

In financial straits and needing \$4,000 immediately, a nephew asked his uncle for a \$4,000 loan. The uncle said that he would lend the money to the nephew only if the nephew's mother would "guarantee" the loan. At the nephew's suggestion, the uncle then telephoned the nephew's mother, told her about the loan, and asked if she would guarantee it. She replied, "Yes. Lend my son the \$4,000, and I'll repay it if he doesn't." The uncle then lent \$4,000 to the nephew, and the nephew orally agreed to repay that amount in six weeks. The next day, the nephew's mother wrote to him and concluded her letter with the words, "Son, I was happy to do you a favor by promising your uncle I would repay your six-week \$4,000 loan if you don't. /s/ Mother." Neither the nephew nor his mother repaid the loan when it came due, and the uncle sued the mother for breach of contract. In that action, the mother raised the statute of frauds as her only defense.

Will the mother's statute-of-frauds defense likely be successful?

- A. No, because the amount of the loan was less than \$5,000.
- B. No, because the mother's letter satisfies the statute-of-frauds requirement.
- C. Yes, because the mother's promise to the uncle was oral.
- D. Yes, because the nephew's promise to the uncle was oral.

Explanation:

A **suretyship** is a promise to assume responsibility for a duty incurred by another (eg, the mother's promise to repay the loan if her son does not). Suretyships are generally subject to the **statute of frauds** and therefore are only enforceable if they are:

- **in a writing**—ie, physical or electronic document(s) such as a receipt, check, or emails—containing a reasonable basis to believe that a contract was formed *and*
- **signed** through a handwritten signature or other identifying mark by **the party against whom enforcement is sought**.*

Here, the mother's letter satisfied the writing requirement because it evidenced her promise to repay the loan to the uncle. It also satisfied the signature requirement because her "/s/ Mother" notation on the letter identified her as the sender. As a result, the mother's statute-of-frauds defense will likely fail, and the uncle can use the letter to enforce the mother's promise to repay him.

*There is no requirement that the writing be addressed to a particular person.

(Choice A) The amount of the loan is *not* relevant in determining whether a suretyship is subject to the statute of frauds. The dollar amount is only relevant in determining whether a contract for the sale of goods (\$500 or more) is subject to the UCC statute of frauds.

(Choice C) Although the mother's promise was oral, it was evidenced by a signed writing (ie, her letter to her son) that satisfied the statute of frauds.

(Choice D) The son's oral promise to repay the loan is enforceable without a writing because this type of contract is not subject to the statute of frauds. In contrast, the mother's suretyship agreement is subject to the statute.

Educational objective:

Under the statute of frauds, a suretyship is enforceable if it is (1) in a writing—ie, physical or electronic document(s)—containing a reasonable basis to believe that a contract was formed *and* (2) signed via a handwritten signature or other identifying mark by the party against whom enforcement is sought.

UCC = Uniform Commercial Code

References

- Restatement (Second) of Contracts § 112 (Am. Law Inst. 1981) (requirement of suretyship).
- Restatement (Second) of Contracts § 116 (Am. Law Inst. 1981) (main-purpose rule).
- Restatement (Second) of Contracts § 136 (Am. Law Inst. 1981) (time of memorandum).

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