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Giving a guarantee

It is essential that before giving any form of guarantee to a bank, building society or other financial lender over lending taken up by for example your own company, trust or family member you first obtain expert legal advice.

In a recent High Court case ***Southland Building Society v Allison*** [2012] NZHC 2614, the lender, Southland Building Society (SBS) personally sued Mr and Mrs Allison under their guarantees for repayment of their company's borrowings. The Allisons unsuccessfully argued that SBS owed them a duty of care to ensure that loans advanced to their company were loans that a prudent banker would make.

The High Court said that it is established that a banker generally is under no duty of care to offer advice to its customer or to a guarantor on the prudence of a loan or the wisdom of their customer's commercial project.

The Allisons also attempted to argue that they were owed a duty of care by SBS through the bank's representative who assisted them with the making of the loan application. The High Court stated that a banker who stays within the "traditional" confines of a banker/customer relationship will avoid the imposition of a duty of care. However, if a bank does offer assistance or advice in relation to financial structuring it may be found to have stepped outside that traditional boundary and to have exposed itself to the imposition of a duty of care.

In the end the Allisons attempt to ward off SBS's claim was unsuccessful and judgment for over \$2 million plus interest and costs was made against them.

If you are thinking about being a guarantor or you would like to be removed as one contact Graeme at Graeme Withers Law on (04) 478 4888 for personal and professional assistance.

This note is intended for general information only. It is not intended to be relied on as a substitute for legal advice which focusses on individual circumstances.