

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**BISON PARK DEVELOPMENT, LLC**

**APPELLANT-RESPONDENT,**

**v.**

**NORTH AMERICAN SAVINGS BANK, F.S.B.**

**RESPONDENT-APPELLANT.**

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DOCKET NUMBER WD75150 Consolidated with WD75192

DATE: May 28, 2013

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Appeal From:

Jackson County Circuit Court  
The Honorable Jack R. Grate, Jr., Judge

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Appellate Judges:

Division Three: Joseph M. Ellis, Presiding Judge, Lisa White Hardwick, Judge and Cynthia L. Martin, Judge

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Attorneys:

Robert J. Bjerg, Overland Park, KS, for appellant-respondent.

Thomas M. Franklin, Kansas City, MO, for respondent-appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

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No. WD75150 Consolidated with WD75192

Jackson County

Before Division Three: Joseph M. Ellis, Presiding Judge, Lisa White Hardwick, Judge and Cynthia L. Martin, Judge

Bison Park Development, LLC alleged North American Savings Bank, F.S.B., breached an agreement to deposit the proceeds from a sale of property on which the bank held a deed of trust into an unpledged deposit account available for Bison Park Development's use. The trial court granted a directed verdict in favor of North American Savings Bank. Bison Park Development appeals, claiming that the trial court erred in concluding that the Missouri Credit Agreement Statute, section 432.047, barred its causes of action against North American Savings Bank.

**AFFIRM.**

**Division Three holds:**

1. Section 432.047 precludes a debtor from "maintain[ing] an action upon or a defense, regardless of legal theory in which it is based, in any way related to a credit agreement unless the credit agreement is in writing, provides for payment of interest or for other consideration, and sets forth the relevant terms and conditions."

2. A credit agreement is defined as "an agreement to lend or forbear repayment of money, to otherwise extend credit, or to make any other financial accommodation."

3. The trial court identified the "credit agreement" at issue to include a deed of trust which gave North American Savings Bank the discretion to apply the proceeds of any sale of the encumbered property to obligations owed by Bison Park Development or a related construction entity. Because the promise to deposit the proceeds into an unpledged deposit account did not appear in the credit agreement, section 432.047 barred Bison Park Development's causes of action based on the promise.

4. Bison Park Development's alternative argument that North American Savings Bank's promise was not a credit agreement fails because the promise was an agreement to forbear the repayment of money or a financial accommodation.

Opinion by Cynthia L. Martin, Judge

May 28, 2013

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