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Matiere SAS v ABM Precast Solutions Ltd [2025] EWHC 1434 (TCC) (11 June 2025: The End of the (Green) Tunnel – When Good Faith Goes Bad, But Not Quite Bad Enough

Matiere SAS v ABM Precast Solutions Ltd [2025] EWHC 1434 (TCC)

Date: 11 June 2025

Judge: Alexander Nissen KC sitting as a Deputy Judge of the High Court

Key Words:

Joint Venture, Consortium Agreement, Collaboration Agreement, HS2 Project, Cut and Cover Tunnels, Good Faith, Professional Services Contract, Loss of Chance, Account of Profits, Breach of Contract, Fiduciary Duty, Green Tunnels, Scunthorpe Factory, Tender Process, EKJV, Adjudication, Witness Evidence, Contractual Interpretation, Fiduciary Relationship, Strategic Partnership

Summary

The dispute arose between Matière SAS (Claimant) and ABM Precast Solutions Ltd (Defendant), who together sought to bid as a joint venture subcontractor on the HS2 'Green Tunnels Project' [1, 2]. The bid failed. ABM alleged that Matière breached contractual duties of good faith, claiming loss of profits and an account of profits [2]. Matière counterclaimed for unpaid fees [2].

The court allowed Matière's fee claim in full, holding that the outstanding £373,295.06 was sufficiently proven and largely admitted by ABM [11-13, 15]. ABM's limited dispute as to a small part of the claim was unsupported by evidence [13-15].

ABM's counterclaim was dismissed in full [199, 304-305]. ABM's principal claim was for loss of a chance to win the HS2 subcontract, alleging Matière breached its duty of good faith by undermining the Scunthorpe factory proposal and by presenting the project to a competitor [16-18]. ABM also sought an account of profits, alleging Matière breached the Collaboration Agreement by contracting directly with EKJV [18].

Alleged Breaches of Contract

- **Undermining the Scunthorpe Proposal**: The court found Matière breached express duties of good faith under the Consortium Agreement (Clause 3.1) and Collaboration Agreement (Clauses 3.1-3.3) [184-191]. Matière had deliberately criticised the Scunthorpe factory to EKJV and

explored alternative sites and providers (such as Pacadar and Stanton Bonna) without ABM's full knowledge or agreement [169-171]. Actions included considering "Plan B" (reducing ABM's scope) and "Plan C" (replacing ABM entirely), behaviour deemed dishonest or commercially unacceptable and lacking fidelity to the joint venture [170-171, 184-186, 190-191]. Matière's project manager, M. Vignon, admitted to acting against joint venture interests [110-111, 171-173].

- **Presenting to Stanton Bonna**: The allegation that Matière presented confidential details to Stanton Bonna in late 2019 or early 2020 was dismissed [266, 270-271]. The judge found the evidence unconvincing; any tripartite discussions with Stanton Bonna in 2018, known to ABM, were not improper [267-270].
- **Direct Contract with EKJV**: ABM alleged breach of Clause 3.2 of the Collaboration Agreement, arguing Matière contracted directly with EKJV after the joint venture's termination [18]. The court rejected this, finding the Collaboration Agreement had ceased when EKJV formally terminated the JV (18 September 2020) [179-183, 282-283]. Matière was then entitled to pursue new agreements [179, 183].

Causation (Loss of Chance)

For the only proven breach (undermining Scunthorpe), ABM failed to show causation: Matière's conduct did not cause the loss of a real and substantial chance to win the subcontract [304-305]. The court found:

- **EKJV's Pre-Existing Concerns**: EKJV's dissatisfaction with the Scunthorpe factory and pursuit of alternatives pre-dated Matière's conduct and would have occurred regardless [299]. Matière's actions mainly responded to EKJV's initiatives [299]. EKJV, as the decision-maker, harboured reservations about ABM independently [299].
- **Other Significant Factors**: Factors outside Matière's responsibility were decisive: EKJV's concerns with the joint venture's structure, ABM's technical issues (including a failed fire test), and delivery concerns from a dispute between ABM and Kier at Luton Airport [216, 219, 235, 242-243, 301].
- **ABM's Financial Inability**: ABM was unable to secure funding for the Scunthorpe factory; its assertions of advanced financial discussions were "gross exaggeration" [213, 302]. EKJV's lack of confidence in ABM's financial position directly caused the JV's collapse [216-217, 302-303]. ABM had no substantial chance of success as it could not have delivered its own proposal [302, 303].

As causation failed, the quantum of damages was not considered [305]. Judgment was entered for Matière on its claim for unpaid fees, and ABM's counterclaim was dismissed entirely [306].

Authorities:

Case Law:

Duty of Good Faith

- ***Re Compound Photonics Group Ltd*** [2022] EWCA Civ 1371: Good faith clauses are context-driven [64-65]; prohibit undermining the bargain [65]. Further obligations must arise from other contract terms [66]. May inhibit self-interest if that would render the contract worthless [70-71].
- ***Yam Seng Pte Ltd v International Trade Corporation Ltd*** [2013] EWHC 111 (QB): Duty of good faith = honesty; bad faith could include commercially unacceptable conduct [62].
- ***Mid-Essex Hospital Services NHS Trust v Compass Group*** [2013] EWCA Civ 200: Good

faith must be read in context, not to override specific provisions [62-63].

- ***Al Nehayan v Kent*** [2018] EWHC 333 (Comm): Obligation is to act honestly and with fidelity to the bargain [67]; relevant for joint ventures [68-69].
- ***Street v Derbyshire Unemployed Workers' Centre*** [2004] EWCA Civ 964: Good faith must be judged in context [65].

Loss of a Chance

- ***Gregg v Scott*** [2005] UKHL 2; Loss of chance actionable if proved on balance of probabilities [289].
- ***Wellesley Partners LLP v Withers LLP*** [2016] Ch 529: Must show real/substantial chance was lost; if causation fails, quantification is moot [291].
- ***BCCI v Ali (No.3)*** [2002] EWCA Civ 82, [2002] All ER 750: If breach played no part, no assessment needed [291, 293].
- ***Thomas v Albutt*** [2015] EWHC 2187: Suggests chances of 10% or less are negligible [289].
- ***PCP Capital Partners LLP v Barclays Bank plc*** [2021 EWHC 307: <11% = not real/substantial [290].
- ***Harding Homes (East Street) Ltd v Bircham Dyson Bell*** [2015] EWHC 3329 (Ch): 10% or less is negligible [290].
- ***Spring v Guardian Assurance plc*** [1994] 3 WLR 354; *Allied Maples Group Ltd v Simmons & Simmons* [1995] WLR 1602; *Perry v Raleys Solicitors* [2020] AC 352: Principle that loss of chance is recoverable [289, 291].
- ***Barker v Corus (UK) Ltd*** [2006] UKHL 20: Law treats loss of chance as compensatable [288].

Contractual Interpretation

- ***Wood v Capita Insurance Services Ltd*** [2017] UKSC 24: Contract meaning found in whole document/factual matrix [6, 35].
- ***Marks & Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd*** [2015] UKSC 72, [2016] AC 74: Test for implied terms [65].

Fiduciary and Equitable Duties in Joint Ventures

Hewitt on Joint Ventures (6th edn, 2016): JV may not create fiduciary duties, but good faith and fair dealing remain relevant [68].

Summary Enforcement and Application of Terms

Overlook v Foxtel [2002] NSWSC 17: Good faith may restrict self-interest [64, 70].

***Legislation*:**

No statutes/regulations cited; reasoning based on case law concerning contractual interpretation, good faith, and loss of chance [61-71, 115-135, 286-292].

Legal Texts & Commentary:

1. Duty of Good Faith in Joint Ventures

Chitty on Contracts, 35th edition at 2-060 [62-63]: Good faith = honesty; bad faith = commercially

unacceptable conduct.

Hewitt on Joint Ventures (6th Edn, 2016) at paras 11-09 to 11-17 [68-69]: This commentary offered a comprehensive discussion regarding duties of good faith between parties in joint ventures. It concluded that "good faith" and "fair dealing" were concepts inherently suitable for numerous joint venture relationships, especially those where mutual trust and commitment were pivotal to the venture's success and often expressly stated in the initial terms establishing the relationship [68-69]. The text also highlighted the importance of such expressions of trust, good faith, and commitment to the relationship, irrespective of formal legal analysis [68-69].

2. Loss of a Chance

McGregor on Damages, 22nd edition at 11-049 [140]: Loss of a chance is compensatable once causation is proved.

Key Themes:

1. ***Breach of Duty of Good Faith****: Express good faith clauses required honesty and fidelity to the bargain; Matière breached by undermining the Scunthorpe proposal [61-71, 115-128, 253-259, 261-265, 250, 256, 281-286, 285-286, 293-294].*
2. ***Loss of a Chance and Causation****: ABM had to prove the breach caused loss of a real/substantial chance. The court found independent factors (EKJV concerns, ABM technical/funding issues) broke the causal chain [4, 287, 287, 289-291, 297, 290, 297, 299, 300, 303, 292, 300-302].*
3. ***Contractual Interpretation****: The court interpreted good faith clauses as covering bid preparation and negotiation [5-45, 73-114, 73-74, 10-11, 85-90, 103, 113, 90-93, 100-101, 110-112].*
4. ***Dynamics and Breakdown of Joint Ventures****: Dysfunction, division, lack of funding, and secret dealings doomed the JV bid [4, 72-244, 8, 10-13, 23, 70-71, 198, 206, 213, 227, 203-204, 260, 284, 183-184, 204-206, 217, 236-237, 70, 232-233, 290].*

Background

The dispute centred on Matière SAS, a French civil engineering designer/fabricator, and ABM Precast Solutions Ltd, a UK pre-cast specialist [1-2]. Together, they bid as a joint venture (JV) subcontractor for the HS2 ‘Green Tunnels Project’ (manufacture, supply, and installation of three tunnels) [2-3]. The main contractor was EKJV, itself a JV [3]. Matière handled design/coordination; ABM was to manufacture the tunnels [4]. The JV was not financially integrated—there was no profit or loss sharing [4, 10 (Cl.31.4)].

The bid failed. ABM blamed Matière, alleging breach of good faith during the bid process [2]. ABM’s main claim was for loss of a “virtually certain” chance to win the contract, valued at £18.92m (or £16.62m), plus an alternative account of profits of £2.25m [2]. These were relied on as set-offs against Matière’s fee claim, which ABM mostly admitted [2, 11, 13].

ABM’s counterclaim alleged several breaches by Matière [16]:

- **Undermining Scunthorpe Factory**: Matière allegedly undermined ABM’s proposed factory, a breach of Clause 3 (Consortium Agreement) and Clauses 3.1-3.3 (Collaboration Agreement) [16-18].
- **Disclosing to Competitor**: Matière allegedly gave a slide presentation on the Green Tunnels Project to Stanton Bonna (a competitor) [16-18, 266], breaching Clause 3.1 (Consortium

Agreement).

- **Post-JV Contracts**: ABM alleged breaches by Matière entering into direct agreements with EKJV post-JV, contrary to Clause 3.2 (Collaboration Agreement) [18]. This and a related subcontract with EKJV formed the basis of ABM's account of profits claim [18-19].

Matière sued for unpaid fees; ABM counterclaimed as above [2, 11, 15-16]. The case was heard in the TCC, with judgment on 11 June 2025.

Legal Issues and Analysis

Matière's Claim for Outstanding Fees

- ***Legal Issue***: Was £373,295.06 owed under the PSC? [11]
- ***Decision***: Yes. Claim allowed in full [15].
- ***Why***: ABM largely admitted the debt; its challenge to £35,000 was unsupported [13-15].

Construction of the Contracts

- ***Legal Issue***: How should the good faith obligations in the Consortium and Collaboration Agreements be construed? [5-6, 9-10, 16-18, 35-71]
- ***Consortium Agreement***: The court found Clause 3.1's good faith duty inseparable from PSC obligations [43]. Bid preparation was "inextricably linked" to the PSC's services [47-48, 53, 59-60]. The JV was not meant to allow competing tenders [53-54].
- ***Collaboration Agreement***: Clauses 3.1-3.3 imposed clear good faith duties regarding the Project and joint offer [60-61, 261-262, 10, 261-262].
- ***Good Faith***: The duty means honesty and commercial acceptability; bad faith includes undermining the bargain's substance [62, 64-67, 71-72].

Breach of Contracts (ABM's Counterclaim)

- ***Legal Issue 1***: Did Matière breach good faith by undermining Scunthorpe? [16-18, 156-157, 246-247]
- ***Decision***: Yes. Matière deliberately undermined the proposal to EKJV, considered alternative sites/providers (Pacadar, Stanton Bonna), and pursued "Plan B" and "Plan C" [163e-164, 167, 259-260, 264-265, 170-173, 250]. This was dishonest/commercially unacceptable [102-103, 107, 110-112, 119-120, 131f-h, 156-157, 159, 162-163, 250-251, 256-257, 259-260, 264-265, 256].
- ***Legal Issue 2***: Did Matière breach by presenting to Stanton Bonna? [16-17, 167]
- ***Decision***: No. The allegation was unproven; the court preferred M. Vignon's denial and found no corroboration [170, 270-271, 169, 269]. Earlier discussions were proper [168, 268].
- ***Legal Issue 3***: Did Matière breach by contracting with EKJV post-JV? [18, 174-175]
- ***Decision***: No. The Collaboration Agreement had terminated before the new contracts [183, 282-283]. Termination by EKJV triggered the contract's end [180, 216, 279, 179-180, 279]. Matière was entitled to act independently [280].

Causation (Loss of Chance)

- ***Legal Issue***: Did Matière's breach cause ABM to lose a real/substantial chance of winning the subcontract? [1-2, 8, 186]

- ***Decision***: No. Counterclaim dismissed [197-198, 304-305, 199].
- ***Why***:
    - **EKJV's Pre-Existing Dissatisfaction**: EKJV's doubts and its search for alternatives predated Matière's conduct [194-195, 299].
    - **Independent Factors**: Other issues, such as JV structure, failed fire tests, and Luton Airport disputes, lay outside Matière's control [194-195, 219-220, 223-225, 292, 234-237, 242-243, 238-240, 292].
    - **No Funding**: ABM could not fund the Scunthorpe factory; its claims to the contrary were exaggerated [197, 227-228, 238-240, 302, 213, 302]. EKJV's decision was based on ABM's financial shortcomings [216-217, 302-303]. By the 19 August 2020 EKJV board meeting, ABM had no real chance [194, 298].

Quantum

- ***Legal Issue***: Quantification of the loss of chance [198]
- ***Decision***: Moot—claim failed on causation [198, 305-306].

Conclusion

The court upheld Matière's claim for fees (admitted by ABM) [15-16]. ABM's counterclaims for loss of chance and account of profits were dismissed [197-199, 304-305]. Although Matière breached good faith by undermining Scunthorpe [163e, 167, 259, 264-265], these breaches did not cause ABM's loss. The failure resulted from EKJV's pre-existing concerns, ABM's technical/financial issues, and the JV structure [194-195, 197-198, 304-305, 299, 302].

Key Takeaway:

A breach of express good faith, particularly in joint ventures, is not enough to support a loss of chance claim unless it is the dominant cause of loss. Where other pre-existing and independent factors would have led to the same outcome, a claim on causation will fail—even if a contractual breach occurred [188, 193-195, 290(4), 194-195, 197, 299, 302].

Parting Thoughts

In the end, the great British joint venture—so often hailed as a model of collaborative spirit—here degenerated into little more than a polite fencing match with foam swords, a contest of "who breached whose good faith first?" over a failed bid for green tunnels in the Buckinghamshire clay. Matière's strategic double-dealing and candid admissions of "yes, I was deceiving you" might make for a compelling Netflix anti-hero, but not, it transpires, for a successful defendant to a loss of chance claim.

The court, wielding the case law on good faith like a precision scalpel, made it clear that "fidelity to the bargain" still matters, even if the contract is as muddled as a joint venture WhatsApp group after closing time. Yet, a breach—however flagrant—does not a jackpot make. It must still be the cause of the loss, not merely a footnote in a saga riddled with failed fire tests, ill-fated factory funding, and a joint venture structure with the stability of blancmange in a tumble dryer.

ABM's confident assertion that its lost profits were as good as in the bank turned out to be more of a spirited self-delusion, unravelled by the court's brisk tour through causation, commercial context, and reality checks. EKJV's independent doubts about ABM's technical prowess, financial standing, and—let's be honest—its general suitability for polite company, meant that, regardless of Matière's duplicity, ABM was never in with a real, substantial shot. As the judge rather mercilessly observed, a

loss of a chance claim requires an actual chance to be lost; ABM, it seems, couldn't have lost what it never truly had.

Matière walks away with its fees (every penny), and a gentle judicial scolding for its Machiavellian tendencies. ABM is left with nothing but the cold comfort that, while good faith clauses can be breached, damages require a little more than hurt feelings and a creative spreadsheet. In the annals of joint venture disputes, this case stands as a brisk reminder: breaches may abound, but causation is king—and sometimes, you simply have to build your factory on firmer ground.

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