

Promises, Promises, Promises..... Louisiana Supreme Court Upholds Requirement of Written Credit Agreement

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The Louisiana Supreme Court recently held that no cause of action exists for damages arising under verbal promises to obtain additional loan security when those promises were not contained in any written loan documentation, finding the verbal promises to be unenforceable as an **oral** credit agreement.

In *Hovell v. Origin Bank*, Origin Bank financed the purchase of a business by KP Music (buyer). As part of the financing, the seller's agent (Hovell) pledged a certificate of deposit as collateral for the loan. After KP Music defaulted on payments and Origin Bank seized the remaining loan balance from Hovell's CD, Hovell (now as subrogee) learned that Origin Bank had not obtained any other collateral from KP Music to secure the loan. Hovell alleged that Origin Bank had made "verbal promises to obtain additional security" including a personal guaranty and liens on the assets sold to KP Music. Origin Bank denied these allegations. After Hovell filed suit, Origin Bank asserted an exception of no cause of action under the theory that the Louisiana Credit Agreement Statute barred the action because there was no written agreement to obtain additional collateral. Although the trial court granted Origin Bank's exception, the Second Circuit Court of Appeal reversed and reinstated Hovell's claim. But the Louisiana Supreme said the trial court got it right.

The Louisiana Credit Agreement Statute explicitly states: "A debtor shall not maintain an action on a credit agreement **unless the agreement is in writing**, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor." La. R.S. 6:1122 (emphasis added). In its per curiam opinion, the Louisiana Supreme Court cited to the Louisiana Credit Agreement Statute and two prior opinions that preclude "all actions for damages arising from oral credit agreements, regardless of the legal theory of recovery asserted." As a result, even though written loan documentation existed for the financing, because Hovell's action was

based on (alleged) oral agreements outside of those documents, the Court ruled that Hovell's claim could not proceed.

This case provides an important reminder to all parties to a loan—especially those who may be providing only a guaranty or additional collateral—to ensure that **all** of the terms of the financing are contained in the written loan documentation.