

Update: 4 June 2013 Lease guarantees - the cost of uncertainty



Fleming Muntz
Solicitors



Summary

Personal guarantees from directors are almost universal when land is leased to a private company. However, a NSW Supreme Court decision from earlier this year shows the danger to both parties when they are not written carefully.

What were the facts and decision?

Commercial premises were leased to a private company using the standard Law Society of NSW lease. Its two directors provided personal guarantees.

The lease form had provision for personal guarantees to be limited to a dollar amount. No amount was given, but instead the parties had added that personal guarantees were not required if a security bond for three months' rent was paid instead. The tenant did not provide the bond and was placed into liquidation.

The guarantors argued that, because the item in the lease dealing with limitation of liability for personal guarantees referred to a bond of three months rental, their guarantees were also limited to that amount. The landlord claimed that the guarantee was unlimited.

The court agreed with the landlord.

What is significant?

Neither party was well served by the way in which the lease was completed.

The guarantors apparently thought that their guarantees were limited to the bond amount and submitted that anything else was 'absurd' and 'unreasonable'.

The landlord ultimately got the result it wanted, but the fact that there was scope for an argument at all shows that the guarantee could have been clearer from its point of view as well.

How can Fleming Muntz help?

Personal guarantees are often seen as a cheap form of security compared to a bank guarantee or security bond.

Fleming Muntz has lawyers experienced in commercial leasing who can ensure that guarantors understand their exposure and that landlords receive the security they expect.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

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