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## Welcome

In this edition we examine a case regarding the dangers involved with Deeds of Collateral Warranty, which unfortunately reflects what often happens in practice. Overleaf we consider a recent case highlighting the importance of formalising all construction and development agreements.

For those who wish to have a more substantial update on construction law we host a series of seminars to give practical and timely advice. Our most recent seminar outlined the key changes to the Construction Act which came into force on 1 October 2011. Don't worry if you missed it, we are happy to make in-house visits to those who would like the presentation to be given to a wider audience.

For further details or to book your place on future seminars please email [marketing@georgedavies.co.uk](mailto:marketing@georgedavies.co.uk).

Kind regards

*Catherine Kay*

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## Beneficiaries be warned when dealing with Deeds of Collateral Warranty

A popular form of agreement on a construction project is the Deed of Collateral Warranty which is required for the benefit of most Funders, Owners and Tenants. In view of a recent High Court decision, beneficiaries of such Deeds should be wary when receiving documents which they would ordinarily consider as complete, and therefore reliable, should a claim be made.

### The case

In the case of Bibby Financial Services Ltd and others v Magson and others, which reflects what often happens in practice, the High Court had to determine whether guarantees and warranties in the form of deeds had been delivered by individuals. The individuals had signed the deeds, their signatures had been

witnessed and the deeds handed to the other side. The individuals then contended that they had signed as a gesture of good faith. They expected, in view of discussions at the time of signature, that clean versions incorporating their manuscript notations would be produced and versions in those revised forms would be signed.

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# Construction

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### The ruling

Based on the facts the court held that none of the warranties were intended to be delivered, in the technical sense, when handed to the other side after signature. In order that a document can be enforceable as a deed, it must be delivered as a deed. Critically the person who had signed the deed had separately indicated that he intended to be bound by the deed. However, mere signature was not enough and neither was it sufficient that what looked like a deed had been given to the person who appeared to be the beneficiary.

The issue was not whether the document had been delivered or physically handed over to the beneficiary, rather the issue was whether the person providing the deed intended to be bound by it. The Court held that the individual was not bound by the warranty due to the absence of intention.

### Lessons learnt

The case illustrates the dangers of signing a document while it is in un-finalised draft form and highlights the importance of careful document drafting.

### Specialist advice

*For further details or advice regarding Deeds of Collateral Warranty please contact construction specialist Catherine Kay using the details overleaf.*

### Disclaimer

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## The importance of formalised agreements

Proceeding with a development or construction project without formalising matters between the parties, or at least recording the key terms in writing, is risky business. Even if neither party intends to take advantage of the other, it can lead to expensive misunderstandings, as illustrated by the recent case of *Edmonds v Lawson and another (t/a Lawson Developments)*.

### The case

Noel Edmonds has claimed against property developers Ulrik and Judy Lawson (the defendants). The Technology and Construction Court (TCC) handed down judgment having considered disputes relating to two properties in Devon.

The first dispute concerned a joint venture to redevelop a property. Edmonds alleged the parties had agreed that his contribution to the purchase price would be repaid before the defendants' contribution. The court rejected this argument on the facts. The second dispute concerned the cost of renovating Edmonds' family home. The court carried out a valuation of the works and rejected Edmonds' suggestion

that the defendant had agreed to manage the renovation for free and without a mark up on "all other costs, labour and materials etc".

### Highlighting the dangers

The case highlights the dangers of proceeding with a development or construction project without formalising matters between the parties. At a minimum, the key terms must be committed to writing to avoid expensive misunderstandings.

### Specialist advice

*For further details or advice regarding construction contracts please contact Kelvin Parry using the details overleaf.*