

### Briefing note: *Good Harvest Partnership LLP v Centaur Services Limited*

#### Can a tenant's guarantor be required to guarantee an authorised guarantee agreement?

##### Introduction

The Landlord and Tenant (Covenants) Act 1995 came into effect on 1 January 1996. It provided for persons bound by covenants of a tenancy to be released from those covenants on the assignment of the tenancy. Although it was established case law that Section 25 of the Act was to be interpreted generously so as to ensure that the operation of the Act was not frustrated either directly or indirectly, there was still uncertainty on the issue of whether the Act precluded a person who had guaranteed a tenant's obligations under a lease from being required to give a further guarantee in respect of an assignee of the lease.

The case of *Good Harvest Partnership LLP v Centaur Services Limited* [2010] all ER(D) 238(Mar) addressed the issue and was therefore an important case in the field of commercial landlord and tenant law.

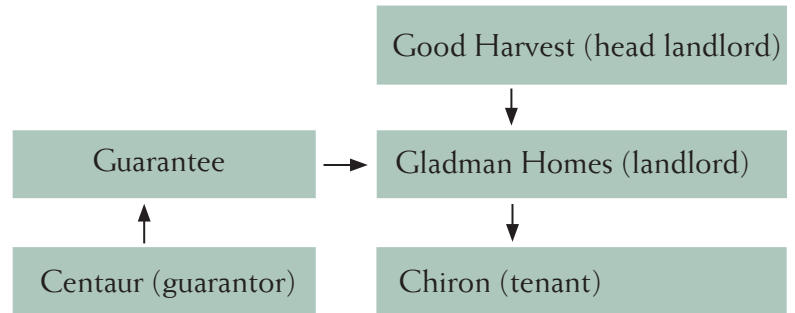
##### Facts

Gladman Homes, itself a tenant, granted an underlease for a ten year term of a business unit in Newcastle-under-Lyme to Chiron CS Ltd. The initial rent exceeded £200,000 and Centaur Services Ltd stood as guarantor.

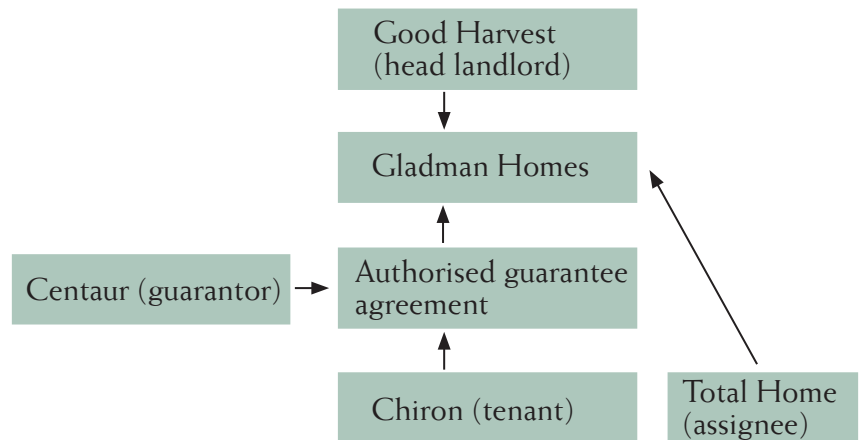
In 2004 Chiron (the tenant) wished to assign to Total Home Entertainment Distribution Ltd. The lease said that the landlord was entitled to require the tenant and the guarantor to enter into an authorised guarantee agreement. Gladman Homes granted licence to assign the lease to Total Home but required both Chiron and Centaur (its guarantor) to enter into an authorised guarantee agreement guaranteeing the obligations of Total Home going forward.

In 2005 the intermediate landlord surrendered its interest so the head landlord Good Harvest Partnership LLP now had a direct relationship with Total Home (the assignee), Chiron (the original tenant) and Centaur (guarantor), the latter two relationships being under the authorised guarantee agreement entered into the previous year.

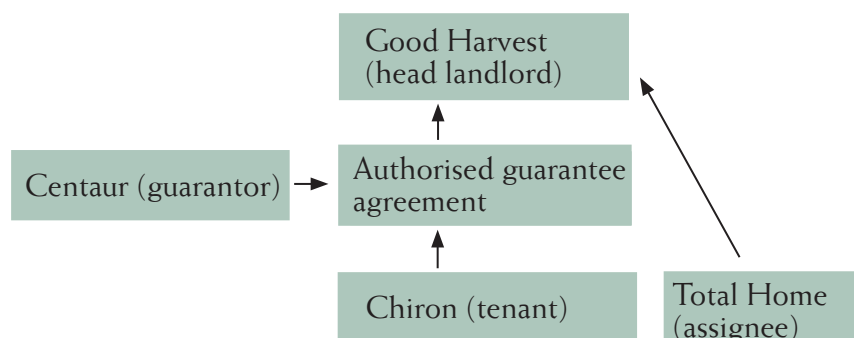
##### *Good Harvest v Centaur: 2001 underlease*



##### *Good Harvest v Centaur: 2004 assignment*



##### *Good Harvest v Centaur: 2005 surrender by landlord*



By 2008 the rent had increased to £245,000 per annum. The rent was not paid by the assignee when due in December 2008 nor in March 2009. Rent arrears of £122,500 were due and in June 2009 Good Harvest made an application for summary judgment in the High Court against Centaur.

Centaur contended that the authorised guarantee agreement was void under the provisions of Section 25 of the Act.

The relevant sections of the Act were:

Section 24: provides that where by virtue of the Act the tenant is released from the lease covenants the guarantor is also released.

Section 16: confirms that the tenant can be required to enter into an authorised guarantee agreement guaranteeing the next assignee's obligations under the lease but makes no mention of the original tenant's guarantor.

Section 25: an anti avoidance section which provides that the parties are unable to contract out or avoid the effects of the Act.

## Decision

The Chancery Division of the High Court held that in circumstances where the defendant guarantor had been required to guarantee the obligations of the assignee of a tenant by virtue of its original obligations as guarantor at grant of the lease, the obligations of the defendant under guarantee were invalidated by Section 25 of the Landlord and Tenant (Covenants) Act 1995. Had Parliament intended a tenant's guarantor to be able to guarantee the obligations of an assignee, the Act would have explicitly provided for that, but it did not do so. The Act would be seriously undermined if a guarantor was required to guarantee obligations of assignees beyond the tenant that he had agreed to guarantee. On the facts, it was apparent that the defendant had been required to enter into a further guarantee when the lease was assigned to the assignee. It had clearly been a condition of the grant of the licence to assign that the defendant should enter into the authorised guarantee agreement. Consequently the authorised guarantee agreement was invalidated by Section 25 of the Act insofar as it purported to impose liability on the defendant.

## Appeal

The landlord's appeal to the Court of Appeal was settled before hearing on 25 August 2010.

## Comment

Although this case answers some of the issues relating to a guarantor's position in relation to authorised guarantee agreements, it addressed only the situation where the guarantor of the original tenant's obligations was required, according to a provision in the lease, to enter into an authorised guarantee agreement. This was a direct guarantee by the original tenant's guarantor of the assignee's obligations. The position has not yet been tested in relation to a "sub guarantee" where a guarantor is required to guarantee the original tenant's guarantee of the assignee's obligation.

It is also fair to say that the High Court decision is potentially less binding on other courts than a Court of Appeal decision would have been.

## Implications

It is unsafe to rely on the original tenant's guarantor's obligations continuing on assignment. What could the landlord have done to improve his position?

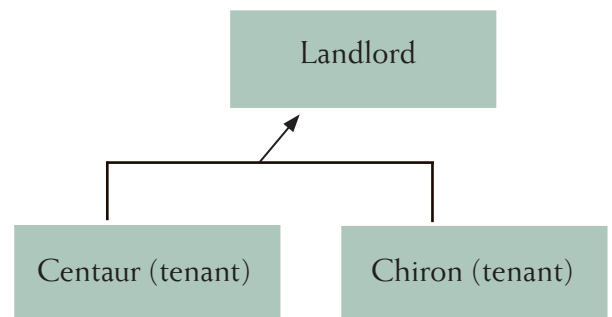
It was open to the landlord at grant of the lease to have required Centaur to be a joint tenant rather than guarantor of the obligations of Chiron.



If Centaur had been a joint tenant, the landlord could have validly required them to enter into the authorised guarantee agreement to guarantee the assignee's obligations.

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### Joint tenants: grant of lease



### Joint tenants: assignment

