

PAYMENT ON PRINCIPLE UNDER PRINCIPAL'S BOND

CATHRYN BARBER, FIONA BENNETT & MARK REESE

A recent High Court decision has reinforced the need for principals, bond issuers and contractors to be careful with the wording used in on-demand bonds.



The Context

Clark Road Developments Limited (**Clark**) engaged Rohits Civil and Infrastructure Limited (**Rohits**) under a construction contract to carry out civil works at a property at Clark Road, Hobsonville. The contract required Clark to provide a principal's bond to Rohits to secure payments due from Clark to Rohits for work performed under the contract. The bond was issued by China Construction Bank (**CCB**).

Rohits terminated the contract following a payment dispute with Clark and claimed the full value of the bond, being \$600,000. CCB refused to pay on the basis that the contract had been terminated so the bond was; null and void.

The bond, which was payable on demand, was; expressed to expire on payment of the

contract price and any other monies due under the contract. Clark argued that it had paid all amounts due to Rohits for work completed.

Rohits disputed this but also claimed for loss of profits, loss of income and fixed costs.

Decision

The Court found that the bond was; payable by CCB without enquiry as to the position between Rohits and Clark or as to Clark's default.

It accepted that Rohits may need to refund some of the money to Clark once the substantive argument was; heard but held that had no bearing on CCB's obligation to pay out under the bond.

A bond is an independent contract between the issuer and the beneficiary.

ABOUT THE AUTHORS



CATHRYN BARBER
Partner, Auckland
Finance

FIONA BENNETT
Partner, Christchurch
Corporate & Commercial



MARK REESE
Partner, Wellington
Finance



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