DAVIES & DAVIES

Davies & Davies Associates Ltd
Solicitors & Chartered Surveyors

31 Pearce Drive Faringdon Oxfordshire SN7 7ND
0800 840 4025 enquiries@dda.law **www.dda.law**

January 17, 2026

No Such Thing as a Free Lunch: Tenderbids Ltd t/a Bastion v Electrical Waste Management Ltd [2026] IEHC 5 and the Death of the Irish "Smash and Grab"

Tenderbids Limited [Trading as Bastion] -v- Electrical Waste Management Limited [2026] IEHC 5

Date: 12 January 2026

Judge: Mr Justice Garrett Simons

Key Words:

Adjudication, Construction Contracts Act 2013, Enforcement, Payment Disputes, Payment Claim Notices, Default Payment, "Smash and Grab", Statutory Interpretation, Natural Justice, Fair Procedures, Jurisdiction, Pay Now Argue Later, Concessions, Procedural Discipline, Irish Construction Law

Summary

These proceedings concerned an application by a contractor (**Tenderbids Ltd**) to the High Court for leave to enforce an adjudicator's decision against an employer (**Electrical Waste Management Ltd**) under **s.6(11) of the Construction Contracts Act 2013** [1-3]. The core of the dispute was whether the employer's failure to respond to a **payment claim notice** entitled the contractor to a "default decision" for the full amount claimed—a concept often referred to in English law as a "**smash and grab**" adjudication [4-5]. Although the employer had conceded this legal point during the adjudication, it sought to argue against it at the enforcement stage [19, 46-47]. The High Court ultimately **refused to enforce the decision**, ruling that the Act does not provide for default directions to pay and that adjudicators cannot deny a party's right to a defence on the merits without express legislative authority [61-63, 89-90].

Key Themes:

1. "***Pay Now, Argue Later***"*: The fundamental principle that adjudicators' decisions are provisionally binding and subject to summary enforcement to ensure cash flow in the construction industry [6-7].*
2. ***Statutory Interpretation****: The tension between literal and purposive approaches, specifically whether the court can "read in" consequences for procedural failures that the Oireachtas*

(Parliament) did not expressly enact [12, 76-77].

3. ***Procedural Fairness -v- Systemic Integrity****: The balance between holding parties to their concessions at adjudication and the court's duty to ensure the statutory scheme is not expanded beyond its legal limits [47-48, 56, 90-91].*
4. ***Jurisdictional Gateways****: Defining what constitutes a "payment dispute" amenable to statutory adjudication [10, 26-27].*

Background

The dispute arose from a contract for a metal waste recycling facility with a contract sum of approximately **€6.9 million** [17]. The contractor served a payment claim notice for **€1,402,457.13**, to which the employer failed to deliver a response within the 21-day statutory period [18-19].

In the subsequent adjudication, the contractor argued that the failure to respond resulted in the full amount falling due by default [18]. Crucially, **the employer conceded this point** during the adjudication process [19]. Consequently, the adjudicator issued a decision directing payment in full without ruling on the employer's substantive defences regarding unauthorised variations [20-22]. When the contractor sought to enforce this in the High Court, the employer reversed its position, arguing that the Act does not actually support "default" decisions [23, 46-47].

Legal Issues and Analysis

A. Definition of a "Payment Dispute"

The employer argued the referral was invalid because a claim for a "default payment" is a statutory creation, not a dispute "arising under the construction contract" [27]. The court rejected this, clarifying that a "**payment dispute**" **includes claims provided for under the Act itself** [29-30]. The court emphasised that the "payment dispute" requirement is a **gateway**; a claim need not be meritorious to pass through it, only of the correct *type* [33-34, 39].

B. New Arguments at Enforcement

Generally, a party cannot raise new arguments at the enforcement stage that were not made (or were conceded) at adjudication [46-48]. However, the court found this case **exceptional** [54]. Because the issue of "default decisions" goes to the very "**architecture of adjudication itself**," the court permitted the employer to perform a volte-face (a total change of position) to ensure the integrity of the statutory scheme [54, 57-58].

C. The "Default Direction to Pay"

The court conducted a detailed analysis of **Section 4 of the Act** [58-59]. It found that while the Act is clear on what happens if a response is delivered (the proposed lesser amount must be paid), it is **entirely silent** on the consequences of a complete failure to respond [64-65]. The court held:

1. **No "Smash and Grab"** - Unlike UK legislation, the Irish Act does not expressly create a default payment obligation for failing to respond [5, 64].
2. **Anti-Judicial Law-making** - Implying a specific consequence (like a default award) would be **judicial law-making** because there are several other plausible policy choices the legislature could have made [75-77].
3. **Natural Justice** - A party should not be shut out from defending a claim on its merits without "good cause and without advance warning" clearly spelled out in the legislation [74-75].

Conclusion

The court concluded that the adjudicator **erred in law** by deciding that a non-response triggered an automatic entitlement to payment [62-64, 85-86]. While errors of law do not always prevent enforcement, this error was so fundamental—denying a right of defence without statutory authority—that it compromised the fairness of the process [89-90]. Consequently, the court **refused to enforce the adjudicator's decision** [90]. However, due to the employer's late change of mind, the court indicated the employer might still have to pay the contractor's legal costs to reflect "procedural discipline" [91-92].

Key Takeaway:

The Construction Contracts Act 2013 does not permit "default decisions" or "smash and grab" adjudications solely based on an employer's failure to respond to a payment claim notice. While such a failure may crystallise a dispute, the paying party retains the right to defend the claim on its merits during the adjudication process [62-64, 85-86, 89-90].

Parting Thoughts

*If this case can be reduced to a single sentence, it is this: **the Construction Contracts Act 2013 means what it says, and—more importantly—does not mean what it does not say**.*

The temptation to import a ready-made "default payment" mechanism from across the water has now been firmly resisted. The High Court has made it clear that Irish adjudication is not a theme park where every procedural misstep triggers a pre-programmed rollercoaster to the cashier's desk. The Act is a carefully engineered machine, not a slot machine.

The contractor's argument had a certain surface appeal: if you ignore a payment claim, surely something unpleasant should happen. And indeed, something does happen—you can be dragged into adjudication immediately, and you may well lose on the merits. But what does not happen, absent express legislative instruction, is the legal equivalent of being struck by lightning for failing to check your post.

*The judgment is, at heart, a robust defence of **institutional boundaries**. Courts interpret statutes. They do not finish them. Adjudicators decide disputes. They do not create new species of summary judgment by enthusiasm alone. And legislatures, when they wish to impose draconian procedural penalties, tend to do so in words of one syllable and great clarity.*

*Perhaps the most intellectually bracing aspect of the decision is the court's willingness to tolerate the employer's late-stage change of mind—not because it deserved indulgence, but because the **integrity of the system mattered more than the tidiness of the parties' conduct**. That is a rare thing in modern litigation: a court choosing architectural coherence over moral satisfaction.*

The result is a system that remains true to "pay now, argue later", but refuses to mutate it into "pay now because someone forgot to reply to an email".

The practical message is simple:

- ***In Ireland, there is no statutory "smash and grab".***
- *Failure to serve a payment response is risky, foolish, and potentially expensive.*
- *But it is not, by itself, a legal guillotine.*

If the Oireachtas wishes to introduce such a mechanism, it can do so tomorrow, in half a page, using

very large font. Until then, adjudication remains a forum for deciding disputes—not for enforcing procedural forfeits dressed up as justice.

Or, to put it more bluntly: ***if you want a default judgment, try the courts. If you want adjudication, bring an argument****.*

A Tale of Two Statutes: Ireland v England and the Myth of the Portable "Smash and Grab"

Anyone tempted to read this judgment as an eccentric Irish detour should resist the urge. What it really exposes is a fundamental divergence between two statutory architectures that are often spoken about as if they were interchangeable, and very much are not.

In England and Wales, the "smash and grab" adjudication is not a judicial invention. It is a **deliberate statutory creature**. The Housing Grants, Construction and Regeneration Act 1996 (as amended) and the Scheme for Construction Contracts spell out, in terms that are neither shy nor subtle, that:

- If a valid payment notice (or pay less notice) is not served,
- The notified sum becomes payable,
- And the payer is temporarily shut out from arguing about the "true value" of the works in that adjudication.

This is not an accident of drafting, nor a gap in the statutory scheme waiting to be filled by judicial creativity. It is a deliberate policy choice, hammered into the payment regime with all the finesse of a large, well-aimed mallet and repeatedly endorsed by the courts. In *ISG v Seevic [2014] EWHC 4007* and *Galliford Try v Estura [2015] EWHC 412 (TCC)*, the court held that, in the absence of a valid payment or pay less notice, the sum stated in the contractor's application becomes the sum due and is, for that valuation cycle, treated as conclusively binding — even if it is wrong. The employer is not merely obliged to pay; it is procedurally precluded from re-opening the valuation for that period by way of a second adjudication.

That uncompromising position was later moderated, but not abandoned, by the Court of Appeal in *S&T v Grove [2018] EWCA Civ 2448*. The court restored the employer's right to seek a "true value" adjudication, but only on one strict condition: the notified sum must first be paid. The message is both simple and unmistakable. The statutory regime is not concerned, in the first instance, with arriving at the correct answer. It is concerned with maintaining cash flow. Substantive justice may be pursued afterwards — but only by a party that has first complied with the discipline of the payment code.

The English system is therefore intentionally **procedural and punitive**. It uses short-term injustice as a tool to enforce long-term discipline. Miss your notice, and you will pay first and argue later, even if everyone in the room knows the valuation is nonsense.

Ireland, as this judgment makes clear, has chosen a **different temperament**.

The Construction Contracts Act 2013 looks superficially similar but is, in truth, philosophically more restrained. It:

- Requires payment claim notices and responses,
- Encourages early definition of disputes,
- And provides for adjudication as a fast, interim remedy,

…but it **stops short** of saying what happens if the payer fails to respond. Critically, it does not say: "In that case, you lose the right to defend yourself."

That silence is not a typo. And the court has now confirmed that it is not a judicial invitation either.

Where the English statute weaponises procedure, the Irish statute treats it as **infrastructure**. Useful. Important. But not, by itself, a guillotine.

The deeper contrast is this:

- The UK model is **disciplinary**: it enforces compliance by punishment.
- The Irish model is **adjudicative**: it enforces cash flow by speed, not by forfeiture.

Or, to put it another way, English adjudication is prepared—quite consciously—to be unfair in the short term in order to make the system work. Irish adjudication, as this judgment insists, is not.

This also explains the court's evident allergy to importing UK case law "by osmosis". A "smash and grab" adjudication is not a generic feature of adjudication. It is a **bespoke statutory animal**. And like most exotic species, it does not travel well.

The practical consequence is stark:

- In England, the first question is often: *"Did you serve the right notice?"*
- In Ireland, the first question remains: *"Are you actually entitled to the money?"*

Procedure matters in both systems. But only one of them turns procedural failure into a temporary substitute for liability.

Seen in that light, *Tenderbids v EWM* is not conservative. It is **constitutionally tidy**. It keeps adjudication in Ireland what the statute says it is: a fast way of deciding disputes, not a fast way of manufacturing debts.

And it sends a clear warning to anyone trying to run a UK playbook on Irish soil:

Same word, same industry, same mechanism — very different game.

What This Means for Cross-Border Contractors (A Short Guide to Avoiding Expensive Surprise)

For contractors, funders, and contract administrators operating on both sides of the Irish Sea, the most dangerous assumption is that "adjudication is adjudication". It isn't. Not anymore, and arguably never was.

This case makes three things uncomfortably clear.

1. Your UK Playbook Does Not Travel

If your commercial strategy relies on the tactical use of "smash and grab" adjudications—i.e. **winning by procedural knockout rather than by valuation**—that strategy ends the moment the governing law is Irish.

- In England & Wales: missing a payment notice can be commercially fatal in the short term.
- In Ireland: missing a response is still bad practice, still risky, but **not a substitute for liability**.

If you are pricing risk, funding claims, or making cashflow forecasts on Irish projects using UK assumptions, your spreadsheet is lying to you.

2. Contract Drafting Now Matters More Than Ever

Because the Irish statute does **not** impose a default payment regime, the contract itself becomes far more important.

Parties should now be asking:

- Does the contract **create its own notice consequences**?
- Does it **deem sums due** in the absence of a response?
- Does it **limit defences** in any interim procedure?

If it doesn't, do not expect adjudication to do that work for you.

In the UK, the statute does the heavy lifting.
In Ireland, **if you want procedural teeth, you will have to draft them yourself** (and even then, expect arguments about enforceability).

3. Adjudication Strategy Must Be Jurisdiction-Specific

For employers:

- In Ireland, you still **should** serve timely payment responses.
- But failure to do so is **not the end of the world,** as it is in England.
- You will still be able to run a merits defence in adjudication.

For contractors:

- In Ireland, adjudication is **not** a shortcut to risk-free cash via procedural ambush.
- You must be prepared to **prove entitlement**, not merely prove silence.

For both:

- Do not assume that advisors, project teams, or commercial managers trained in the UK system are giving correct instinctive advice on Irish projects. They may be acting on muscle memory from a different legal climate.

4. Funding, Security, and Cashflow Models Need Updating

Litigation funders and internal finance teams should take note:

- In England, a "smash and grab" is often treated as **near-term low-risk receivable** (pending a later true value fight).
- In Ireland, that asset category **does not exist**.

If your recovery model assumes early enforcement based purely on notice failures, it will fail in

Ireland — expensively and publicly.

5. Expect Behavioural Divergence on Projects

Over time, this difference will shape behaviour:

- UK projects incentivise **hyper-compliance with notice machinery** (sometimes at the expense of substance).
- Irish projects will incentivise **earlier substantive positioning** and evidential preparation.

The Irish system is, in effect, less a procedural chessboard and more a fast-tracked meritocracy.

6. The Boring but Vital Checklist

For any contractor or employer working in both jurisdictions:

- Identify governing law at the bid stage
- Train commercial teams on **two different adjudication cultures**
- Do not recycle UK strategies into Irish disputes
- Review standard forms and amendments for **payment mechanism consequences**
- Recalibrate cashflow and risk assumptions accordingly

In Short

Cross-border contractors must now accept a mildly inconvenient truth:

There is no such thing as "the" adjudication system anymore. There are at least two. They look similar. They behave very differently. And if you confuse them, they will cost you money.

#ConstructionLaw #Adjudication #IrishLaw #UKConstructionLaw #PaymentDisputes #StatutoryInterpretation #NaturalJustice #FairProcedures #SmashAndGrab #PayNowArgueLater #TCC #ConstructionIndustry #LegalUpdate #CaseLaw #DisputeResolution #ContractLaw #InfrastructureLaw #DDAlegal

Authorities

Case Law:

Statutory Interpretation and Legislative Intent

1. ***Heather Hill Management Company v An Bord Pleanála [2022] IESC 43, [2024] 2 IR 222, [2022] 2 ILRM 313*** *- This judgment is the primary authority for the principle that literal and purposive approaches to interpretation are not hermetically sealed. The court relied on it to establish that "legislative intent" is not the subjective minds of parliamentarians, but the legal effect of the words enacted by the Oireachtas. It was central to the ruling that courts cannot impose an outcome (such as a default payment obligation) simply because it appears "reasonable" or "sensible" if it is not supported by the statutory text.*
2. ***Crilly v T. & J. Farrington Ltd [2001] IESC 60, [2001] 3 IR 251*** *- Used to confirm that the subjective intent of individual parliamentarians is irrelevant to the construction of a statute.*
3. ***Aakon Construction Services Ltd v Pure Fitout Associated Ltd [2021] IEHC 562*** *- Cited for the principle that English case law regarding "smash and grab" adjudications must be*

approached with caution and cannot be automatically applied to the Irish Construction Contracts Act 2013.

4. ***McGrath v McDermott* [1988] I.R. 258** *- Relied on for the principle that judges must apply objectively ascertainable principles rather than their own assessments of what parliament "ought sensibly to have wished to achieve".*
5. ***D.P.P. v Flanagan* [1979] I.R. 265** *- Cited to support the view that interpreting a statute involves ascertaining legal effects through an established set of rules and presumptions.*

The Jurisdictional Gateway of "Payment Disputes"

1. ***Connaughton v Timber Frame Projects Ltd [2025] IEHC 469*** *- This authority was used to define the "organic link" between the payment claim notice (Section 4) and the right to adjudication (Section 6). The court applied it to clarify that a "payment dispute" acts as a jurisdictional gateway; if a party asserts a claim for payment provided for under the Act or contract, the adjudicator has jurisdiction regardless of whether the claim is ultimately meritorious or "unmeritorious".*

High Court Discretion and Fair Procedures in Enforcement

1. ***John Paul Construction Ltd v Tipperary Co-Operative Creamery Ltd [2022] IEHC 3*** *- This judgment established that the High Court retains a narrow discretion to refuse enforcement of an adjudicator's decision if there has been an "obvious" or "blatant" breach of fair procedures. The court relied on this to justify refusing enforcement of a "lopsided decision" where a party was denied a right of defence.*
2. ***McGuinn v Commissioner of An Garda Síochána [2011] IESC 33*** *- Cited for the principle of natural justice that courts lean in favour of determining litigation on its merits rather than shutting out a party for procedural reasons.*

Procedural Waiver and Conduct of Parties

1. ***McGill Construction Ltd v Blue Whisp Ltd [2024] IEHC 205*** *- Relied on for the principle that a party who represents they will be bound by an adjudicator's decision on jurisdiction (such as by making a concession) should not normally be allowed to resile from that representation.*
2. ***Tenderbids Ltd v Electrical Waste Management Ltd [2025] IEHC 139*** *- Cited regarding the procedural history between the parties; it distinguished the current case because, in the earlier proceedings, the employer had not participated in the adjudication at all, thereby avoiding the pitfalls of waiver or representation.*

Legislation:

Statutory Framework for Adjudication and Enforcement

1. ***Construction Contracts Act 2013, Section 6*** *- This is the foundational provision of the statutory scheme. Section 6(1) creates the right for a party to refer a "payment dispute" to adjudication. Section 6(11) provides the mechanism for an adjudicator's decision to be enforced by the High Court in the same manner as a judgment or order. The court relied on this section to establish the "pay now, argue later" principle and the jurisdictional "gateway" for referrals.*
2. ***Construction Contracts Act 2013, Section 3*** *- This section regulates the amount and timing of interim and final payments under construction contracts. It was relied on to confirm that the Act aims to ensure prompt payment and that its provisions (including the Schedule) apply where a contract is silent on payment matters.*

3. ***Construction Contracts Act 2013, Section 5*** *- Mentioned alongside sections 3, 4, and 6 to illustrate that the term "payment" bears a specific, consistent meaning throughout the Act, relating to payments provided for under a construction contract.*
4. ***Rules of the Superior Courts, Order 56B*** *- This regulation prescribes the "formal proofs" that must be established before the High Court will grant leave to enforce an adjudicator's decision.*

Payment Claim Notice Procedures and Default Obligations

1. ***Construction Contracts Act 2013, Section 4*** *- This section establishes the procedure for payment claim notices. The court analysed this section extensively to determine if a "default" payment obligation exists.*
    1. ***Section 4(3)*** *- Mandates that a paying party who contests an amount "shall" deliver a response within 21 days.*
    2. ***Section 4(3)(b)*** *- Expressly requires the paying party to pay the amount they proposed in their response by the due date. The court used the presence of this express obligation to highlight the absence of a similar express obligation to pay the full claimed amount if no response is delivered.*
    3. ***Section 4(4)*** *- Specifies that if a response relies on a claim for loss or damage (set-off), it must provide detailed particulars.*
2. ***United Kingdom Legislation*** ***(Unnamed)*** *- Referenced as a comparative authority. The court noted that unlike the Irish Act, the equivalent UK legislation makes "express provision" for "smash and grab" or default decisions when an employer fails to respond to a notice.*

Costs and Procedural Safeguards

1. ***Legal Services Regulation Act 2015, Section 169*** *- This statute governs the allocation of legal costs. The court relied on it to justify a potential costs order against the employer, noting that the court can have regard to "litigation conduct"—such as the employer's volte-face (change of position) regarding the legal interpretation of the Act—when deciding who pays the costs.*
2. ***Rules of the Superior Courts (General)*** *- Mentioned [74] regarding the "entry of judgment in default of appearance or defence". The court used these rules as a principle of comparison to show that shutting out a party for procedural failures usually requires clear legislative authority and specific safeguards (like warning letters), which are absent in Section 4 of the 2013 Act.*

Legal Texts & Commentary:

Parliamentary History and Legislative Preparatory Materials

1. ***Construction Contracts Bill (and associated amendments)*** *- The court analysed the evolution of the Bill from its initiation through various amendments. The Bill as initiated, had made express provision regarding the withholding of sums due, which was subsequently deleted via a government-sponsored amendment. The court used this text to conclude that while the Bill once contemplated "default" payment obligations, the enacted* ***statute's text and structure*** *must take primacy over its history.*
2. ***Select Sub-Committee on Public Expenditure and Reform debate (12 June 2013)*** *- This record of parliamentary debate was cited to show that specific amendments, which would have introduced an express obligation to pay the full amount in the absence of a response, were proposed by Mary Lou McDonald, T.D. and rejected. The court relied on these debates to*

*illustrate that there were **multiple policy choices** available to the legislature; since the Oireachtas did not explicitly choose the "default award" option, the court held it would be "judicial law-making" to imply it.*

3. ***Explanatory Memorandum accompanying the Construction Contracts Bill** - This document was cited as stating that, absent an effective notice of intention to withhold, the amount claimed was to be paid in full. The court used this to explain the employer's argument but ultimately ruled that such a memorandum is **not a reliable guide** to legislative intent, as it only reflects the initial views of the Bill's sponsor rather than the final "settled compromise" of the Act.*
4. ***Long Title of the Construction Contracts Act 2013** - The court noted that the reference to regulating "certain other matters" in the Bill's Long Title was removed in the final Act. This was used as part of the analysis to determine the intended **scope and reach** of the statutory payment regulations.*

Standard Form Contract Documents

1. ***RIAI Blue Form** - This is the standard form construction contract adopted by the parties for the project. The court cited this text to establish the **contractual matrix** of the dispute, specifically regarding Clause 13, which governs "authorised variations". The principles within this text were relied on to identify the substantive defences that the adjudicator had wrongly refused to consider.*

Nigel Davies BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, CArb, GMBPsS, Panel Registered Adjudicator, Mediator, Mediation Advocate, Chartered Builder & Chartered Construction Manager, Chartered Surveyor & Civil Engineering Surveyor, Chartered Arbitrator, Author, and Solicitor-Advocate

Adjudicator Assessor and Re-Assessor for the ICE and the CIArb
Arbitrator Assessor for the CIArb
ICE DRC Member
ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
FIDIC Adjudication Panel Member since 2021
ICE Adjudication Panel Member since 2021
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
TECSA Adjudication Panel Member since 2012