LEGAL UPDATES

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Banks Protected from Lawsuits Based on Oral or Unexecuted Commercial Credit Agreements

Service

Banking & Finance

On July 2, 2013, Missouri Gov. Jay Nixon signed into law Senate Bill No. 100, in which the Missouri General Assembly added requirements to what must be included in a credit agreement in order for debtors to bring a claim or assert a defense relating to the agreement. Effective Aug. 28, 2013, the bill revises Section 432.047 of the Missouri statute relating to credit agreements.

Under previous law, Missouri Statute 423.047, Subsection 2, stated that a debtor could not maintain an action or defense relating to a credit agreement unless the agreement is in writing, affords for the payment of interest, and includes terms and condition. The new law adds a fourth requirement that "the credit agreement [be] executed by the debtor and the lender."

When a credit agreement has been signed and in order for Subsection 2 to apply, lenders must include certain language in the signed credit agreement. The bill adds the words "or unexecuted" to the language in the previous version of Statute 423.047. The following is to be included in written commercial credit agreements in boldface 10-point font:

Oral or unexecuted agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt, including promises to extend or renew such debt, are not enforceable, regardless of the legal theory upon which it is based that is in any way related to the credit agreement. To protect you (borrower(s)) and us (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.

The bill comes on the heels of a decision issued by the Missouri Court of Appeals for the Western District in October 2012. In *Bailey v. Hawthorn Bank*, the bank prepared a detailed loan summary setting out the terms and rationale for the bank to loan Baily $510,000. The bank approved the loan, sent Bailey a loan commitment letter but never closed the loan. Bailey sued for contract, fraud and negligent misrepresentation. The court found that taken together, a bank's commitment letter and a loan summary were enough to constitute a credit agreement. The court rejected the bank's argument that because the loan summary was an internal memorandum and borrower never received it until after filing the lawsuit, it could not be construed as part of a credit agreement. Dispositive to the holding, the court did not read there to be a delivery requirement in Missouri Statute 432.047. Together, the commitment letter and a loan summary fulfilled the requirements of the previous version of the statute to the court's satisfaction and led the way to the debtor's victory.

What This Means to You

As a result of the recently signed Senate Bill No. 100, in order to satisfy the requirements of Statute 432.047 to maintain an action or assert a defense based on a credit agreement, borrowers will have to present a credit agreement that has been executed by both the borrower and the lender. Courts will no longer be allowed to take into account documents that have not been signed by the parties when determining if all the requisite requirements are present in a credit agreement to allow the debtor to bring a claim or assert a defense. No matter the legal theory on which a debtor brings a claim or asserts a defense, it may not offer such on the basis of an oral and, now also, an unexecuted contract.

Contact Information

For more information concerning this or other issues affecting banking matters, please contact your Husch Blackwell attorney or an attorney in our banking practice.