

US: Divided Court Preserves Circuit Split On Spouse's Defense Under Equal Credit Opportunity Act

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In a one-sentence ruling, the Court affirmed the decision of the U.S. Court of Appeals for the Eighth Circuit in *Hawkins v. Community Bank of Raymore*, leaving a circuit-split unresolved in its wake. In that case, PHC Development, LLC was the borrower under a note, which was unconditionally guaranteed by Gary Hawkins, one of PHC's owners, and Valerie Hawkins, his wife. When PHC defaulted, the bank sued the wife only. The wife claimed the bank's actions constituted marital status discrimination under the Equal Credit Opportunity Act. The Sixth Circuit had previously agreed that spousal guarantors had standing under the Act to raise such a challenge as an "applicant," but the Eighth Circuit disagreed, holding that the Act unambiguously excluded guarantors because they are not integrally part of "any aspect of a credit transaction." [A link to the affirmance is here.](#)

Some state courts, like the Virginia Supreme Court, have already ruled consistent with the Sixth Circuit, and those rulings are still in place for those jurisdictions. Other jurisdictions that have not squarely confronted the issue may have decided ancillary matters, such as whether a particular agreement constitutes a "credit transaction"—see, for example, *Laramore v. Ritchie Realty Mgt. Co.*, 397 F.3d 544 (7th Cir. 2005) (lease of real property not a "credit transaction"), and *Shaumyan v. Sidetex Co.*, 900 F.2d 16 (2d Cir. 1990) (home improvement contract that provided for contemporaneous payments as work progressed not a "credit transaction"). Lenders and creditors who intend to use spousal guarantors should consult counsel on the practical implications of the Court's non-decision on potential claims under the Act.

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