



THE CAPE
INSTITUTE FOR
ARCHITECTURE

February 2015

**CIA PRACTICE ADVISORY
A CASE STUDY ON PAYMENT GUARANTEES:**

The Cape Institute for Architecture provides an advisory service to assist and advise its members on problems that they encounter in the course of the practice of architecture. The executive officer refers the query to one of the more experienced members of the CIA Practice Committee.

Most of these queries tend to be routine, and can usually be resolved during the course of a telephone discussion, but sometimes a more unusual matter rears its ugly head.

We recently came across an instance where the employer had entered into a guarantee agreement for direct payment with a selected sub-contractor. In terms of this guarantee, the employer was bound to settle any outstanding payment to the selected sub-contractor in the event that the principal contractor failed to settle a claim. The guarantee took the form of a demand-guarantee at the employer's bank.

The sub-contractor delayed the project, but the employer decided not to apply penalties. A final account was prepared and agreed to by the principal contractor. The final payment certificate was thereafter issued and settled.

At this point, however, the principal contractor raised additional charges against the selected sub-contractor, and refused to pay the full amount due to it. The sub-contractor responded by simply calling upon the bank guarantee provided by the employer and the bank was bound to pay this. The nett effect was that the employer paid twice, with the benefit accruing to the principal contractor.

There is in this and similar cases very little advice that the Institute could give, apart from a homily on taking all possible care in the issuing of guarantees, and taking such guarantees into consideration when preparing payment certificates, especially final payment certificates.

Any enquiries on the above matter may be directed to:
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