



# Personal Guarantees

## Four Marketing Ltd v Bradshaw

Adams & Remers recently acted for Four Marketing Ltd in a High Court claim considering the enforceability of a personal guarantee. It demonstrates some significant points for those seeking to rely on or give a personal guarantee.

### Background

Four Marketing Ltd is a wholesale and marketing agency in the fashion industry. As the claimant in this case, it sought to enforce the terms of a personal guarantee given by the defendant as security for loans provided to fund his clothing company.

Following the signing of the personal guarantee, it was later proposed that the loans should be capitalised by the issue to the claimant and others of shares in the defendant's company, which would also release the defendant's personal guarantee. A term sheet, describing itself as 'non-binding', was drafted by the defendant's accountant to this effect. This document was signed by all parties, including the claimant and defendant.

The defendant's accountant, without notifying the claimant, immediately took steps to issue the shares and notified Companies House.

In the two month period after the term sheet was signed, some preliminary steps were also taken by the interested parties to put it into effect. But the term sheet also envisaged detailed documentation for the proposed capitalisation and this was never agreed or completed.

The claimant, dissatisfied with the operation of the defendant's company, subsequently pulled out of the proposed capitalisation and issued a claim to enforce the personal guarantee.

## The Court's Decision

The court found that the defendant had not been released from the guarantee, which extended to all sums sought by the claimant.

There are several principles to note from the court's decision.

- Prior to giving a personal guarantee, ensure that you seek independent legal and accountancy advice. This case demonstrates that it is very difficult to extract yourself from such an arrangement.
- A guarantor seeking to rely on a later, written agreement, one of the terms of which states it is non-binding, will struggle to prove (as the defendant tried to in this case) that an identical binding oral agreement exists. The defendant argued that an underlying oral agreement immediately discharged the defendant's obligations under the personal guarantee but this was not accepted by the court.
- If you are seeking to rely on a personal guarantee, be sure not to act in a manner that could be perceived as issuing a waiver. Sign any subsequent written agreement with the guarantor with care and, preferably, legal advice. The court held that the part performance of the term sheet, albeit without agreeing or executing the required documentation, did not prevent the claimant from continuing to be able to rely on the personal guarantee. The court found that any such waiver would have to be unequivocal.

The full transcript of the judgment can be found [here](#).

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