

Elderly widow defeats bank for monies owing on credit card (Royal Bank of Canada v. Smith)

Liability | Litigation | Litigation & Dispute Resolution

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According to data available on the internet, at least 8 out of 10 Canadians either own or use a credit card. Credit cards are obviously convenient financial tools that give consumers a lot of purchasing power. However, a credit card should not be overused and a consumer should be wary that whenever they use a credit card their transaction fundamentally creates a loan. The consumer is being extended “credit” by their financial institution, and at the end of each month the consumer is obligated to pay at least a minimum of the outstanding balance. If the balance owing on the use of the card is not paid in full, the card owner will be charged interest on the outstanding balance. To limit the potential overuse of a credit card, credit limits exist, which will vary from consumer to consumer depending on their financial stability and income.

However, as determined in *Royal Bank of Canada v. Smith*, 2024 BCSC 963, use of a credit card by a person will not necessarily render that user liable for a balance owing under the card. As well, banks should carefully ensure that credit card owners consent to any increase in the card’s credit limit.

In this case, the bank sought summary judgment against the elderly defendant in the amount of \$51,764.09 for a balance that had been outstanding since 24 April 2020.

The elderly defendant was a widow, whose husband had passed away in June 2019. In the years prior to the husband’s death, the outstanding balance on the card had steadily increased as did the credit card’s limit.

However, the defendant contended that she was not responsible for the balance owing because she had never applied for the card and was merely an “authorized user” of the card, rather than an owner.

Under the Cardholder’s Agreement an “Authorized User” was “...a person to whom we [the bank] have issued a Credit Card on your Account at your request.” While an Authorized User had the same ability to charge transactions to an account, they did not have any responsibility for amounts owing on the account.

In the alternative, the defendant argued that if she was an owner, she had never authorized the bank to increase the credit card beyond its initial limit of \$1,000.

The bank argued otherwise.

The bank primarily relied on the definition of “you” as found in the Cardholder’s Agreement to establish that the defendant had accepted responsibility for balance owing under the card. This definition provided as follows:

When this Agreement refers to “you” or “your”, it includes each person who signed or submitted the Credit Card Application, whose name is on the Account or to whom a Credit Card on the Account has been issued (each Credit Card issued on the Account will have its own unique card number) other than an Authorized User. If this includes more than one person, “you” means each one of you. All of you are, individually and together, responsible under and bound by this Agreement. This means that each of you is fully responsible for amounts owing on the Account, irrespective of which one of you incurred or which Credit Card was used to incur any particular charge. The amounts for which you are responsible include any amounts that may have been owing on your Accounts at the time your Credit Card is

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

issued.

The bank further relied on the testimony of a collections associate with the bank, LL, who, although never having had direct dealings with the defendant and her late husband, relied on general bank practices to support the claim. LL testified that defendant had applied for the credit card at issue and had been approved as a co-applicant by the bank. As well, LL stated that as a result of having accepted and used the credit card, the defendant was bound by the terms and conditions found in the bank's Cardholder's Agreement.

However, the application for the credit card was never introduced into evidence and there were no other documents showing that the defendant had been approved as the primary cardholder or as a co-applicant for the card.

The bank also relied on employee notes on the interactions they had with the defendant and her late husband. These notes referred to the defendant and her late husband as "client" or "clients" and showed that the defendant had been looking to consolidate loans or that she had discussed insurance protection for the account, at which time she had presented a power of attorney for her husband.

With respect to the increase in credit limits, the bank relied on a screen shot of the account to show that the limit had increased from \$1,000 prior to September 2002, with a number of intervening increases, to the final limit of \$28,000 in January 2018.

The court ruled against the bank.

Overall, the bank's evidence was insufficient to prove that the defendant was an owner on the credit card account or that she had agreed to be a co-applicant.

Although the facts showed that credit card statements may have been sent to the defendant's address and that she had used the credit card, this was insufficient to establish liability for the account's outstanding balance. This had been established in the similar case of *Royal Bank of Canada v. Klassen*, 2013 BCSC 631, in which the court found that even though the back of a credit card contains a warning that its use will be subject to the terms of a bank's credit card agreement which the cardholder acknowledges having received, this did not bind the user to the agreement. In *Klassen*, the court found that this warning or term was onerous and needed to be brought to the attention of the user.

As well, the motion judge found that the fact that the bank referred to the defendant in its records as a co-applicant or did not refer to her as an "authorized user", did not mean that the references or lack of references accurately reflected the defendant's status as a cardholder.

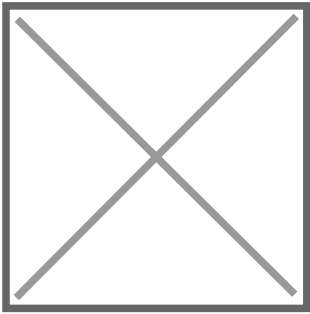
In the alternative, the court found that if the defendant had been liable to pay the outstanding balance, the liability would have been capped at \$1,000 because the bank had failed to prove that express consent had been given to increase the limit. The screen shot evidence was not proof that consent had been given to increase the credit limit.

The key takeaway from this case is that banks must keep adequate records of the status of their customers. A bank will not necessarily be able to rely on employee notes to establish a customer's status, particularly where a written application form should exist. A PDF version is available to download [here](#).

For more information please contact: **Stephen Thiele** at **416.865.6651** or sthiele@grllp.com

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Author



Stephen A. Thiele

Partner

416.865.6651

sthiele@grllp.com

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com