

So you're in Special Credit – Can you sue?

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27 December 2017

Deciding not to advance any more money and shifting a debtor's account into the euphemistic and scary world of the bank's "Special Credit" department isn't a breach of a bank's credit arrangements.

But some people don't see it that way. In what can only be described as tenacious, Willowbrook Nurseries ("WN") took Royal Bank to task for doing just that.

Since it was in the seasonal plant business, WN often needed a temporary bulge on its credit line in the winter for growing and producing plants sold in the spring and summer when the bulge would be paid down. But WN's 2008 was a bad year. It didn't repay the bulge. In what could only be described as pushing it, WN asked RBC for more money and a further bulge during the winter of 2008 for the next year's production.

Sensing that WN's business was withering on the vine, RBC denied the extra request for more money and sent the account to the bank's vigilant Special Credit department. They did not immediately turn out WN's lights but provided some interim financing with strict controls while WN found another institution more accommodating. WN refinanced with another bank in April of 2009.

Having done that, WN then sued RBC for acting in bad faith by not giving reasonable notice when it restricted access to credit and delivered the account to the tender mercies of Special Credit. WN effectively said that RBC had to lend more money during a "reasonable notice" period. It claimed the move to Special Credit was also an indicator of bad faith and notice had to be given for that also.

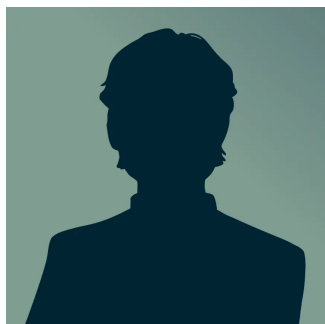
The Court of Appeal (yes, surprisingly, this saga went through two court levels) considered WN's arguments to be some sort of noxious fertilizer. They found that in the circumstances there was no bad faith and that the "principle of good faith performance of contractual obligations does not extend so far as to require RBC to subjugate its own financial interests by extending additional credit that it does not want to advance". Transferring an account to Special Credit was entirely discretionary to the Bank and there was no breach of a lending term when they did.

The moral of the story is that when you don't pay the bank back don't be surprised if they get annoyed.

<https://goo.gl/pHCDx4>

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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