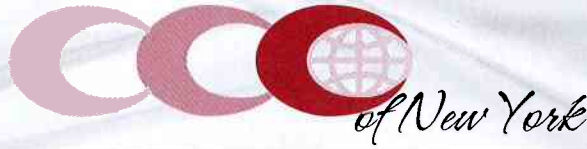


What's Up

In the World of Collections



A Publication of The Commercial Collection Corp. of NY Inc.

June 2012

Personal Guarantees: How Helpful Are They? Part 2

When The Guarantee Is Obtained After The Business Relationship Is Established

Special problems may arise when the guarantee is signed subsequent to the inception of the business relationship. In the typical situation, this will occur when the creditor determines that a customer has far exceeded its credit line and appears unable to liquidate the debt. A dialogue between the creditor and the customer takes place, resulting in the execution of a personal guarantee by the customer's principals.

Although this guarantee may be entirely valid on its face, the unsuspecting credit manager may ultimately discover that the guarantee is legally unenforceable for a variety of reasons, the most prevalent being lack of consideration and statute of limitations.

For the purposes of this article, consideration may be defined as value. In order for a personal guarantee of a corporate obligation to be binding, value or consideration must be received. Future extension of credit by the supplier to the purchaser is the most obvious example of consideration.

In addition, the waiver or postponement of a legal right by the creditor, such as the institution of suit to collect an overdue account or filing of a mechanic's lien, will also be construed as consideration by the courts in most jurisdictions. The gray area is the situation where, after execution of a personal guarantee, the creditor refuses to sell to the customer on either a credit or cash basis - and furthermore takes immediate legal action against both the primary obligor and guarantor. This may result in the guarantee being interpreted as a gratuitous document and not legally binding upon the guarantor due to the lack of consideration.

Another problem that may surface in conjunction with subsequently executed personal guarantees is the statute of limitations. As you are aware, the statute of limitations that applies to actions commenced to recover damages for goods sold and delivered is four years. [Uniform Commercial Code Sec 2-725(1)].

The execution of a personal guarantee subsequent to the inception of a debt may lull the uninformed into believing that the statute of limitations has been waived or extended. Unfortunately, this is simply not the case.

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- * **Personal Guarantees How Helpful Are They?**
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- * **Brain Teaser**
- * **Happy Birthday!**

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Believe It or Not

**The NACM Credit Congress
is coming up FAST!!**

Please e-mail Judy Mattioli at
jmattioli@commercialcollection.com
if you will be attending.

Hope to see you there!

Cont'd on back



Cont'd from front...

The personal guarantee does not generally give rise to an independent legal right, and the ability to enforce a guarantee is directly dependent upon the validity of the underlying corporate indebtedness.

Therefore, if the statute of limitations would act as a defense to the collection of a debt from a corporate obligor, it would also prevent imposition of legal liability upon the guarantor. As a result, a careful monitoring of the aging of accounts receivable is advisable, even when personal guarantees are in existence.

What Is The Bottom Line Advantage To Having A Personal Guarantee?

A personal guarantee creates a greater potential source of recovery for the collection of outstanding receivables. The guarantee, as an effective tool of collection, can be maximized when proper attention in drafting, execution and monitoring is exercised.

The credit manager who is able to obtain personal guarantees from the principals of his incorporated customers has established a greater security and financial advantage in the protection and minimization of future debt liability.

By Murray S. Lubitz, Esq.

Gemini

May 21 - June 20

Best Quality - *Great Communicator*
Special Flower - *Lily of the Valley*
Special Color - *Bright Yellow*
Lucky Day - *Wednesday*

Happy Birthday to:

Nancy Benn Gayle Peacock
Jim Alden Jodi Ross
Gary Berwald Tim Howe
Halley Fleishman

Brain Teaser

Who is the odd one out?
Diana, Mary, Deidre or Carol?

Answer to last Brain Teaser: Yes in 166 seconds

Winners of Last Drawing

1. Mr. Anthony Nanfito (Old Lyme, CT) 2. Ms. Maria Limarenko (Parsippany, NJ)
3. Ms. Sandy Carstensen (South Kearny, NJ)
4. Mr. Ron Lewis (Westfield, PA) 5. Ms. Laura Palastra (Pittsburgh, PA)

All answers to be placed on enclosed Fax-O-Gram form.
5 Fax-O-Grams will be pulled at random & sent a FREE Gift.

Cancer

June 21 - July 22

Best Quality - *Family - Oriented*
Special Flower - *Larkspur*
Special Color - *Sea Green*
Lucky Day - *Monday*

Happy Birthday to:

Barbara Condit Sue Kelly
Romona Muir Jenny Wang
Donna Calzada Julia Van Horn
Dave Abel

Congratulations to Commercial Collection Corporation for 50 years in business!

I started dealing with Commercial Collection Corporation and Bernie Engle in 1977 when I was a Sports Credit Manager for Dunlop Tire. I spent 15 years with Dunlop, becoming General Credit Manager, and during that time I developed an excellent relationship with Bob Ingold, Joe Grieco, Judy Mattioli, and many others. In fact, CCC has a solid group of long time employees which is very important from an experience and customer service standpoint.

I became the Corporate Credit Manager for B & L Wholesale Supply, Inc. and continued my relationship for another 23 years before retiring in March 2012. CCC helped me to succeed in my career because I could count on them to collect the tough marginal accounts. I felt that I could help expand sales for my company by extending credit to these types of accounts because CCC was there to help. I have used other agencies but in the end, I always found that CCC's service was honest, reasonably priced and consistent in performance.

Best of luck to Commercial Collections Corporation on your 50th Anniversary and I am sure the company will be around to celebrate 100 years!

James Dentico, Corporate Credit Manger, Retired
B & L Wholesale Supply, Inc.



If there is a topic you would like to see appear in our newsletter, please contact Judy Mattioli at:

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