

Kookmin Bank v Rainy Sky SA (2010): Drafting of Advance Payment Bond

This recent case highlights the importance of ensuring that there are no ambiguities in the drafting of an advance payment bond. On the face of it advance payments bonds are very straight forward: an employer agrees to make an advance payment to a contractor and gets an on-demand bond in return. If the contractor defaults (for example, insolvency), the employer would be able to call on the bond and the bank would pay out the sum upon the demand. In this case the Court of Appeal took a very narrow view of the drafting in the bond and decided in favour of the bank, holding that the bank did not have to pay out under the bond. Whilst the decision has been subject to much criticism (for lacking business common sense), it is nonetheless a reminder to ensure that advance payment bonds are carefully drafted.