

BUILDING CONTRACTS & REGULATION QUEENSLAND

SUPPLEMENT TWO – JANUARY 2017

CHAPTER SIX – Paragraph [6.12]

[6.12.1] While it is the case that a call upon such performance instruments, being unconditional on their face, can usually only be restrained due to a breach (or alleged breach that gives rise to a serious issue to be tried) of a negative covenant or statutory prescription, that is not to say that a party making the call also must not strictly comply with the requirements in the relevant instrument that govern how demand is to be made. That extends to where there is some error or misdescription of the party, named on the face of the bond (so that it does not coincide with the identity of the party making the call) as the party for whose benefit it was issued; although in such cases rectification of the document may be possible.¹

¹ *Simic & Ors v New South Wales Land and Housing Corporation & Ors* [2016] HCA 47 (High Court of Australia).