



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



“One Line” Comments Can Constitute Binding Guarantee

A one-line sentence that stated “to be guaranteed by [company]” in an E-mailed recap to a charterparty is enough to amount to a binding guarantee, the United Kingdom Commercial Court has held.

Maria Alexandroff and Brian Perrott of law firm Holman Fenwick Willan have been looking at the issue of one liners and whether they are a binding guarantee in the latest edition of the company’s *London Calling* news briefs.

The case in question arises from a charter agreement entered into on 30 May 2022 between SFL ACE 2 Company Inc (“the Owners”) with Allseas Global Project Logistics Ltd (“the Charterers”) for the hire of MV Green Ace (“the Charter”).



During negotiations, the parties discussed the provision of a guarantee. In an E-mail recap, the Charterers agreed “to be guaranteed” by Allseas Global Management Ltd (“AGML”), which held 50% of the shares in the Charterers.

When the Charterers defaulted on payment, the Owners pursued a claim against AGML under the guarantee. AGML denied liability, arguing primarily that:

- a. the contract did not contain a term that AGML would guarantee the Charterers’ performance
- b. even if such term existed, AGML did not consent to be bound by it
- c. the guarantee was unenforceable as it did not comply with the Statute of Frauds, which requires guarantees to be evidenced in writing

In its decision, the Court held that:

- I. the E-mail recap, which included the phrase “to be guaranteed by AGML” was correctly interpreted as a binding promise to guarantee, effective without further agreement or formality
- II. it was undisputed that the person who entered into the Charter [the chief financial officer for a number of Allseas companies and director of the Charterer], had the authority to enter into a guarantee – if the exchange of recap E-mails amounted to a valid guarantee (which it did). Indeed, it was reasonable for the Owners to understand that this was the case and that AGML was agreeing to enter into an immediately-binding guarantee
- III. the exchange of E-mails satisfied the writing requirement under the Statute of Frauds

Holman Fenwick Willan’s comment on the case is that it highlights that even brief statements can constitute a binding guarantee. As a guarantee is a secondary obligation, it typically mirrors the obligations of the principal in the underlying contract. As such, it is not strictly necessary for the terms of a guarantee to be formalised.

December 2024