

Litigation

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CLIENT ALERT

*Emerging Legal Issues
for Corporate Management
and In-House Counsel*

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THE SEVENTH CIRCUIT BROADLY INTERPRETS THE ILLINOIS CREDIT AGREEMENTS ACT TO PROTECT PROVIDERS OF COMMERCIAL CREDIT

The Illinois Credit Agreements Act (the "Act"), 815 ILCS 160/1 et seq., was enacted as a "strong form" of the statute of frauds applicable to transactions involving the extension of commercial credit. The Act provides that an alleged commercial credit agreement or an alleged amendment to a commercial credit agreement will not be enforced unless both parties sign the credit agreement or the amendment. Case law has established that traditional exceptions to the statute of frauds such as fraud, part performance and equitable estoppel do not apply to the Act. As such, every provider of commercial credit which does business in Illinois should be aware of the Act and the protections that it affords against claims that credit was wrongfully withheld or that amendments to credit agreements were breached. There are, however, surprisingly few reported federal or state court opinions interpreting the Act or the scope of its protections.

Relying upon the Act, Goldberg, Kohn recently successfully defended a client accused of wrongfully refusing to fund an accounts receivable financing program. The case, Help at Home, Inc. v. Medical Capital, L.L.C., 2001 WL 902462, ___ F 3rd ___ (7th Cir. August 7, 2001), involved a claim by Help at Home that Medical Capital refused to fund an accounts receivable financing program after Medical Capital had sent Help at Home a commitment letter; had sent transaction documents to Help at Home which Help at Home had executed; and had executed at least some UCC financing statements. The commitment letter, however, contained no terms and was not countersigned by Help at Home, and Medical Capital itself never signed the transaction documents.

In defending Medical Capital, Goldberg, Kohn argued that (1) the accounts receivable financing program, which consisted of an alleged agreement by Medical Capital to make up to \$5 million available on a revolving basis to purchase Help at Home's receivables, was the equivalent of an extension of credit governed by the Act, and (2) because Medical Capital never signed the transaction documents, Help at Home's claim was barred by the Act. In response, Help at Home argued that because the alleged transaction was not a typical loan, but was structured as a sale of accounts receivable, the Act did not apply. Help at Home further argued that even if the Act did apply, Medical Capital's execution of the commitment letter and execution of at least some UCC statements evidenced an intent by Medical Capital to be bound by the alleged agreement which was sufficient to satisfy the Act. The District Court dismissed the claim based upon the Act, and Help at Home appealed.

The Seventh Circuit affirmed, and in so doing broadly applied the Act to effect its purpose — protecting providers of commercial credit from claims based upon oral agreements or documents not signed by the credit provider. The Court first addressed whether the accounts receivable purchase agreement was a "credit agreement" governed by the Act and held that it was. The Court held that "[t]he net effect of this agreement was that, as set forth in the commitment letter, [Medical Capital] provided accounts receivable financing to [Help at Home]. . . . The terms of the [document] referring to 'sales' of [Help at Home's] receivables are best viewed as a device to ensure that [Medical Capital] had the legal ability

to recoup the funds it lent [Help at Home] through the receivables. Because we have concluded that the agreement embodied in the [document] is essentially a loan, the [Act] is implicated, and its terms must be satisfied." Thus, the Court broadly interpreted the Act to apply to the involved accounts receivable financing program, even though the program involved the sale of accounts receivable.

Next, the Court addressed whether the documents executed by Medical Capital were sufficient to satisfy the Act's writing requirement. Because it was beyond dispute that Medical Capital did not sign the governing transaction document, Goldberg, Kohn argued that, as a matter of law, the Act barred the claim. In response, Help at Home argued that it is permissible to piece together several different documents, some signed by Help at Home and some signed by Medical Capital, to satisfy the Act. In particular, Help at Home argued that its execution of the transaction document and the UCC financing forms, coupled with Medical Capital's execution of the commitment letter and various UCC financing forms, was sufficient to meet the Act's requirements. Given the lack of Illinois case law precedent regarding this issue, the Seventh Circuit declined to decide whether, as argued by Help at Home, the Act may be satisfied by reliance upon numerous different documents that can be pieced together to evidence an intent to be bound. Assuming that it would be possible to satisfy the Act in that manner, however, the Court analyzed whether the documents signed by Medical Capital were sufficient to bind Medical Capital to the alleged agreement and found that, given the underlying purpose of the Act to protect credit providers, they were not.

The Court applied the test that is applicable to the general statute of frauds — that the writing requirement will be met if the defendant has signed at least one document which either incorporates by reference the agreement that the plaintiff is seeking to enforce or attaches that agreement. With respect to the commitment letter signed by Medical Capital, the Court held that it "does not support [Help at Home's] argument because it does not reference any other document that allegedly comprises the contract nor does it discuss the terms of the parties' agreement. Without some connection to the rest of the documents, we cannot read the commitment letter as demonstrating an intent to contract."

With respect to the UCC financing statements that had been signed by Medical Capital, Goldberg, Kohn argued that those documents were signed in anticipation that the agreement would be executed, and that when Medical Capital chose not to go forward with the accounts receivable financing program, the UCC forms became unenforceable. Goldberg, Kohn further argued that to allow the UCC forms, which would only become effective in the event that a final agreement was executed, to establish the existence of the agreement itself, would make no sense. The Court agreed, holding that the UCC forms were "too attenuated from the underlying agreement . . . to evidence the parties' intent to contract." In expressing its intent to broadly interpret the Act, the Court further stated that "[w]e do not believe that the policies that the state courts have said animate the [Act] would be served adequately if we were to infer from the UCC forms, which depend on the [alleged agreement] for their validity, that the [alleged agreement] is valid. Permitting such documents to establish the validity of the underlying credit agreement would hardly be implementing 'a strong form of the Frauds Act.'" Accordingly, the Court held that the Act barred the enforcement of the alleged agreement. Thus, the Seventh Circuit broadly interpreted the Act both in terms of what type of alleged agreement will be governed by the Act and in terms of how the Act's writing requirements can be satisfied.

The Seventh Circuit's ruling is important because it confirms that courts should broadly interpret the Act to protect providers of commercial credit against claims by borrowers when the claim is not supported by a document signed by all parties. Every business that engages in transactions which involve, or arguably involve, the extension of commercial credit in the State of Illinois should be aware of the protections provided by the Act. Moreover, several other states have enacted legislation similar to the Act which should be reviewed when claims governed by the laws of those states are raised.

Steven A. Levy of Goldberg, Kohn had the primary responsibility for representing Medical Capital and argued the case before the Seventh Circuit. If you would like to discuss the Act or the Help at Home opinion with Steve, or if you would like a copy of the opinion, please feel free to contact him.

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