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Clarifying joint and several liability



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The recent case of *Marlbray Ltd v Laditi* has provided guidance on what are called joint and several liability clauses.

When more than one person constitutes a party to a contract, they often agree to be jointly and severally liable under that contract. This means that any one, or all of the people constituting the defaulting party are wholly liable and can be sued for the entire amount owing.

At a sales fair, Mr Laditi entered into a contract with Marlbray to purchase a property in London. He paid a deposit and signed a contract naming himself and his wife as joint purchasers. Mrs Laditi did not sign the contract, spending most of the day outside of the fair looking after their children.

Mr Laditi could not raise the balance of the purchase price. Marlbray terminated the contract for breach and forfeited the deposit.

The court accepted Mr Laditi's argument that he lacked authority to sign on behalf of his wife because Mrs Laditi had not signed the contract, nor authorised Mr Laditi to sign on her behalf. Accordingly the contract was not enforceable against either of them.

However, the Court of Appeal decided that, even if Mrs Laditi was not liable, Mr Laditi was liable under the contract due to the joint and several liability clause. Just because one party did not sign the agreement, did not mean that the signing party could not be held liable under that contract.

Key aspects to keep in mind:

When contracting with multiple parties, the safest option is to ensure all parties sign the contract. Include joint and several liability provisions so that you have a choice as to who to sue. One may have more money than the other or the other may have left the country.

If you agree to be jointly and severally liable under a contract, consider whether you need a liability sharing agreement with those you have agreed to be jointly and severally liable for.

If you would like to discuss any of your contracting arrangements, please contact [Grant Esterhuizen](#) or the [Corporate and Commercial](#) team at Lester Aldridge.