

**Is your guarantee  
worth the paper  
it's written on?**

The enforceability of a guarantee of an assigned lease was recently considered by the High Court in the case of *Good Harvest Partnership LLP v Centaur Services Ltd* (23 February 2010) [2010] EWHC 330 (Ch)

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**Facts**

A lease was granted for a term of 10 years ("the Lease") to the Tenant ("T") and the Guarantor ("G") was a party to it. The Lease required the landlord's consent to an assignment and contained an obligation on the T and G to enter into a guarantee of the assignee's obligations under the Lease ("the Guarantee Agreement") upon assignment. The Lease was assigned and T and G entered into the Guarantee Agreement. The Assignee failed to pay its rent under the Lease. The landlord issued proceedings to recover the rent from G.

**Decision**

The Judge concluded that the Guarantee Agreement was unenforceable against G. The Lease was granted after 1 January 1996 and was therefore a "new lease" for the purposes of The Landlord and Tenant (Covenants) Act 1995 ("the Act"). The Act stipulates that both tenants and guarantors are released on an assignment, subject only to the tenant's potential obligation to enter into an Authorised Guarantee Agreement ("AGA"). There is, however, no provision for a guarantor to enter into an AGA. The Act also contains wide reaching anti-avoidance provisions and the Judge concluded that the requirement in the Lease that the guarantor should also enter into a guarantee of the assignee's liabilities fell foul of those provisions.

Although the Judge did not find expressly that a guarantor of the tenant cannot volunteer to guarantee an assignee's liabilities (for instance to facilitate an inter-group reorganisation), his comments suggest that this might also fall foul of the anti-avoidance provisions.

We understand that this decision is being appealed.



**Consequences**

This decision might well have adverse consequences for both landlords and tenants. From a landlord's perspective it might render some existing guarantees unenforceable and limit a landlord's ability to accept guarantees from existing guarantors. From the tenant's perspective, it might make assignment more difficult to achieve, especially in inter-group reorganisations, because a landlord will not be free to accept guarantees from the existing guarantor, thereby reducing the pool of potentially acceptable guarantors.