

This Contract Provision Can Save Headaches and Dollars: Why a Personal Guaranty Can Make All the Difference

By Leo L. Esses, Senior Counsel

In my work with owners and executives of large and small businesses, there is one provision of an agreement that can make a substantial difference in a dispute to enforce a contract or collect damages as a result of the other party's breach: a personal guaranty. Whether a lease for real estate, for equipment, or in other services contracts, securing a personal guaranty may be the best and, sometimes, only way to protect your bottom line.

Here's why. Most businesses are set up as corporations or limited liability companies to insulate the individuals from liability. But, it is easy to create new entities, and many people do so to hide or protect assets from legal disputes and obligations. For example, if you contract with an entity and then sue for breach, a company can move its assets to another entity. So, even if you obtain a judgment in court against the breaching entity, you then have to find its assets and, if they were moved, start a new lawsuit against the new entity. By securing a personal guaranty, you add a layer of protection.

A layer of protection that can have consequences down the road.

In addition to the leverage provided by a personal guaranty, it also simplifies enforcement and saves you legal hassles and time down the road.

In New York, and many other states, a guaranty for the payment of money only can be used to file a motion for summary judgment in lieu of complaint. This procedural vehicle allows the aggrieved party to skip the traditional summons, complaint, depositions and other discovery, and go straight to seeking an award of liability and damages. Many times, this process can lead to a judgment within a few months instead of the all too common years it takes to resolve a traditional lawsuit.

Of course, no one provision promises success all of the time, and any contract will still be subject to negotiation. But this is a provision that is worth fighting for, because it can save you dollars and headaches in the future.

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