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## BLOGS

Personal Liability

# Court Enforces Personal Guaranty

The United States District Court for the Northern District of Texas granted summary judgment to franchisor Jani-King Franchising, Inc. in a contract dispute it had with its regional franchisee in Great Britain, Jani-King GB Ltd. ("JKGB"), and JKGB's majority shareholder and director, Ian Thomas ("Thomas"). *Jani-King Franchising, Inc. v. Jani-King (GB) Ltd.*, 2017 WL 4758673 (N.D. Tex. Oct. 20, 2017). When the parties executed a franchise agreement to extend their existing relationship, Thomas signed a personal guaranty (governed by English law) promising to pay Jani-King all monies due under the franchise agreement if JKGB failed to do so. When JKGB stopped paying fees to Jani-King and terminated the franchise agreement, Thomas refused to pay any fees that had accrued prior to the termination date. Jani-King sued JKGB and Thomas for breach of contract, and the court granted Jani-King summary judgment. The district court subsequently reopened the matter to determine whether Thomas was liable under the personal guaranty to Jani-King for fees that had accrued prior to the termination date. Noting that the parties had agreed that Texas law and English law did not materially differ regarding personal guaranties, the court considered the parties' motions for summary judgment.

The court enforced the guaranty, rejecting Thomas's argument that Jani-King could not enforce the personal guaranty because Jani-King had not satisfied a condition precedent to enforcement, the mitigation of Jani-King's termination-related damages. The court observed that the mitigation condition only applied to damages arising from termination, but Jani-King only sought fees owed by JKGB prior to the termination date. The court also rejected Thomas's claim that due to Jani-King's alleged fraudulent business practices, subsequent negative online reviews posted about JKGB by its unit franchisees, and a steep decline in JKGB's revenue, Thomas was not obligated to pay Jani-King under a carve-out in the guaranty for any losses, damages, or claims that were caused directly or indirectly by an act outside of JKGB's control. The court noted that the fees were simply what JKGB had promised to pay Jani-King in exchange for JKGB's rights under the franchise agreement and did not constitute losses, damages, or claims. Therefore, the court granted Jani-King's motion.

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