

Property

March 2010

Important News Regarding Tenants' Guarantors

It has been a long standing legal conundrum as to whether a tenant's guarantor under a lease can also be required to guarantee an assignee's obligations by way of an authorised guarantee agreement (an "AGA") entered into when the tenant assigns the lease.

*We have now had a ruling on the point in **Good Harvest Partnership LLP v Centaur Services Ltd** – and it's not in the landlord's favour.*

The decision relates to most leases completed on or after 1 January 1996. The judge held that the anti-avoidance provisions of the Landlord & Tenant (Covenants) Act 1995, which came into force that day, should be viewed widely. The decision means that

- It is not possible to require an outgoing tenant's guarantor to guarantee in an AGA an assignee's performance of the lease covenants as a pre-condition of giving consent to the tenant to assign the lease. Fortunately, landlords rarely sought this guarantee, preferring instead to require an assignee to provide its own guarantor.

- It *might* not be possible to rely on a guarantee from a tenant's guarantor to cover an assignee's performance of the lease, even if that guarantee is willingly given, independently of an AGA and without any obligation to do so. So landlords should treat any such guarantees voluntarily given with caution.
- It *might* not even be possible to require a guarantor to guarantee an outgoing tenant's obligations whilst that tenant continues to be liable to a landlord by way of an AGA. Landlords should not rely on this guarantee alone for fear of further case law to come.

This decision has opened up to debate issues that had previously appeared settled. Whether or not the decision is appealed, in the meantime, where a tenant's covenant strength is in doubt, landlords should redouble their efforts to persuade a prospective guarantor to become a joint tenant instead.

This Alert! is correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

© March 2010, Dundas & Wilson CS LLP and Dundas & Wilson LLP. All rights reserved.

If you would like any further information on this Alert!, or any other Property issues, please call the person at D&W with whom you normally liaise, or one of the following specialists:

Richard Lampert	richard.lampert@dundas-wilson.com	020 7759 3501
Martin Thomas	martin.thomas@dundas-wilson.com	020 7759 3543