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RECENT DEVELOPMENTS IN THE LAW OF GUARANTEES

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Guarantees are curious thi[illegible] They are contracts in whic[illegible] consideratio[illegible] at the cred[illegible] contract with a th[illegible] party. It is [illegible]umed tha[illegible]en their relationship, the su[illegible] ***wants*** the credit[illegible] contrac[illegible] this third party on the ter[illegible]roposed. Often [illegible] is true [illegible]t the law mandates no actu[illegible] is bou[illegible]

Because of this, th[illegible] has [illegible]aditiona[illegible] been [illegible]th[illegible]otec[illegible]ve [illegible] sureties. Numerous [illegible] an[illegible] equitabl[illegible]es h[illegible]e [illegible]ped to protect them fro[illegible]oten[illegible]onero[illegible]s [illegible]ity that [illegible] guarantee may entail. Th[illegible]wever, ca[illegible]ot[illegible] the fact that guarantees are contracts. Sureties and creditors may agree to dispense with most of the protections that the courts have devised. The result has been an arms race in which creditors (through their counsel) devise increasing broad contractual language in an attempt to bind sureties to the principal s obligations, while sureties defence lawyers work equally hard to find new defences.

This article considers three aspects of law of guarantees, with reference to three recent appellate decisions. It considers: (i) what a creditor needs to do to make a claim on a guarantee, (ii) 0.00000912 9nBT/F7 9.96 Tf1 0 0 1 77 g216.41 371.23 Tm0 g0 G[(g)-5(u)6(ar)-5(a

plaintiff had contracted to build a trailer park for the corporate defendant, whose obligation to pay the plaintiff was guaranteed by the individual defendants.

After default by the corporate defendant, the plaintiff sued the sureties without making a separate prior demand for payment. The guarantee was payable on