

Dispute Resolution
Case Law Update
Rosling King LLP



Background

Urbisity Ltd (the “**Company**”) was a developer of up market apartments. The Company funded its developments through various loans and its two directors, Nicholas Mullen (“**NM**”) and Christopher White (“**CW**”) acted as guarantors. Following the credit crunch, sales waned and, without substantial equity, the Company began selling property it owned and borrowing money from family members, one of which was NM’s father, Francis Mullen (“**FM**”).

In September 2014, the Company went into liquidation and a number of disputes arose relating to repayment of the loans and the guarantee arrangements. In particular, the executors of FM’s estate sought to recover a number of loans that FM had made to the Company before he died.

The Issues

The Court considered the extent of FM’s lending to the Company and the terms to advance the funds. FM made a loan to the Company, for £100,000 in August 2007 and subsequently agreed a further advance of £100,000, in December 2007 (together the “**2007 Advances**”). There was a loan agreement (the “**2007 Loan Agreement**”) between the Company and FM which envisaged an advance of £200,000 and included a joint and several guarantee by NM and CW, together with an obligation to make immediate repayment, on demand, if the Company defaulted for more than 28 days. There were then two further advances by FM to the Company in May 2008 and June 2008 for £60,000 and £40,000 respectively (the “**2008 Advances**”). There was no written agreement in respect of the 2008 Advances and crucially nothing to show that they had been guaranteed by either of NM and/or CW.

The Judgment

The Court ruled the 2007 Loan Agreement governed the 2007 Advances. As a result the terms of the 2007 Loan Agreement was enforceable, meaning that the whole of the £200,000 under the 2007 Advances was guaranteed by NM (1) and CW. When the Company failed to repay (from 2010 onwards) the debt became due on demand from NM and CW.

Whilst the Court considered that the 2008 Advances were intended to be supported by personal guarantees, they were absent any such documentation signed by NM or CW recording this intention and so the Court ruled therefore that repayment of the 2008 Advances was unenforceable against either NM or CW.

Commentary

The case demonstrates the importance of always ensuring that any guarantee of a loan is properly documented and signed by the guarantors. Whilst the Court may infer an intention to guarantee, it cannot enforce such an obligation without written documentary evidence. For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.