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A DEAL IS A DEAL

TOP B.C. COURT DISMISSES CLASS ACTION AND UPHOLDS INTEREST PROVISIONS IN CREDIT CARD USER AGREEMENTS

INTRODUCTION

A recent decision of the British Columbia Court of Appeal (its second ruling in this contentious class action) has upheld the terms of credit card user agreements relating to which charges constitute interest and when interest will begin to accrue.

In *Dabl v. Royal Bank of Canada*¹ the plaintiffs brought a class action against the Royal Bank of Canada, Canadian Imperial Bank of Commerce and the Bank of Montreal (the “Banks”), alleging that since 2001 the Banks have failed to properly disclose the amounts charged on their credit cards.

The plaintiffs’ main contention was that the charges collected by the Banks between the date when cardholders used their credit cards (the “Transaction Date”) and the date the funds were advanced by the Banks to the merchants who accepted the cards (the “Funding Date”), which is usually several days after the Transaction Date, were improperly characterized as interest.

The plaintiffs argued that since the Banks did not advance any funds to the merchant or provide credit to the cardholders on the Transaction Date, there was no principal amount on which interest could be charged. Therefore, in backdating the interest charges from the Funding Date to the Transaction Date, the Banks essentially increased the rate of interest, failing to disclose the true rate of interest and the true cost of borrowing as required by the *Bank Act*² and the *Consumer Protection Act*.³

The Banks argued that they advanced credit to the cardholder on the Transaction Date by allowing the cardholder to use the card to make purchases while retaining his or her own money.

Were the Charges from the Transaction Date “Interest”?

The court held that interest is “the return or consideration or compensation for the use or retention by one person of a sum of money, belonging to, in a colloquial sense, or owed to, another” which accrues from day to day. This definition contemplated two possible scenarios: one where money is advanced, and another where payment is deferred. The use of a credit card to make purchases is an example of the latter. In effect, the cardholder retains the use of his or her money when using the credit card to pay for a transaction.

The court agreed that Banks could charge cardholders interest from the Transaction Date even though funds had not yet been advanced to the merchant who accepted credit card payment. The wording of the Cardholder Agreements themselves, which provided for interest from the Transaction Date, was determinative of this issue. In relying on these agreements, the court cited an established mortgage law principle that while a lender can claim interest only from the time money is advanced, where an agreement between parties demonstrates an intention to have the interest run from some other time, that intention will take precedence. Consequently, there is no substantive limitation on the ability of parties to specify the date from which interest charges begin to run.

¹ [2006] BCCA 369.

² S.C. 1991, c. 46.

³ R.S.B.C. 1996, c. 50, s. 37.

When is Credit Advanced?

The plaintiffs alternatively argued that credit is not advanced on the Transaction Date because the agreements between the Banks and the Merchants (the “Merchant Agreements”) contain chargeback provisions which only create a conditional obligation to pay the merchant on the Transaction Date. They stated that an absolute discharge of the obligation of the cardholder to pay the merchant was necessary for an advance of credit. The cardholder’s obligation to pay is only absolutely discharged on the Funding Date.

The Court of Appeal held that since the Merchant Agreements were separate bi-lateral contracts between the Banks and the Merchants, they did not qualify or alter the Cardholder Agreements. The principle of privity of contract rendered all other contracts irrelevant to the determination of whether the charge by the Banks to the cardholders was interest. In making this determination, the Court of Appeal in effect, has settled the confusion that a credit card transaction is a multi-party contract between the cardholder, the credit card company and the merchant who accepts credit card payment.

The interest provisions in each of the Cardholder Agreements clearly provided that an immediate debt between the Bank and the cardholder arose upon the use of the card on the Transaction Date. The court concluded the “credit, that is, the retention by the cardholder of her own funds rather than experiencing the immediate outlay of those funds, is extended upon the cardholder’s presentation and the merchant’s acceptance of the credit card as the means of payment for the goods or services provided. Credit is accordingly provided at the time of the transaction.”

CONCLUSION

In addition to quashing a potentially massive class action against the Banks, *Dabl* brings some welcome certainty to both the enforceability of Cardholder Agreements and the scope of the legal relationship between credit card issuers and cardholders. Issuers should now be able to rely on the terms of Cardholder Agreements without worrying how they are qualified or altered by Merchant Agreements.

Written by Jason Murphy and Brett Harrison⁴

⁴ The authors thank Sivan Nisimov, student-at-law, for her assistance in preparing this article.

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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