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## Some big 'watch outs' for guarantors of other people's borrowings>>

Guarantors now increasingly understand that they have rights if they are sued when the debtor does not pay the debts which were guaranteed.

A guarantor can raise a number of types of claims:

- *a claim that tries to set aside the guarantee completely,*
- *a claim that sets off some of the debt because of actions that are complained of by the guarantor or*
- *a direct right that a guarantor might have because of the conduct of the creditor. That conduct might have been such as to sacrifice the security or diminish the value which the security might have obtained on a sale.*

Guarantors and their advisers must be aware though that most guarantee documents contain a clause that requires that the entire debt be paid as a precondition of the guarantor taking any action that might have the affect of reducing the debt.

In a recent NSW case after considerable argument a court held that this type of clause in the guarantee document was valid and bound the parties.

Guarantors should be made aware of this type of clause and should negotiate with the creditor when entering into a guarantee to delete or vary the clause... or negotiate with the debtor to better protect his future position.

If you are not already a subscriber to the free Jackson Smith newsletter please contact Kirsten on free-call 1800 687 217 to regular updates on banking law issues.

I hope that this is of interest and value to you.

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