

## Court reviews summary judgment jurisdiction in dispute over pension plan guarantee

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The recent High Court decision in *Caribonum Pension Trustee Limited v Pelikan Hardcopy Production AG [2018] EWHC 2321 (Ch)* will provide some comfort for pension plan trustees owed money by insolvent sponsoring employers by allowing trustees to pursue guarantors within the same group for those debts.

What was contended to be an abuse of Court process has been confirmed by the Court as a legitimate debt recovery strategy. This was on the basis that a contractual agreement, a guarantee, was in place that was legitimately enforceable by a pension plan trustee.

### Background

The Caribonum Pension Scheme (the “**Plan**”) was a registered occupational pension scheme and Pelikan Hardcopy Scotland Limited was a participating employer obliged to contribute to the Plan (the “**Employer**”).

The defendant, Pelikan Hardcopy Production AG (“**Pelikan AG**”), was a Swiss company that was part of the same group of companies as the Employer. Pelikan AG entered into a guarantee with the Trustee of the Plan on 27 March 2008 under which it guaranteed the performance of the Employer’s obligations (the “**Guarantee**”).

The Employer became insolvent so, in accordance with the Guarantee, the Trustee pursued Pelikan AG for the remaining debt (£4,306,605.33) owed to it by the Employer.

### Arguments

Pelikan AG opposed the Trustee’s application for summary judgement (1) on the basis that under the Guarantee, liability was limited to the extent of Pelikan AG’s freely disposable reserves (which were in negative equity) and (2) that the Trustee’s claim was an abuse of process.

### Decision

The first argument was fact-specific; the Court reviewed the guarantee and held that, on its true construction, it did not limit the liability owed by Pelikan AG to the Trustee.

The second argument, the Court held, would only be viable if the Trustee had used the Court process to achieve something not properly available to them in normal proceedings, giving it a collateral advantage.

The Court held that the Trustee was simply trying to secure payment of sums validly due under the Guarantee from Pelikan AG and therefore the claim was not and could not be an abuse of process.

Pelikan AG argued that the claim was also an abuse of process because the Guarantee would not be enforceable in Switzerland and that there was insufficient non-Swiss assets to satisfy the claim. But the Court held that an ability of a defendant to satisfy a judgement is not a pre-requisite to a claimant obtaining a judgement.

The Court granted the Trustee summary judgment against Pelikan AG.



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