

**BETWEEN: SPAR AUSTRALIA LIMITED**  
*Claimant*

**AND: MAJOR LIMITED in Liquidation**  
*First Defendant*

**AND: MICHEL GANDON-LEDGER**  
*Second Defendant*

**AND: NATALIE GANDON-LEDGER**  
*Third Defendant*

*Hearing: Thursday 21 August 2014*  
*Further submissions and evidence: 28 August 2014*  
*Judgment: Tuesday 16 September 2014*  
*Before: Justice Stephen Harrop*  
*Counsel: Robert Sugden for the Claimant*  
*Christina Thyna for the Second and Third Defendant*

---

**RESERVED JUDGMENT OF JUSTICE SM HARROP AS TO CLAIMANT'S  
APPLICATION FOR SUMMARY JUDGMENT**

---

**Introduction**

1. In this proceeding the claimant ("SPAR") in its amended claim filed on 23 April 2014 claims AUD 48,048.11 together with interest and costs against the second and third defendants. The claim arises from goods supplied to the first defendant which subsequently went into liquidation. The second and third defendants are sued on an undated deed of guarantee made contemporaneously with the agreement between SPAR and Major Ltd.
2. On 23 April 2014, SPAR applied for summary judgment pursuant to rule 9.6 of the Civil Procedure Rules based on SPAR's belief that the second and third defendants had no real prospect of defending its claim. The stated grounds were:

- “(1). *The claim is for the price of goods sold to the first defendant, a documentation fee and the cost of transporting those goods from Australia to the first defendant in Vanuatu, which cost the first defendant had agreed to pay.*
- (2). *The second and third defendants gave guarantee in writing to guarantee the first defendant’s performance of its obligations to pay to the claimant the price of the goods, the documentation fee and the transport cost.*
- (3). *The guarantee also contained a promise by the second and third defendants to pay the claimant’s costs, charges and expenses of any action that they took, on an indemnity basis.*
- (4) *The second and third defendant have admitted signing the guarantee.”*

3. The second and third defendants have filed no sworn statement setting out the reasons why either of them believes they have an arguable defence. The hearing of the application was adjourned at the request of Ms Thyna, counsel for the second and third defendants to allow time for negotiations as to possible settlement. Nothing came of that and despite direction made on 1 July 2014 to Ms Thyna that in the event that the case was not settled she was required to file and serve her client’s notice of opposition by 22 July together with any evidence she wished to file, no documentation was filed. Ms Thyna was further directed to file submissions in opposition to the application of summary judgment by 18 August but did not do so.
4. Accordingly the hearing of the summary judgment application on 21 August 2014 proceeded on an undefended basis, although the Court takes into account the defence which was filed by the second and third defendants on 4 June 2014. In that brief document they say that the written agreement was drafted in English and its terms were not explained to them (my understanding is that their native language is French). They further say that they signed the agreement without understanding its content.
5. The defence acknowledges that the guarantee was signed and purports to raise what is effectively a non est factum defence. As Mr Sugden points out, signing a document without understanding its content does not amount to a defence. There are strict requirements that a person who knowingly signs a document must establish in order to be relieved of the prima facie clear responsibility which ordinarily results : see *Saunders v Anglia Building Society* [1971] AC 1004.

Further those requirements must be supported by clear evidence with the party seeking to disown a signature carrying the onus. Here, there is no sworn evidence at all to support the pleading, so I there is no basis on which this could amount to an arguable defence.

6. I proceed therefore to consider the matter on an undefended basis but of course the Court still needs to be satisfied that the application for summary judgment is properly granted and that judgment is properly entered, both as to liability and quantum, as claimed by SPAR.
7. Mr Sugden relies on the sworn statement of Barbara Anne Proberts sworn on 8 April 2013. Since this was not filed until 16 April 2014 I believe the date of the sworn statement is incorrect as to the year. Mr Sugden also filed submissions in support of the application on 11 August 2014.
8. At the hearing on 21 August I raised with Mr Sugden two possible impediments to summary judgment being entered and gave him the opportunity to file further submissions and if he thought fit further evidence touching those matters.
9. The first issue raised was as to jurisdiction because paragraph 15 of the guarantee provided:

*“Any legal action arising out of or in respect of this guarantee shall be brought only in the Courts of the State of Queensland and the guarantor irrevocably submits itself to the jurisdiction of the Courts of that State.”*
10. This raised the question whether the Supreme Court of Vanuatu could entertain this claim since it was clearly *“illegal action arising out of or in respect of this guarantee”*.
11. The other issue raised was that there was no evidence that a demand had been served on the second and third defendants calling on them to honour their guarantee and it appeared to me this may be a prerequisite to SPAR suing on it.
12. Mr Sugden filed further submissions and a further sworn statement from Ms Proberts dated 28 August 2014.

## **Discussion and Decision**

13. Dealing first with the two points I raised at the hearing, I accept Mr Sugden's point that clause 15 of the guarantee is one inserted solely for the benefit of SPAR and that it was designed to enable it to enforce the guarantee without being subjected to a jurisdictional argument raised by the defendants when seeking to avoid SPAR taking prompt action in the Queensland Courts. On this basis it is not a clause which the second and third defendants are able to call in aid. In any event, as Mr Sugden points out, they have not attempted to do so. There has been no protest to jurisdiction and they have effectively waived any such right by their engagement with this proceeding and their filing of a defence. I accept that this Court does have jurisdiction to deal with this claim and that the defendants by filing a defence have waived any right they may have had to protest jurisdiction.
14. As to the absence of a demand on the guarantors, Mr Sugden submits that there is now before the Court evidence of a demand by way of an emailed letter dated 3 November 2010. It is addressed to the customer and has been emailed to two addresses, one in which it appears to be that of the second defendant.
15. Mr Sugden submits that clause 10 of the guarantee deems that to be service on both the second and third defendants because it is addressed to the customer.
16. Clause 10 of the deed says:
- “Any notice of demand given to or made on the guarantor may be signed on behalf of SPAR Australia Ltd by any director, manager or authorized staff member of SPAR Australia Ltd or its solicitors and will be deemed to have been duly given or made if delivered mailed or faxed to the guarantor at the address or facsimile number of the guarantor last known to SPAR Australia Ltd or to the customer”.*
17. Ms Proberts confirmed that the sender of the letter, Barbara McNab, credit manager, was authorized by SPAR to send the letter. She also says that the only address that the customer had given to SPAR was “Port Vila” but the email address for Michel Gandon-Ledger was the email address he was known to be using. She has attached a series of emails corroborating these points and making it clear that Mr Gandon-Ledger was indeed using that email address. I note too that Mr Gandon-Ledger is clearly talking about the financial difficulties Major Ltd was in.

Incidentally, I note that his emails demonstrate an excellent command of the English language which rather puts in perspective the pleading that the second and third defendants signed the agreement without understanding its content.

18. In any event I accept the alternative submission made by Mr Sugden that clause 6 of the Deed of Guarantee and Indemnity which makes the second and third defendants principal debtors in respect of any debts incurred by Major Ltd means that no demand is required in order to make the debt theirs.
19. The evidence provided in Ms Proberts' first statement proves that the amount owing by Major Ltd and therefore by the second and third defendants is the sum of AUD48,048.11 as set out in the amended claim. There was only one supply of goods by SPAR to Major, on or about 24 November 2009, for a total price of AUD 40,360.99, the details of the goods involved being set out in invoice number PS 100010827. The way in which the sum ultimately claimed, AUD 48,048.11, is reached has been set out in the claim and this has been verified by Ms Proberts and supported by the documentation attached to her statement filed in support of the application for summary judgment. I note that at no stage have the defendants suggested the amount claimed is incorrect.
20. In terms of Rule 9.6(7) of the Civil Procedure rules, I am satisfied for these reasons that there is no real prospect of the second and third defendants defending any part of this claim and that a trial is not necessary. I am in these circumstances empowered to, and I do, enter summary judgment in favour of SPAR for the primary amount claimed, AUD48,048.11.
21. I also accept Mr Sugden's submission that SPAR is entitled to interest at 5% per annum from the date on which the claim was filed, 20 June 2011, until the date of judgment which will be 16 September 2014.
22. SPAR is also entitled to indemnity costs pursuant to clause 12 of the Deed of Guarantee and Indemnity. I order accordingly, with such costs to be taxed if not agreed. Indemnity costs of course are like all costs subject to the test of reasonableness.

**Result**

23. Summary judgment is accordingly entered in favour of SPAR against each of the second and third defendants for the total sum calculated in accordance with paragraphs 20, 21 and 22.

**BY THE COURT**