



Protecting the Rights of a Purchaser After Closing

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Abstract

Absent evidence suggesting fraud or misrepresentation, a guarantee document will be enforceable against a guarantor even if the guarantor did not read the document or seek independent legal advice.

Full Article

Bank of Montreal v 1480863 Ontario Inc., 2007 Carswell Ont 2419 (Ont. S.C.J. April 20, 2007) highlights that it is the responsibility of guarantor when signing a guarantee document to read the document and seek independent legal advice, and that there is no fiduciary duty imposed on a bank to advise the guarantor when signing the guarantee.

In this decision, the defendant's husband was the sole officer and director of 1480863 Ontario Inc. The corporation borrowed \$50,000 on a demand loan from the Bank of Montreal (the "Bank"). Several documents, including a promissory note on behalf of the company, were signed by the defendant and her husband. Relative to the initial loan, the wife also filed an application for life insurance in the amount of \$50,000 with the Bank as the primary beneficiary. The Bank then advanced a further amount to the company in return for a demand promissory note signed by the defendant's husband on behalf of the company. Subsequently, the company requested an additional advance, and the Bank agreed on the condition that it receive the personal guarantees of the defendant and her husband. The guarantee was signed with liability limited to \$167,000. The defendant admitted to signing the guarantee but stated she did not realize that she was guaranteeing payment for the company, nor did she receive independent legal advice regarding executing the guarantee.

The court rejected the defendant's argument and granted the Bank's motion for summary judgement on its claim for payment under the guarantee. The signing of an agreement without having read it did not, in absence of fraud or misrepresentation, absolve a person from being bound by the agreement. The lack of independent legal advice also did not relieve the defendant of her contractual obligations under the guarantee because in order to do so, the lack of independent legal advice must be coupled with other evidence such as non est factum, undue



Signing Guarantees

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influence, misrepresentation or fraud, none of which were present in the case at hand. In addition, the court imposed no duty on the bank to advise the defendant with respect to the guarantee.

It is important for any guarantor when signing a guarantee document to read and understand the legal consequences of signing the document in entirety in addition to obtaining independent legal advice before signing the document. Failure to do so will not absolve a person from being bound by the guarantee document and the courts will conclude that a bank has no fiduciary duty to you when signing the guarantee.