Guaranteed Win?

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Guarantees are a vital part of any credit agreement, however enforcing them is often a major headache for creditors, especially when collecting money. It is often the case that guarantors will argue that a guarantee is invalid or was never incorporated into the credit agreement: see Singh v De Castro; Dhaliwal v De Castro; Brar v De Castro [2017] NSWCA 241 ("Singh").

So how can debt collectors avoid guarantors trying to get around a guarantee when they are trying to recover a debt? The simple answer is by foreseeing the issues which may arise in respect of a guarantee and eliminating them now.

In Singh, the guarantors argued that whilst they had signed the back page of a loan agreement, they had not signed the version of the loan agreement containing a guarantee that the creditor was now seeking to enforce.

In order to avoid this issue arising and ensure that collecting money under a credit agreement is not a headache down the track, creditors should consider ensuring that guarantors sign every page of a credit agreement and at the very least, the page which contains the actual guarantee.

Matthews Folbigg are experts in debt recovery and debt collection and can help you ensure that your guarantees will not cause you any issues in the future when you try to enforce them in order to recover a debt. Speak to one of our lawyers today in relation to how you can improve your credit agreements and guarantees.

Read the judgment https://www.caselaw.nsw.gov.au/decision/59c1a343e4b058596cbaa7a7

If you would like more information or advice in relation to insolvency, restructuring or debt recovery law, contact Bonnie McMahon or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

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