

Guarantee Clause Not Linked to Assignee

With times being tough, unexpected traps in agreements are coming to light with greater regularity. A recent landlord and tenant case shows the sort of thing that can happen if insufficient attention is paid in negotiation to clauses that might seem unimportant at the time.

It is usual for a commercial lease to contain a clause which will bind the tenant to guarantee the payment of the rent and performance of covenants under the lease should it be assigned. In a recent case, a lease was assigned and the new tenant later became insolvent and went into liquidation.

The relevant lease agreement bound the original tenant to guarantee performance during the period the assignee was 'bound by the tenant covenants of the lease'. The liquidators disclaimed the lease, making no payments, and the landlord sued the tenant under the guarantee.

The tenant claimed that it was not liable for the assignee's rent etc. after the liquidator had disclaimed the lease, the argument being that the assignee was no longer bound by the covenants in the lease and the original tenant could not therefore be bound by them after the lease was disclaimed.

The Court of Appeal did not accept this argument. The original tenant was liable under the guarantee. The liability of the original tenant as guarantor was separate from that of the assignee.

"Your potential responsibilities under a guarantee if you assign a lease may not be uppermost in your mind when you are negotiating to take on new rented premises," says Kamlesh Chandarana. "However, attention to detail pays dividends and, in the present environment, landlords may agree to limit or remove guarantee clauses if pressed."