



### Guarantees and Indemnities: Gordon Ramsay bound by automatically generated signature

Gordon Ramsay has been held liable under a personal indemnity for rent on his London restaurant, York & Albany. Mr Ramsay sought a declaration that he was not bound because he had not signed it. Mr Hutcheson, his father-in-law and agent, had used a ghostwriter machine to sign Mr Ramsay's name – a device often used by authors for book signings.

#### The decision

Following an eight day trial, Mr Justice Morgan found that, as a question of fact, Mr Hutcheson had authority to bind Mr Ramsay by placing the signature on the indemnity, which was signed as a deed.

Mr Hutcheson routinely bound Mr Ramsay in business matters without his specific knowledge or permission. In fact, Mr Ramsay testified that he trusted him to "sign and to negotiate on my behalf" and did not ask for or expect to be provided with details of such transactions.

Mr Ramsay knew of the existence of the ghostwriter machine and there was evidence that he was aware of its use for legal documents. He also knew that, due to the strength of his business finances at the time, a prospective landlord would likely require a personal guarantee.

In order to free himself of the indemnity, Mr Ramsay will have to pay two year's rent at £1,280,000. The combined legal costs (the majority of which Mr Ramsay will now have to pay) exceeds £1,500,000.

#### Copy signature

The parties agreed that a deed did not need to be executed with a pen held by hand. For example, Mr Ramsay could have used the machine himself as he had created the original signature for it. The machine could validly be used by someone else provided that permission was given for its use. No argument was heard on the statutory requirement that the signature be in the presence of a witness.

Although the document in question was referred to by the parties as a "guarantee", it was in reality an indemnity. This difference was important regarding the document formalities.

#### Execution requirements of guarantees and indemnities

The difference between guarantees (a secondary obligation to pay someone else's debt) and indemnities (a primary obligation to pay the debt) is determined by the content, not form of the document.

Execution requirements for a guarantee are regulated by the Statute of Frauds Act 1677 which requires the guarantee to be in writing and signed by the guarantor or his agent. An indemnity does not have such strict requirements.

However, an indemnity will commonly be a deed (so that it is not void for lack of consideration) which is subject to s.1(3) and s.1(4) of the Law of Property Miscellaneous Provisions Act 1989. Importantly, Mr Justice Morgan determined that use of the ghostwriter machine under authority complied with this requirement:

- (3) An instrument is validly executed as a deed by an individual if, and only if:
  - (a) *it is signed -*
    - (i) *by him in the presence of a witness who attests the signature; or*
    - (ii) *at his direction and in his presence and the presence of two witnesses who each attest the signature; and*
  - (b) *it is delivered as a deed [...] 3.*

The judgment does not consider the requirement for a witness or that execution is to be in his presence. However, this case has not been appealed. It would be interesting to see whether Mr Ramsay would have been bound if the document had been construed as a guarantee and not an indemnity.

This case is a reminder that care should be taken when executing guarantees and indemnities, and particularly for complying with deed execution requirements. It is a further

reminder to take care of any express or implied authority given in a business context.

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