

Beware electronic signatures

How secure is your electronic signature?

There has been some debate over the years about the veracity of electronic signatures. The courts now accept that an electronic signature can create a binding contract.

But, is the electronic signature more secure than the old-fashioned paper and ink?

It was thought that an electronic signature should be more secure, due to password protection.

However, as the case of *Williams Group Australia v Crocker* [2016] NSWCA 265 shows, an electronic signature is as vulnerable to forgery as the old-fashioned one.

In this case, an electronic signature was purportedly affixed to a personal guarantee by a director of a corporate customer. However, the director denied that he affixed the signature, so he was not liable. It was possible that an administration manager had used the director's password to affix the signature to the guarantee without the director's knowledge.

Despite the director failing to properly secure his password, thereby creating the situation where the guarantee was signed electronically, the court found that he was still not liable under the guarantee.

By the principle of ostensible authority, a company can be liable for the conduct of its employees, where the company has allowed the conduct to occur, and it would be unfair to allow the company to avoid the consequences of that conduct (ie entering into a contract) to the detriment of another party who has relied on that conduct. The court found that the principle did not apply in this instance.



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