



Guarantees given by an existing tenant's guarantor on lease assignment are unenforceable and invalid

Summary and implications

In a ground breaking case, the High Court held yesterday* that a guarantee given by the original tenant's guarantor in respect of its assignee's obligations was void and unenforceable.**

This decision has the following highly unwelcome implications for landlords:

- Landlords will not be able to recover unpaid sums from a repeat guarantor.
- Investment value of properties may decrease where there is over reliance on a guarantor. This may impact on future sales.
- Potential claims by guarantors for reimbursement of sums already paid to landlords under existing guarantees.

Implications for future assignments:

- Landlords are advised to withhold consent to assign to a proposed assignee of weak covenant strength where the guarantee offered is from a previous guarantor. In our opinion this would be reasonable grounds for refusal.
- Tenants may have difficulties effecting transfers (particularly intra-group transfers) where a parent company has guaranteed the existing tenant and the proposed assignee is a new company or is of weak covenant strength.

Further comment

Whilst a tenant can be obliged to give a guarantee on assignment under an authorised guarantee agreement, a guarantor cannot give any further guarantee. Landlords should therefore carefully consider who will be the tenant on new lettings.

This decision will not affect "old" leases granted before 1 January 1996, nor authorised guarantee agreements given by previous tenants under "new" leases granted since that date.

We wait to see whether the judgment, which many will find controversial, will be appealed.

Ask a question

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* *Good Harvest Partnership LLP v Centaur Services Limited* [2010] EWHC 330 (Ch)

** As it frustrated section 25 of the Landlord and Tenant (Covenants) Act 1995

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