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## LEGAL BRIEFING

### *Quest 4 Finance Ltd v (1) John Maxfield (2) John Carter (3) Michael John Chesney*

[2007] EWHC 2313 (QB), 12 October 2007 (Teare J)

#### ***The Facts***

Quest 4 Finance Limited claimed an indemnity from two of the directors of Hilmax Engineering Limited; Maxfield and Carter, pursuant to a warranty document dated 18 July 2006. The third defendant, Chesney, had been adjudged bankrupt so the proceedings were discontinued against him.

Hilmax had fallen into financial difficulty and required additional finance. Quest was in the business of providing short term finance for sums equivalent to twice the borrower's monthly wage bill. Quest's product was described in a brochure as not requiring personal guarantees from directors nor charges over the company; simply requiring a "warranty" which was put in place to cover the event of any fraudulent acts knowingly committed.

Hilmax then entered into a loan agreement with Quest under which Hilmax gave certain warranties. The directors also signed documents in which they warranted the Hilmax had complied and would continue to comply with its warranties in the loan agreement. Significantly, the directors stated in their warranties that they had not placed any reliance on the advice or opinion of any person representing the interests of Quest.

Shortly after entering the loan agreement, Hilmax went into administration. That constituted a breach the directors' warranties under the loan agreement and Quest therefore brought a claim against the directors. The directors argued that the warranties should be set aside on the basis that they were induced by a misrepresentation that personal guarantees were not required. On the other hand, Quest argued that the directors were prevented from relying upon the statements in Quest's brochure by reason of the declaration of non-reliance.

#### ***The Issue***

Three main issues arose at trial. The first was whether the directors had believed the representations contained in Quest's brochure and relied upon them. The second was whether the brochure constituted "advice" given by Quest given within the meaning of the declaration of non-reliance. The third was whether the obligations contained in the directors warranties were effectively personal guarantees.

#### ***The Decision***

As to the first issue, the Judge was satisfied that the statements contained in the brochure constituted "advice" for the purposes of the non-reliance clause. Further, the Judge found that the directors had believed the statements as to the provision of personal guarantees contained in Quest's brochure and relied upon them.

As to the obligations contained in the warranties, the Judge found that these were in effect personal guarantees. The Judge took the opportunity to

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summarise the relevant legal principles in this area, namely; that a guarantee is a promise to see that a debtor performed his obligations to the creditor, and that the question as to whether an obligation was a guarantee or not is a question of substance, not form. The director's promise that Hilmax would comply with the warranties was in substance an obligation to see to it that Hilmax complied with the warranties and therefore in the nature of a guarantee. The representation in Quest's brochure that personal guarantees were not required was therefore misleading. The directors were accordingly entitled to allege that they relied upon the misrepresentations in the brochure and were induced by those misrepresentations to sign the warranties.

***Comment***

This is a familiar scenario: directors seeking to bail a company out of financial difficulties with as little personal financial exposure as possible. Situations like this are all too frequent; finance companies offering a "quick fix" without pointing out the fine print or, worse, actively misleading borrowers and others involved in the transaction in relation to their personal liabilities.

This case provides a timely reminder to company directors and / or shareholders who need to refinance to not only read the fine print, but also think carefully about signing a declaration of non-reliance if the lender has made any representations as to your personal liabilities. Generally speaking, lenders tend to cover all bases, which includes having recourse to the people protected by the corporate veil if they can.

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