

Resolute Lawyers & Associates

BANK GUARANTEE

BANK GAURANTEE | COURT OF APPEAL ALLOWS INJUCTION

The NSW Court of Appeal on 1 November 2010 in ***Lucas Stuart Pty Ltd v Hemmes Hermitage Pty Ltd [2010] NSWCA*** allowed an injunction preventing a call upon the performance bond because of the possible likely damage to the contractors' reputation and financial standing. There will be significant implications for businesses seeking to terminate contracts for a 'material breach'.

Notice issued under Clause 16.2 of the contract required Lucas Stuart to remedy the non-compliance and further stated they *have "not materially complied with its obligations under this contract"*.

The Practical Completion Certificates referred to 'major defects and other matters. Stuart sought an Injunction to stop Hemmes from calling upon the Performance Bonds, arguing that clause 16.2 was not been satisfied and its notices were invalid.

The main focus was whether a serious question to be tried arose between the parties as to whether Stuart had "*materially*" failed to comply with his obligation.

On appeal the Court held that the 'material non-compliance' dispute gave rise to a serious question to be tried and allowed the injunction. Absolute clarity for termination should be sought otherwise the other party may have claims for repudiation of contract.

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