

**SOME  
GOOD NEWS  
FOR  
LANDLORDS**

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**K/S Victoria Street v House of Fraser (Stores Management) Ltd  
and others [2011] EWCA Civ 904 (27 July 2011)**

The Court of Appeal in the recent decision of *K/S Victoria Street v House of Fraser (Stores Management) Ltd and others [2011]* has clarified the law on the extent to which a tenant's guarantor can be required to remain liable for the lease obligations following an assignment. At first instance, the Court followed the decision in the *Good Harvest* case and ruled that a guarantor of the tenant's obligations under a lease cannot validly guarantee the obligations of the assignee but neither the Court at first instance nor the Court in *Good Harvest* determined whether or not a guarantor could guarantee the outgoing tenant's AGA.

On appeal, the Court of Appeal decided the following points:

1. Any contractual obligation in the tenancy or other document which requires a guarantor of the tenant's liabilities to guarantee future assignees will be void;
2. Even if the current guarantor volunteers to guarantee the assignee's future obligations under the lease, this will also be void;
3. A guarantor could guarantee subsequent assignee's obligations under the lease but cannot act as guarantor for the immediate assignee;
4. However, a guarantor may guarantee the tenant's obligations under an AGA.

Points 2-4 above were not central to the issues in the case and accordingly will not be binding on future Courts, however, they will be considered by future Courts in determining similar cases.



**Practical Implications for landlords**

- Whilst landlords cannot rely on guarantees given by the outgoing tenant's guarantor for the obligations of the assignee, a landlord can have the benefit of a guarantee of the outgoing tenant's AGA;
- When considering the covenant strength of a proposed assignee, a landlord can ignore an offer by the tenant's guarantor to guarantee the assignee's obligations under the lease;
- Where a lease permits intra group assignments with the only condition being that the guarantor for the tenant gives a guarantee for the assignee group company, the landlord may have difficulties. The condition will be void and the tenant may then be free to assign to a group company of questionable strength;
- Landlords may wish to strengthen the restrictions on alienation in future leases to protect their investment value but this should be weighed up against a potential adverse effect on rent review.