

Are you sure you haven't bound yourself as surety?

It is common practice for credit providers contracting with a company to require the representatives of the company to bind themselves as sureties to the agreement. This is often the only way to hold the representatives of a company personally liable for the debts of the company, should the company fail to satisfy its debts.

The personal liability of such a company representative was recently considered in the Supreme Court of Appeal judgement of *Tshepe and Another v Rustia Feed (Pty) Ltd*. In this matter, the First and Second Applicant signed a credit agreement as representatives of a company, which agreement contained a suretyship clause in terms whereof they bound themselves as sureties and co-principal debtors to the agreement.

Upon the Respondent attempting to hold the Applicants liable for the outstanding debts of the company, the Applicants alleged that they could not be held liable based on the suretyship clause, as they had not been aware of the clause and had been misled into signing the agreement. The Applicants further alleged that it was merely their intention to sign the agreement as representatives of the company and not to bind themselves in their personal capacity.

In consideration of the arguments raised by the Applicant, the Court remarked that there is no requirement in law that a suretyship agreement must be embodied in its own separate document, and further, that a person who signs an agreement in a representative capacity may nevertheless in the same agreement expressly undertake some form of personal liability.

The Court ultimately concluded that, as no pressure had been exerted on the applicants to sign the agreement and, further, as the provisions of the suretyship clause were not inconspicuous, nor of a complex or intricate nature, there was no reason why the Applicants should not be held personally liable as sureties in accordance with the *caveat subscriptor rule*.

In terms of this rule, persons who sign an agreement signify their acceptance of the contents of the document, regardless of whether they have read or

understood the content of the document.

This judgment again reiterates the importance of contracting parties to read all agreements they enter into, irrespective of whether they do so in a personal or representative capacity. In this regard, readers need to remember that they should always be provided with an opportunity to contact their attorney should they be unsure of the legal effects of an agreement they intend to conclude.

Alicia Cusack, Van Velden-Duffey Inc