

Personal Guarantees

Understand The Consequences

Linda Jane Inkster v Mountain Wear 2004 Limited

A recent High Court case delivers a very strong message that an individual intending to sign a contract as a personal guarantor should take proper professional legal advice prior to signing any document which contains a personal guarantee condition of supply.

Under the letterhead of Junction Ski Shop Limited (**Junction Ski**), Ms Inkster applied to Mountain Wear 2004 Limited (**Mountain Wear**) to open an account to supply sporting goods stores in Ohakune. Ms Inkster completed the account application form and signed it as director of Junction Ski.

Conditions of supply included:

- "5. I/We further agree by signing this application that I acknowledge by offer of extending a personal guarantee in support of any outstanding credit by Mountain Wear 2004 Limited as applicable to the "Customer" as described above."

When Junction Ski defaulted on its payments under the contract, a claim was made by Mountain Wear against Ms Inkster as a personal guarantor to the transaction. Ms Inkster argued that there was no basis for the claim that the guarantee had been signed by her personally. Ms Inkster said that she had assumed that she was signing only on behalf of Junction Ski.

The Court held that the key to the case was what the written agreement actually contained.

In this case, although the wording of the document "by offer of extending personal guarantee" was clumsy, the meaning was clear. The application required a personal guarantee which was accepted by Ms Inkster as signatory. This was not a case where the terms of the guarantee were so confusingly drafted that it might have been possible for the person signing it to construe it in such a way that it did not promise a personal guarantee.

This case highlights the importance of reading the fine print on such application forms and being sure that what is signed is understood. Such guarantees frequently appear in application forms or other forms, packing slips and delivery documents for example. If such a clause appears in documents – delete it, or take advice before you sign it.

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