



PROPERTY BULLETIN

DEPOSIT BONDS

The recent NSW Supreme court case of *Reliance Developments (NSW) Pty Limited v Lumley General Insurance Limited [2008] NSWSC 172* highlights the fact that in the cases where deposit bonds are to be used in lieu of a cash deposit the terms of the deposit bond must be strictly complied with if the vendor is to receive the amount of the bond after termination of a contract.

In the Reliance case, a deposit bond was used in lieu of a cash deposit. The more important terms of the bond were:

- (1) The bond expired at 4pm on 22nd September 2006 and any claim by the vendor had to be correctly made by this date;
- (2) There were strict requirements to be adhered to should the vendor demand the amount stipulated in the bond;

Contracts in the Reliance case were exchanged on 4th April 2006. A series of events led to the contracts being terminated by the vendor on 12th September 2006. The solicitor for the vendor wrote to the bond issuer (Lumley) on 15th September 2006 serving notice on the bond issuer to pay the vendor the sum of \$160,000.00. The letter was originally sent by fax, the originals of which were not received until 21st September 2006. The correct documents were not sent with the demand and by the time the vendor's solicitors sent the correct documentation, the bond had expired. The issuer then denied liability.

The court held that the bond issuer did not have to comply with the demand by the vendor to pay up the sum insured as the correct requirements to make a demand on the issuer as per the terms and conditions of the bond had not been met.

Thus the vendor did not receive any money at all even though the contract was terminated legally after a notice to complete was issued.

Should you have any queries with regard to the above please do not hesitate to contact any of the Commins Hendriks property team.