

Express Contractual Notice Provisions: A Reminder - *Tenderbids Limited Trading as Bastion v Electrical Waste Management Ltd* [2025] IEHC 139

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Summary

The recent case of *Tenderbids Limited Trading as Bastion v Electrical Waste Management Ltd* [2025] IEHC 139 confirmed that failure to comply with the prescribed method of service invalidates the adjudication process. This case serves as a reminder to parties involved in contractual agreements that where there has been agreement as to a prescribed method of service to proceed with adjudication, failure to follow that prescribed method will invalidate the adjudication process.

Introduction

Over the last 15 years or so there are a range of countries³ that have adopted statutory construction adjudication which of course has been in place in this country since 1998.⁴ Case law in one obviously may be persuasive authority in another but the degree to which that arises will depend on the detail of the specific legislation. Some payments legislation is more broadly or narrowly defined than other comparable acts that allow for construction adjudication. The neighbouring jurisdiction of the Republic of Ireland has had adjudication under their 2013 Construction Contracts Act for some years now with that legislation shortly being commenced 9 years ago.⁵ Broadly, the legislation in that jurisdiction and this one can be characterised as often similar but different. The cycle of such legislation being introduced and ‘bedding down’ can often follow a path that has been seen before in other more established jurisdictions. Issues that were seen in the first decade or so of adjudication being in place in England and Wales can be seen in the first decade of countries who have more recently introduced this Alternative Dispute Resolution (‘ADR’) process.

The recent decision of the assigned Irish adjudication judge Simons J on whether a payment dispute had been validly referred to adjudication, *Tenderbids Limited Trading as Bastion v Electrical Waste Management Ltd* [2025] IEHC 139⁶ (‘Tenderbids’) is a helpful reminder of

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³ Legislation introducing or revising adjudication has been seen in Ireland from 2016, Ontario, Canada in 2019, Western Australia in 2021, Hong Kong in 2024 and a number of other jurisdictions.

⁴ Housing Grants, Construction and Regeneration Act as amended by the Local Democracy, Economic Development and Construction Act 2009 (‘the Construction Act’.)

⁵ Commencement date July 25, 2025.

⁶ [Judgments | The Courts Service of Ireland](#)

some decisions of the Technology and Construction Courts ('TCC') from around 15 years ago. Often what should be done ends up not being done, lessons from the past are not always long remembered and as such *Tenderbids* may be a helpful reminder of the importance of following express contractual notice provisions.

What the case was about

In *Tenderbids* the parties had agreed that the notice to refer to adjudication would be served by registered post. Nevertheless, at the relevant time the moving party had served the notice to refer by email. The adjudication proceeded with the adjudicator determining that the notice has been properly served. Ultimately, the matter then came before Mr. Justice Garret Simons earlier this year. As might be expected the moving party who had served the notice by email submitted that there was no issue with this method of service. The respondent whilst not as quick to 'get out of the blocks' to make the contention that there had been improper service did eventually place reliance on this position.

What the court decided

Reference was made to prior decisions from England and Wales such as *Primus Build Limited v Pompey Centre Limited* EWHC 1487 (TCC) ('Primus').⁷ In those decisions, as Simons noted in *Tenderbids*, the TCC 'consistently held that failure to comply with the prescribed method of service invalidates the adjudication process.' Citing Coulson J, in *Primus*, he noted that because an adjudicator derives his jurisdiction from the notice of adjudication, if it is proved that the notice has not been validly served, it will generally operate to deprive the adjudicator of any jurisdiction. Simons J followed this case, and the wider body of authority on the point, and ruled that the adjudication award dealing with the payments dispute between the parties was a nullity. Quite simply the notice of intention to refer was not delivered in the manner agreed between the parties. He drew a distinction between case law which concerned legislation which expressly allowed for a departure from the strict rules in respect of service and the Construction Contracts Act 2013, noting that "there is no equivalent legislative framework which would allow the court to 'forgive' a failure to comply with the provisions of section 10 of the Construction Contracts Act 2013."

Case Analysis

⁷ [Primus Build Ltd v Pompey Centre Ltd & Anor \[2009\] EWHC 1487 \(TCC\) \(16 June 2009\)](#)

Whilst it is not suggested that case law from outside England & Wales will be particularly helpful in this jurisdiction for some of the reasons set out above, it is as stated helpful to be reminded of some parts of the wider construction adjudication process that can be forgotten. When English adjudication is soon enough approaching 30 years old bad habits of the past which have been settled and/or criticised by way of judicial decisions of the TCC some years ago can resurface. *Tenderbids* is perhaps not the first aide memoire that Mr. Justice Simons has offered, to those outside the Republic of Ireland, from the Dublin High Court. The proximity of the two jurisdictions and the broad similarities in the application legislation, and the respective construction industries in each country sees such external judicial missives being perhaps more helpful than those that might come from further over the sea.

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