

Real Estate Case Study

Failure to obtain bank guarantee



Case Details:

A claim was pursued against the insured by the owner of a commercial premises for failing to enact renewal of a lease accordingly. The Lessor undertook the negotiations for the renewal, notwithstanding that the insured managed the property. The renewal lease was secured by Bank Guarantee however was never renewed in conjunction with the lease extension.

Once the lease was secured, the insured attended to finalise the paperwork which included preparation of the lease and ensuring the bank guarantee was obtained. What became clear was that there was an oversight on the insureds part and bank guarantee was not done.

The tenant at the premises unfortunately went into liquidation and the bank guarantee was not available for them to call on.

Whilst the owner was in the process of reletting the premises, they suffered a loss as the tenant went into arrears and administration prior to the lease ending.

The evidence provided in relation to this matter showed that the insured was liable to ensure that the bank guarantee was in place. The management agreement did not negate the insured of this responsibility. Due to the insureds failure to act in their professional duty, they would be held responsible for the sum of the bank guarantee that should have been in place.



Case Outcome:

Policy Response

The Policy responded in this case as the insured acted negligently in failing to obtain a bank guarantee to protect the lessor's interest on the renewal of the lease. Indemnity was granted to the insured in respect to the claim submitted against them for the total sum, the insured was required to pay the excess.



Reduce Your Risk:

- Ensure you are aware of your responsibility when finalising a lease;
- Have a checklist of the items you are required to complete;
- Consider having a colleague double check all responsibilities have been completed;
- Be aware and involved in all negotiations in respect to the lease on a premises in which you are managing.