



## Guarantors Beware: Guaranty May Survive Underlying Settlement

It is not uncommon in a business deal for individuals—owners, for instance—to personally guarantee the business’s obligations to a third party (such as a lender or landlord). These types of arrangements are beneficial in situations where, for example, a lender is unwilling to do business with a startup or similar company that has a few or no assets, but will agree to enter into the deal so long as the business owner personally guarantees that the lender will be repaid on the debt or investment even if the business fails.

Most individuals enter into such guaranty agreements under the assumption that, if a dispute arises between the two businesses, which dispute is later resolved by mutual agreement of the businesses, the individual guarantor is “off the hook” for the debt. Earlier this year, the Massachusetts Appeals Court cautioned against such an assumption, finding that the trial court correctly held an individual guarantor liable for past due rent even after the landlord and tenant reached an agreement to release the tenant from that same obligation. *Cedar-Fieldstone Marketplace, LP v T.S. Fitness, Inc.*, 93 Mass. App. Ct. 33 (Feb. 2, 2018).

In *Cedar-Fieldstone*, the tenant, a business, entered into a commercial lease with a landlord. To secure the tenant’s obligations under the lease, the tenant’s president signed a personal guaranty. When the tenant defaulted on the lease,

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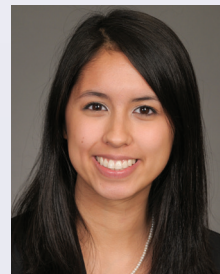
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## Laredo & Smith Lawyers Participate in Boston Bar Association Programs



**Marc Laredo** presented as a panelist for the CLE program “*Small Business, Big Headaches: Ethical and Practical*

*Challenges in Representing Closely Held Businesses.*”



**Jessica Conklin** moderated the panel “*Drafting and Negotiating Contracts.*”



**Payal Salsburg** presented a roundtable at the American Bar Association on the legal and ethical complexities of

litigating closely held business disputes.

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the landlord brought suit against the tenant (but not the tenant's president). That lawsuit was resolved by an agreement for judgment, under which the tenant was released from its obligation to pay past due rent. After resolution of that lawsuit against the tenant, the landlord instituted a collection action against tenant's president in his individual capacity as guarantor of the lease.

In his defense, the guarantor argued that once the landlord's claims against the tenant were released, he too was "relieved of his guaranty obligations as a matter of law." He based this argument on the "black letter legal principle that a guarantor's obligations are coextensive with those of the principal obligor." The Appeals Court, however, interpreted that principle more narrowly, finding that it stood for the proposition that a guarantor's liability could not exceed that of the underlying liability he guaranteed. Although a guarantor can negotiate a release of his obligations if the principal obligor is released, such a release is neither required nor implied as a matter of law.

The Appeals Court further found the language of the guaranty in the Cedar-Fieldstone case "unforgiving" to the guarantor because it (1) was "absolute and unconditional," (2) stated that the guarantor's liability would not be affected, modified, or released for a variety of broad reasons, including "consent, release...or ... any dealings or transactions or matter or thing occurring between [the l]andlord and [the t]enant," and (3) stated that all the landlord's remedies under the lease were intended to be distinct, separate, and cumulative - the exercise or partial exercise of one right was not intended to waive or exclude others.

Thus, what may have seemed like broad boilerplate language at first had the effect of binding the guarantor even when the tenant's obligation to pay past due rent had been released. The Cedar-Fieldstone case is a reminder that drafting guaranty agreements is more art than science. Without careful negotiation of the terms, including terms that might at first glance seem customary, the guarantor may find him or herself trapped by those same terms.

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