When are you bound by a suretyship contained in a credit application form?

This question was considered by the Supreme Court of Appeal in the case of Brink v Humphries & Jewell (Pty) Ltd 2005 (2) SA 419.

The appellant raised the defense of justus error maintaining that when he signed the credit application form on behalf of the debtor, he had not known that it embodied a personal suretyship obligation. It was common cause that no one had informed the appellant that such an obligation was embodied in the form.

From the facts of the case it appears that the following lines were printed above the space where the appellant had signed the credit application form:

"I the undersigned in my capacity as of the debtor

1. hereby warrant that I am duly authorized by the debtor to make this application on its behalf and that the above information is true and correct;
2. do hereby on behalf of the debtor accept and agree to the terms and conditions of contract set out on the reverse hereof, which terms and conditions I acknowledge having read and understood;
3. do hereby acknowledge and agree that by signature hereto I bind myself as surety and co-principal debtor in solidum with the debtor unto and in favor of the creditor for the due and by the debtor of all amounts which may now or hate any time here often, become payable by the debtor to the creditor in tens of the conditions overleaf."

The court held that:

1. The furnishing of a document which was misleading in itself, without more, could constitute the misrepresentation which rendered the contract void ab initio.
2. It appeared from the evidence that the appellant had indeed acted under a misapprehension in signing the form.

3. The appellant’s error appeared to have been justus in that the form itself was a trap for the unwary and the appellant was justifiably misled by it.

If you use a standard credit application form in your business you should therefore ensure that any suretyship is clearly indicated in the document preferable on a separate page with a heading referring to a suretyship.

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