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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

High Court Split In Lending Bias Case 'Anticlimactic'

By **Evan Weinberger**

Law360, New York (March 22, 2016, 10:41 PM ET) -- The U.S. Supreme Court's ruling Tuesday limiting discrimination claims that can be brought by spouses under a fair lending law further defined the statute's applicability, but because the first split decision since Justice Antonin Scalia's death did not come with a published opinion, the impact on consumer finance laws remains murky.

Handing down a 4-4 decision in Hawkins et al. v. Community Bank of Raymore, the high court affirmed a ruling for the bank in a lawsuit filed by two Missouri women, Valerie Hawkins and Janice Patterson. The pair alleged the bank violated a Federal Reserve rule aimed at preventing discrimination against women based on their marital status by requiring them to serve as guarantors on $2 million in loans taken out by their husbands to fund a failed real estate development.

But because the court issued a one-sentence opinion affirming the Eighth Circuit, it missed an opportunity to clarify how it will look at federal agencies' interpretations of consumer finance laws, said BuckleySandler LLP partner Valerie Hletko.

"It's anticlimactic because we have no benefit of the court's thoughts on deference issues," she said.

The Supreme Court said that a federal district judge appropriately dismissed Hawkins and Patterson's case at the summary judgment stage and was right to reject the Fed's interpretation of the Equal Credit Opportunity Act to include spousal guarantors.

The law guarantees that women can't be forced to have their husbands sign on as guarantors when they apply for a loan, but the Fed had held it also applied to borrowers' spouses being forced to sign on as guarantors for commercial loans. That reading will no longer be valid in the Eighth Circuit, said Melanie Brody, a partner at Mayer Brown LLP.

However, even though the split means that the decision is only binding on the Eighth Circuit, it is likely that other courts will follow it as well. And if they don't, the Supreme Court will likely have the same interpretation in future disputes that come close to the facts presented in the Community Bank of Raymore case, Brody said.

"If the court followed its own decision in this case, those decisions [in other courts] would be overturned," she said.

And there is reason to believe that, absent Justice Scalia's death, the court would have ruled against the

petitioners in a slim 5-4 majority.

The 4-4 split suggests that Justice Anthony Kennedy, the court's usual swing vote, had sided with the bank and the Eighth Circuit in the case, even though the one-sentence opinion did not reveal how individual justices voted in the case.

And Justice Scalia hit the petitioners' counsel, John M. Duggan of Duggan Shadwick Doerr & Kurlbaum LLC, with aggressive questions during oral arguments in October.

"Wait, wait, wait. You say she was required to sign. She wasn't required to sign. Somebody put a gun to her head? She wanted the husband to get the loan, and this was the deal," Scalia said, according to a transcript of the arguments.

And that should provide a sufficient guide for courts to follow, according to Greer S. Lang, a Lathrop & Gage LLP partner who represented the bank.

"Even though it's an equally divided court, I think that those people that are familiar with the case and its argument and perhaps the circuit courts may take some guidance from the decision," she said.

Duggan cautioned against making any assumptions about Scalia's vote.

"These Chevron cases are really not split in any kinds of ideological lines," he told Law360, referring to Supreme Court's Chevron precedent regarding deference to agency decisions. Duggan added that Justice Scalia had in several cases written opinions deferring to agency judgment.

Having that air of uncertainty could help Duggan in other similar cases he has pending in the Tenth Circuit and Kansas state courts, as well as other potential litigants, he said.

As it stands, the Supreme Court decision in the Community Bank of Raymore case will only impact similar attempts to use the ECOA in gender discrimination cases involving guarantors.

"It's pretty narrowly applicable to this particular issue," Brody said.

A broader opinion could have given a better idea of how the high court would handle questions of deference to agency decision-making when it comes to other areas of consumer finance, a significant question given the aggressive readings of existing law put forward by the Consumer Financial Protection Bureau and other regulators.

"An affirmance that said the Federal Reserve Board went beyond its authority would have been very helpful in imposing discipline on agency rulemaking more broadly," Hletko said.

But with the confirmation process for Justice Scalia's replacement stalled for the foreseeable future, more such uncertainty is likely.

Hawkins and Patterson are represented by John M. Duggan, Deron A. Anliker and Jay T. Shadwick of Duggan Shadwick Doerr & Kurlbaum LLC.

Community Bank of Raymore is represented by Stephen R. McAllister of Thompson Ramsdell & Qualseth PA and Greer S. Lang, Thomas Stahl and Justin Nichols of Lathrop & Gage LLP.

The case is Hawkins et al. v. Community Bank of Raymore, case number 14-520, in the Supreme Court of the United States.

--Editing by Mark Lebetkin and Philip Shea.
