THE RESTRAINTS OF PERFORMANCE BOND CLAIMS IN CONSTRUCTION INDUSTRY

GRACE POH CHIENG LING

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Faculty of Built Environment
Universiti Teknologi Malaysia

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“I declare that this thesis entitled “The Restraints of Performance Bond Claims in Construction Industry” is the result of my own research except as cited in the references. The thesis has not been accepted for any degree and is not concurrently submitted in candidature of any other degree.”

Signature : .............................................................
Name : GRACE POH CHIENG LING
Date : ...............................................................
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ABSTRACT

Construction industry is full of uncertainties. It is a risky enterprise. Due to the recent problems of the construction industry, various bonds are required. Performance bond is used to guarantee performance of contract and protect the owner from financial loss due to the failure of the contractor to perform. It has held as a comprehensive and reliable instrument for minimizing the risks in construction projects. However there are some issues that may obstruct the real purpose of performance bond and restrained the performance bond claim. In Teknik Cekap Sdn Bhd v Public Bank Bhd, defective notice in calling performance bond had obstructed the real purpose of performance bond. Besides, in Edward Owen Engineering Ltd v Barclays Bank International Ltd and another, it stated that if there is clear fraud, the surety does not have to pay according to its guarantee. In Min Thai Holdings Pte Ltd v Sunlabel Pte Ltd & Anor, it also stated that unconscionability is another restraint of performance bond claims. These few case laws show that there are some circumstances that restrain performance bond claims. Therefore this research is conducted to identify the circumstances that restrain the performance bond claims in construction industry. This research is conducted by documentary analysis. In order to achieve the objective of this research, 16 Malaysia law cases which succeed in restraining the performance bond claim in construction industry are analyzed. These cases are Malayan Law Journal (MLJ) cases which are available in the database of Lexis Malaysia website. From the findings of this research, it can be concluded that the circumstances that restrain performance bond claims in construction industry are unconscionable conduct, prevention of irretrievable injustice, invalid demand, serious issues to be tried, balance of convenience, fraud, premature contract termination and no right to claim performance bond.
ABSTRAK