

The Commercial Litigator

Addressing legal issues for businesses

Loan Agreements in Illinois: Oral Modifications Are Unenforceable

What if a loan officer orally promises a commercial borrower an extension of credit terms, a waiver of default interest, forbearance from default remedies or other modifications of the written loan agreement? Are those promises enforceable? Can a prospective borrower sue to enforce an oral agreement to make a loan when the market has shifted against the borrower before that loan has been documented?

In Illinois, the answer is probably “no.”

Pursuant to the Illinois Credit Agreements Act, agreements to loan money or change the terms of existing loans are enforceable only if contained in a writing signed by both the creditor and the debtor:

A debtor may not maintain an action on or in any way related to a credit agreement unless the credit agreement is in writing, expresses an agreement or commitment to lend money or extend credit or delay or forbear repayment of money, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor.

815 ILCS 160/o.01 *et. seq.*

Also, a debtor may not assert a claim or defense that a new loan agreement has been created based on the creditor's rendering of financial advice, a consultation or a purported agreement to

modify existing loan terms, unless the agreement is in writing and satisfies the above requirements. The statute applies to commercial loans, i.e., to loans “not primarily for personal, family or household purposes, and not in connection with the issuance of credit cards.”

Example: A lender met with a customer in 2008 and specific loan terms were discussed. In the new economic climate, however, the lender refuses to loan on those terms. Under the Act, the prospective borrower has no sustainable claim unless there is a signed agreement.

In addition to precluding actions based on oral promises to extend credit or alter *core* loan terms, the Act bars claims relating to credit agreements where the promise underlying the claim is not contained in a writing conforming with the Act.

Bank One, Springfield v. Roscetti, 309 Ill. App. 3d 1048 (1999) (lender's alleged agreement to alter guaranty held unenforceable; guaranty was part of loan agreement and could not be modified except by a writing); **First National Bank v. McBride Chevrolet, Inc.**, 267 Ill. App. 3d 367 (1994) (bank's alleged oral promise to hold check pending deposit of sufficient funds held unenforceable as a defense in foreclosure action; alleged promise constituted a “credit agreement” that had to be put into writing); **Nordstrom v. Wauconda**

National Bank, 282 Ill. App. 3d 142 (1996) (following a fire, borrower sued bank for failure to fulfill oral promise to obtain insurance on the collateral; since credit agreement merely gave bank discretion to procure insurance, the alleged promise would have modified the loan terms and was thus unenforceable for failure to comply with the Act); **R and B Kapital Development v. North Shore Community Bank and Trust Company**, 358 Ill. App. 3d 912 (2005) (borrower's claims against lender and title company for negligent misrepresentation and breach of fiduciary duty based on failure to comply with oral modifications to loan disbursing agreement were barred; disbursing agreement was a “credit agreement” that could not be altered except by a writing conforming to the Act).

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Katten's Litigation and Dispute Resolution Practice and White Collar Criminal and Civil Litigation Practice have been ranked among the nation's best in the 2008 edition of *Chambers USA: America's Leading Lawyers for Business*. Katten's trial lawyers are adept at achieving the business objectives of our clients in cases ranging from contract disputes and regulatory matters to securities class action lawsuits and other complex commercial litigation. Our experience and foresight lead to sound assessments of business and legal risks, accurate estimates of costs of defense, and, when necessary, favorable settlements. As a result, the firm can deliver cost-effective services on multimillion-dollar cases and efficiently respond to smaller matters.

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