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1. Tenderbids Ltd trading as Bastion v Electrical Waste Management Ltd [2025] EIHC 139 (13 March 2025), 2. Chugga Chugg Pty Ltd v Privinvest Holding SAL [2025] EWHC 585 (Comm) (14 March 2025)

1. *Tenderbids Ltd trading as Bastion v Electrical Waste Management Ltd* [2025] EIHC 139

Date: 13 March 2025

Key Words:

Adjudication, Notice of Intention to Refer, Delivery of Notice, Registered Post, Email Delivery, Construction Contracts Act 2013, Contractual Agreement, Validity of Adjudication, Jurisdiction, Statutory Interpretation, Plain Meaning, Nullity, Rules of the Superior Courts, Waiver, Prejudice, Pay Now, Argue Later, Contractual Autonomy, Compliance

Summary

This judgment concerns a procedural point regarding adjudications under the Construction Contracts Act 2013 [1]. This case addresses whether an adjudication was invalidated when Tenderbids Ltd sent a notice of intention to adjudicate via email, despite a contractually agreed requirement for registered post [1, 5]. Mr. Justice Garrett Simons held that failure to follow this requirement rendered the adjudication a nullity [32] and refused the applicant's enforcement application [32].

Key Themes:

1. ***Importance of Contractual Agreements:*** *Parties are entitled to agree on delivery methods for notices under section 10(1) of the 2013 Act and such agreements must be respected [21–23].*
2. ***Strict Compliance with Statutory Procedures:*** *A valid notice triggers adjudication rights. Non-compliance with agreed or statutory delivery methods may invalidate the process [25, 29–31].*
3. ***Statutory Interpretation:*** *Plain meaning prevails unless displaced by strong contextual justification [13–15, 22–23].*
4. ***Distinction from Court Proceedings:*** *Rules of the Superior Courts regarding service validation do not apply to statutory adjudication notices [24–26].*
5. ***Jurisdictional Challenge:*** *The responding party was not obliged to object during the*

adjudication or participate in a process triggered by an invalid notice [26–27].

Background

- On 19 October 2021, the parties entered a construction contract using the RIAI Yellow Form (August 2017) [3–5].
- Clause 5 required statutory notices to be delivered by registered post, except section 4 payment claim notices, which could be emailed at the sender's risk [4–5].
- Despite this, Tenderbids sent a notice of intention to refer via email on 21 June 2024 [7].
- Email receipt and read notifications were received [7]. The responding party did not engage in the adjudication, and the adjudicator awarded payment to the applicant [8–10].
- The applicant sought to enforce the award in the High Court [11–12]. Legal Issues and Analysis
- The core issue was whether failure to use registered post invalidated the adjudication [1].
- The court held that section 10(1) allows delivery method agreements and section 10(2) applies only where no agreement exists [3, 18, 21–23].
- The applicant argued email was sufficient due to actual receipt and lack of prejudice [16], and that the respondent should have objected earlier [16, 18].
- The court rejected this, stating that such reasoning would undermine section 10(1) and contractual autonomy [19–22].
- Case law on court proceedings service was distinguished, as no equivalent legislative framework exists under the 2013 Act to excuse non-compliance [23–26].
- The contract's specific treatment of email underscored the requirement for registered post for other notices [26–27]. Day-to-day email use did not waive formal notice terms [26–27].
- The respondent was not required to participate in a process initiated by invalid notice [27–28]. The adjudication was a nullity [27–28, 31–32].
- The court also noted similar conclusions under UK case law interpreting equivalent legislation [28–31].

Conclusion

Since the notice was not delivered by registered post, the adjudication was never validly initiated [31–32]. The adjudicator's award was a nullity, and enforcement was refused [31–32]. The respondent was provisionally entitled to recover costs [32–34].

Key Takeaway:

Strict adherence to agreed delivery methods under the Construction Contracts Act 2013 is essential. Even if a notice is received by alternative means, failure to comply with the agreed method can render an adjudication void [1, 31–32].

Parting Thoughts

This case underscores the necessity of complying with contractually agreed notice provisions under the 2013 Act. Courts will not tolerate unilateral deviations, even where the notice is received [16]. The judgment reinforces the Act's respect for contractual autonomy [3, 21–22]. Failure to follow agreed service methods can nullify statutory processes such as adjudication [31–33].

#ConstructionLaw #Adjudication #ConstructionContractsAct2013 #NoticeOfIntention #DeliveryOfNotice #RegisteredPost #EmailDelivery #ContractualCompliance #JurisdictionalChallenge #ValidityOfAdjudication #StatutoryInterpretation #IrishLaw #IEHC

#PayNowArgueLater #ContractualAutonomy #LegalProcedure #Nullity

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2. *Chugga Chugg Pty Ltd v Privinvest Holding SAL* [2025] EWHC 585 (Comm)

Date: 14 March 2025

Key Words:

Guarantee, Demand Guarantee vs. Surety Guarantee, Shipbuilding Contract, Renunciation, Termination, Affirmation, Breach of Contract, Contested Breach vs. Uncontested Breach, Arbitration, Insolvency, Demand, English Law, Interpretation of Contractual Terms, Factual Findings, Commercial Context

Summary

The case concerns enforcement of a parent company guarantee [1–6]. Chugga Chugg Pty Ltd contracted with Nobiskrug GmbH to build a superyacht and sought to enforce Privinvest Holding SAL's guarantee when Nobiskrug failed to repay the first instalment after the contract was terminated [27–28]. Privinvest argued it was a surety guarantee, not a demand guarantee, and that Nobiskrug lawfully terminated following Chugga Chugg's renunciation [30, 32]. The court found for Chugga Chugg, ruling Nobiskrug's termination was invalid and that the guarantee conditions had been met [127].

Key Themes:

1. ***Interpretation of a Guarantee:*** *The court assessed whether the guarantee was a demand or surety guarantee [32, 34(1), 109(b), 110–115]. It was found to be a "see to it" surety guarantee, but clause 2 allowed a contractual mechanism akin to a conditional demand bond [28(1)-(4)(b), 115, 151–152, 155].*
2. ***Renunciation of Contract:*** *Central to the dispute was whether Chugga Chugg renounced the contract and whether Nobiskrug validly accepted this [30, 32, 34(2)(e)-(g), 44–92]. The court analysed communications in April–June 2020 and found no unequivocal renunciation [54–79, 91–92, 120].*
3. ***Affirmation of Contract:*** *The court considered whether Nobiskrug affirmed the contract through its conduct before issuing its termination notice [9–10, 34(2)(e)-(g), 96–109, 128–131], finding Nobiskrug's actions suggested affirmation [108–109(a)].*
4. ***Insolvency and Arbitration:*** *Nobiskrug's German insolvency impacted arbitration against Chugga Chugg [12–27, 46–48, 117, 121–126]. The court evaluated how insolvency proceedings and the roles of arbitral awards intersected with "contested" vs. "uncontested" breaches [16–24, 121–126, 157–164].*
5. ***Valid Demand under the Guarantee:*** *The guarantee required an "uncontested" breach or final arbitral award [30–31, 34(1), 115, 156–164]. The court held that once a claim is contested in arbitration, it remains so unless resolved by award or admission [161, 164]. Chugga Chugg's arbitral awards satisfied this requirement [24–25(a), 28].*

Background

- In 2018, Chugga Chugg (owned by Brett Blundy) contracted with Nobiskrug to build a €99.55m yacht [1–5].
- Privinvest guaranteed obligations up to €9.955m [1–7].
- Delays emerged in 2020 due to Nobiskrug's financial issues and COVID-19 [8–9].
- Discussions in April 2020 about ending the contract led to disputes over alleged renunciation [9–10, 54–68(b)].
- Nobiskrug terminated in June 2020, citing renunciation [78–79]; Chugga Chugg responded with its own termination in July, alleging breach [11].
- Nobiskrug's arbitration was discontinued after insolvency [12–18], but Chugga Chugg obtained final awards in its counterclaim [19–25(a)].
- It then demanded payment under the guarantee [25(b)–28.2].

Legal Issues and Analysis

- **Nature of the Guarantee:** It was a surety guarantee, not payable on demand, but clause 2 created a mechanism to confirm liability via arbitral award [32, 34(a), 115, 148–156].
- **Renunciation:** The court found no clear intent by Chugga Chugg to abandon the contract; intent to terminate was always expressed as conditional [54–118, 91–92, 120, 157–164].
- **Withdrawal of Renunciation:** If renunciation had occurred, Chugga Chugg's later reassurances and financial proposals equivocated or retracted it before termination [34(f), 119–128, 127].
- **Affirmation:** Nobiskrug's continued performance without clear objection indicated affirmation, limiting its right to terminate [34(g), 129–147, 144].
- **Contested vs. Uncontested Breach:** The breach remained contested until resolved by award; Nobiskrug's insolvency process didn't alter this [34(b)-(d), 157–172, 168–171]. Chugga Chugg's arbitral awards satisfied the guarantee's requirement [24–25(a), 27–28].

Conclusion

Chugga Chugg did not clearly renounce [92–93]. Nobiskrug's termination on 9 June 2020 was invalid [44, 49–50, 109] and Chugga Chugg lawfully terminated on 16 July 2020 [44, 79, 100–101]. Even if renunciation occurred, Nobiskrug affirmed the contract [129, 144]. The guarantee conditions were fulfilled via arbitral awards, so Chugga Chugg's claim succeeded [28.2, 127, 172–173].

Key Takeaway:

Exploring termination is not the same as renunciation. Communications must be clear and unequivocal to amount to a repudiatory breach [91–92, 120]. Parties must act consistently—continuing performance or staying silent may affirm the contract [97–98, 132(c)-(e), 138–139, 144]. The wording of guarantees is critical, particularly around how liability is established [110–112, 115, 155].

Parting Thoughts

This case highlights the importance of clarity in contract communications. Mere exploration of termination does not equal renunciation. Parties must respond promptly and unequivocally to potential breaches. Also, guarantee obligations turn on precise drafting—parties must understand when and how liability is triggered to avoid costly litigation.

#CommercialLaw #ContractLaw #ShippingLaw #Guarantees #DemandGuarantee

#SuretyGuarantee #BreachOfContract #ContractTermination #Renunciation #Affirmation #ArbitrationAward #InsolvencyLaw #Jurisdiction #LegalJudgment #EWHC #Superyacht #ForceMajeure #CommercialDispute #LegalInterpretation

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