## CONSUMER CREDIT

### EQUAL CREDIT OPPORTUNITY ACT'S ("ECOA") DEFINITION OF APPLICANT INCLUDES A GUARANTOR

RL BB Acquisition, L.L.C. v. Bridgemill Commons Dev. Grp., L.L.C., 754 F.3d 380 (6th Cir. 2014).
http://law.justia.com/cases/federal/appellate-courts/ca6/13-6034/13-6034-2014-06-12.html

**FACTS:** Defendants, H. Bernard and Starr Stone Dixon ("Bernard" and "Starr"), refinanced a debt with BB&T bank. Both Bernard and Starr executed personal guarantees as part of the refinancing. BB&T subsequently sold the debt to plaintiff, RL BB Acquisition, L.L.C. ("RL BB"). Several years later, Bernard defaulted on the loan, and RL BB sued on Starr's guaranty to collect the debt.

As an affirmative defense, Starr asserted that her guaranty was unenforceable since it violated the ECOA and Regulation B's prohibition on requiring spouses to guarantee loans. 12 C.F.R. §202.7(d)(5); 12 C.F.R. §1002.7(d)(5). The district court held that, because Starr signed as a "guarantor" and not an "applicant," she was not permitted to raise an ECOA violation as an affirmative defense. Starr appealed.

**HOLDING:** Reversed and remanded.

**REASONING:** The court, applying the two-step *Chevron* analysis, first determined that the statutory definition of applicant was ambiguous and could be read to include a guarantor. Second, the court determined that while ECOA's definition of applicant did not expressly include guarantors, Regulation B's definition of applicant did for the purpose of enforcing the Regulation B spouse-guarantor rule.

The court next looked at whether ECOA's remedies included asserting violations of the statute and Regulation B as an affirmative defense in an action to recover a debt. The court determined that, although the recoupment affirmative defense was not expressly in the statute, it did expressly permit the court to grant equitable relief as necessary to enforce the law. Thus, the court held that a defendant guarantor may raise a violation of ECOA and Regulation B as an affirmative defense of recoupment.

### GUARANTOR IS NOT AN APPLICANT UNDER EQUAL CREDIT OPPORTUNITY ACT ("ECOA")

Hawkins v. Cmty. Bank of Raymore, 761 F.3d 937 (8th Cir. 2014).
http://caselaw.findlaw.com/us-8th-circuit/1674696.html

**Facts:** Plaintiff, Valerie Hawkins ("Hawkins"), executed a personal guaranty to secure her husband's loans in favor of Defendant, Community Bank of Raymore ("Community"). After Hawkins's husband failed to make payments due under the loan agreement, Community declared the loans to be in default and demanded payment from Hawkins as the guarantor. Hawkins filed action against Community, seeking an order declaring that her guaranty was void and unenforceable. Community moved for summary judgment on Hawkins's ECOA claim.

**The court held that the plain language of the ECOA provides that a person is an applicant only if she requested credit, but executing a guaranty was not a credit request.**

The district court granted Community's motion for summary judgment, concluding Hawkins was not an "applicant" within the meaning of the ECOA, and Community had not violated the ECOA by requiring her to execute the guaranty. Hawkins appealed.

**Holding:** Affirmed.

**Reasoning:** Hawkins claimed that Community's guaranty requirement constituted discrimination against her on the basis of her marital status, violating the ECOA. The court rejected this argument. Under the ECOA, an "applicant" is an individual who must apply to a creditor directly for credit, or indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit, and "apply" means to make an appeal or request formally and often in writing, and usually for something of benefit to oneself.

Thus, the court held that the plain language of the ECOA provides that a person is an applicant only if she requested credit, but executing a guaranty was not a credit request. A secondary, contingent liability did not amount to a request for credit. A guarantor engages in different conduct, receives different benefits, and exposes herself to different legal consequences than does a credit applicant, so Hawkins did not qualify as an applicant protected by the ECOA.