APPROVED **[2026] IEHC 195**

THE HIGH COURT

2026 2 MCA

IN THE MATTER OF THE CONSTRUCTION CONTRACTS ACT 2013

BETWEEN

BMC RENOVATION LTD

APPLICANT

AND

GAEL PROPERTY INVESTMENTS LTD

RESPONDENT

JUDGMENT of Mr. Justice Garrett Simons delivered on 27 March 2026

INTRODUCTION

1. The Construction Contracts Act 2013 has put in place a scheme whereby payment disputes under construction contracts can be referred to mandatory statutory adjudication. An adjudicator's decision is *provisionally* binding on the parties and is subject to summary enforcement.

2. These proceedings take the form of an application for leave to enforce a decision of an adjudicator. Section 6(11) of the Construction Contracts Act 2013 provides

that an adjudicator's decision can, with the leave of the court, be enforced in the same manner as a judgment or order of the High Court. These proceedings will be referred to hereinafter as "*the enforcement application*" or "*the enforcement proceedings*".

3. The default position is that the successful party is entitled to enforce an adjudicator's decision *pro tem*, with the unsuccessful party having a right to reagitate the underlying merits of the payment dispute in subsequent arbitral or court proceedings. This approach is sometimes referred to informally as "*pay now, argue later*". The High Court does, however, enjoy a discretion to refuse leave to enforce an adjudicator's decision.

ISSUES

4. The enforcement application is resisted on two grounds. First, it is contended that the adjudicator lacked jurisdiction by reason of the fact that the contract between the parties does not comprise a "*construction contract*" for the purposes of the Construction Contracts Act 2013. More specifically, it is said that the contract falls within the residential occupier exception provided for under section 2(1) of the Act. Second, and in the alternative, it is contended that the adjudicator failed to afford the respondent company fair procedures in the conduct of the adjudication.

FACTUAL BACKGROUND

5. The adjudication arises out of a dispute in relation to works carried out in respect of a dwelling at 163 Richmond Road, Drumcondra, Dublin 3 ("*the property*"). The relevant folio at the Land Registry identifies the registered owner of the

property as a company named Gael Property Investments Ltd. This company purchased the property in March 2022. It is apparent from the report which has been exhibited that the respondent company owns a number of other properties.

6. It is common case that a written agreement was entered into between Gael Property Investments Ltd and BMC Renovation Ltd in respect of demolition and alteration works at the property. There is a controversy between the parties as to whether the contract comprises a "*construction contract*" or not. To avoid pre-empting the resolution of this controversy, I will use the neutral term "*the written agreement*" to refer to this contract in the discussion which follows.

7. The written agreement had been adduced in evidence before the adjudicator and a copy of same has been exhibited as part of these enforcement proceedings. The written agreement consists of a two-page letter dated 21 August 2024, setting out the agreed terms and conditions. The written agreement has been printed under the letterhead of Gael Property Investments. It is common case that the only parties to the written agreement are the two companies. It has not been suggested that any of the directors of the respondent company were party to the written agreement. The sum specified in the written agreement for the works is €198,955.65 (exclusive of VAT).

8. Work commenced at the property in or about 1 September 2024. Having regard to the limited grounds upon which the respondent company seeks to resist the enforcement application, it is not necessary to set out the narrative of the works. It is sufficient to the purpose to record that the adjudicator found that certain variations had arisen during the course of the works and that he valued these as part of the adjudication process.

CHRONOLOGY OF ADJUDICATION

9. One of the grounds upon which the respondent company seeks to resist the enforcement application entails an allegation that the adjudication process was unfair. To put this allegation in context, it is necessary to set out the relevant chronology.

10. The referral to adjudication was received by the adjudicator on 9 September 2025. The default position under the Construction Contracts Act 2013 is that an adjudicator must reach his decision within twenty-eight days. In the present case, the referring party consented to a fourteen-day extension (pursuant to subsection 6(7) of the Act). The final date for the decision was 20 October 2025.

11. The respondent company submitted its reply to the claim on 23 September 2025. The referring party submitted a response to this reply on 30 September 2025. For ease of exposition, I will refer to this response as "*the rejoinder*". The adjudicator initially allowed the respondent company a period of two days within which to reply to the rejoinder. The timeframe for a reply was then pushed out to 13 October 2025. In the event, no substantive reply was made to the rejoinder.

12. At a date subsequent to the revised deadline for the delivery of a reply to the rejoinder, the directors of the respondent company wrote to the adjudicator to demand that the adjudication process be terminated. The first email letter is dated 15 October 2025. Having recited certain medical details, the letter continues as follows:

> "We have been advised that we cannot meet your demanding dates and requirements due to exceptional circumstances and we have been advised that should you make a decision in the absence of taking into consideration Gavin's health and well-being that we will vehemently contest any decision that is a negative towards us."

13. The referring company replied as follows on 15 October 2025:

> "Further to email from Gael Property this morning timed at 09:30, we have sympathy with any health issues that Mr Gavin Coyle may have but that is not relevant to this adjudication. Gael have had considerable opportunity before and during this process to engage – Gael chose not to do so.
>
> This adjudication is not against Mr Gavin Coyle; it is against Gael Property Investments Ltd which is a separate entity. The well-being of one of Gael's directors is not at issue in this process.
>
> Furthermore, Gael's email requests that 'this process must be stopped immediately' but adjudication is a statutory process and there exists no such provision to stop an adjudication."

14. The second email from the respondent company is also dated 15 October 2025 and reads, in relevant part, as follows:

> "On the advice of counsel we have been advised that this process has added to Gavins poor health. As Gavin was a central person in the BMC scenario he has not been available in terms of physically and/or mentally in order to respond to your previous request and queries and as such we have not been in a position to respond correctly to any of your queries.
>
> As I stated in fact, your demands and threats, and requests have only made things worse for his health. We are instructing you that this process has resulted in Gavins health deteriorating and that the matter is to cease with immediate effect until further notice. Any judgements or decisions by you in our absence or if you decide to proceed without our 'cease instruction' will be a matter for you to deal with in the courts."

15. The adjudicator summarises his conclusions on this issue as follows (at §3.39 of his decision):

> "The Adjudicator extended the time for this submission from 3rd October to 13th October which was initially a 3-day period to a 10-day period. This in my view was more than sufficient time to respond.
>
> The Adjudicator was left with a very tight timeframe to write his decision from 13th October to 20th October. The Adjudicator continued to reply to emails from Gael during this time.

> I carried out considerable research into the request by the Responding Party to stop this adjudication or cease instruction.
>
> I consulted legal advice.
>
> This detailed legal research took a considerable length of time which has resulted in additional time spent by the Adjudicator.
>
> I conclude that I am legally bound to issue my decision on or before 20th October 2025."

16. The respondent company's allegation that the adjudication process was unfair is discussed at paragraphs 43 and onwards below.

DETAILED DISCUSSION

ADJUDICATOR'S JURISDICTION: "CONSTRUCTION CONTRACT"

Overview

17. One of the first matters to be considered by the court, in determining an application to enforce an adjudicator's decision, is whether the adjudicator had jurisdiction over the underlying dispute. The legislation confers a special status upon an adjudicator's decision, and it would undermine the legislative intent were the "*pay now, argue later*" concept to be erroneously extended to disputes other than those identified in the Construction Contracts Act 2013. The court will not lend its authority to enforce an adjudicator's decision unless the underlying dispute is one which is properly amenable to statutory adjudication.

18. The point was put as follows in *Aakon Construction Services Ltd v. Pure Fitout Associated Ltd* [2021] IEHC 562 (at paragraphs 24 and 25):

> "The '*binding*' status is only conferred on an adjudication which meets the criteria prescribed under the Construction Contracts Act 2013. A court, in exercising its discretion to

> grant leave to enforce, must be entitled to consider whether a purported adjudication meets the statutory criteria. To take an obvious example, the provisions of the Construction Contracts Act 2013 only apply to construction contracts entered into after 25 July 2016. The court would need to be satisfied that this temporal criterion had been fulfilled before it would grant leave to enforce. See, by analogy, the judgment of the High Court (O'Moore J.) in *O'Donovan v. Bunni* [2021] IEHC 575.
>
> On the same logic, it would seem to follow that the court must also be satisfied that the adjudication has been made in respect of a '*payment dispute*'. Unlike the position obtaining under the equivalent UK legislation, the statutory scheme of adjudication is confined to payment disputes and does not extend to other types of dispute which might arise in the context of a construction contract."

19. In the present proceedings, the application to enforce the adjudicator's decision is opposed, principally, on the ground that the underlying dispute is not one which is amenable to statutory adjudication by reason of the fact that the written agreement between the parties is not a "*construction contract*".

Construction contracts and the residential occupier exception

20. A "*construction contract*" is defined, under section 1 of the Act, as meaning an agreement (whether or not in writing) between an executing party and another party, where the executing party is engaged for any one or more of the following activities:

    (a) carrying out construction operations by the executing party;

    (b) arranging for the carrying out of construction operations by one or more other persons, whether under subcontract to the executing party or otherwise;

    (c) providing the executing party's own labour, or the labour of others, for the carrying out of construction operations.

21. The definition is subject to a number of exceptions under section 2. Relevantly, under subsection 2(1)(b), it is provided that a contract is not a construction contract if (i) the contract relates only to a dwelling, (ii) the dwelling has a floor area not greater than 200 square metres, and (iii) one of the parties to the contract is a person who occupies, or intends to occupy, the dwelling as his or her residence. For ease of exposition, this exception will be referred to throughout this judgment by the shorthand "*the residential occupier exception*".

22. The respondent company contends that the written agreement falls within the residential occupier exception. A director of the company, Gavin Coyle, has filed an affidavit in response to the enforcement application. Mr. Coyle avers that it had always been the intention of himself and his wife, Ashling Coyle, to move into the property as their family home upon completion of renovation works. Mr. Coyle sets out a number of personal and family reasons supporting that intention, including proximity to hospitals, schooling arrangements for his children, and accommodation for his mother-in-law.

23. The mechanism by which the directors or shareholders would be legally entitled to occupy a property which is owned by the respondent company has not been disclosed on affidavit. At the hearing, however, counsel on behalf of the respondent company explained that his instructions were that the intention had been that the company would transfer ownership of the property to the two directors.

24. As appears from the express language of section 2, the residential occupier exception is only available where "*one of the parties to the contract*" is a person who occupies, or intends to occupy, the dwelling as his or her residence. It is common case that the written agreement had been between two companies.

Counsel on behalf of the respondent company accepted that neither Mr. Coyle nor Mrs. Coyle were a "*party*" to the written agreement. This is consistent with the fact that the respondent company is the owner of the property and had been the applicant for planning permission. It would be surprising if a person who had no legal or beneficial interest in a property were to commission works in respect of same.

25. There was no suggestion at the hearing before me that the occupation of the property by the directors and their family could, in some way, be characterised as occupation by the company itself. Rather, it was explained that the intention had been that the company would transfer ownership of the property to the directors. The directors and their family would then occupy it *qua* owners.

26. Counsel for the respondent company, very sensibly, did not seek to argue that there were any circumstances which might justify piercing the corporate veil in this case. It is apparent from the fact that the respondent company is the registered owner of a large number of properties that no such circumstances exist. The shareholders cannot approbate and reprobate and, having chosen to avail of the benefits of limited liability, must accept all of the consequences of the company having a separate legal personality.

27. It follows, therefore, that one of the conditions precedent to the availability of the residential occupier exception is not fulfilled. Neither of the intending residential occupants had been a "*party*" to the written agreement as is required under section 2 of the Act. The respondent company is a separate legal entity, distinct from the shareholders or directors.

A company cannot qualify as a residential occupier

28. For the reasons explained under the previous heading, the conditions precedent to the residential occupier exception are not made out on the facts. There is, however, a more fundamental reason why the jurisdictional objection fails. A company can never avail of the residential occupier exception. It is apparent from the language of section 2 of the Act that the exception is only ever available in respect of a natural person. This is because the concept of a residential occupier of a dwelling is one which only makes sense in the context of a natural person. Whereas a company can, in principle, occupy premises for commercial purposes, it cannot sensibly be said that a company could occupy a "*dwelling*" as "*his or her residence*".

29. This interpretation is consistent with the objective of the residential occupier exception, which is to exclude small scale domestic construction operations from the ambit of mandatory adjudication. The Construction Contracts Act 2013 involves a significant incursion on the freedom to contract. Subsection 2(5) provides that the Act applies to a "*construction contract*" whether or not the parties purport to limit or exclude its application. The mandatory adjudication process imposes very tight timelines upon the parties to a construction contract. The existence of the residential occupier exception is indicative of a legislative intent that mandatory adjudication only bites in the context of commercial transactions and does not extend to consumer transactions. It entails a legislative recognition that it may be unrealistic to expect a residential occupier, who has commissioned small scale construction operations in respect of his or her dwelling, to comply with the very tight timelines demanded by statutory adjudication. Instead, the parties to what is, in effect, a consumer contract are

confined to the traditional remedies available under the general law of contract. In the event of a breach, the parties can pursue court proceedings or arbitral proceedings (if there is an arbitration agreement).

30. It should be emphasised that the finding above is predicated on the statutory language employed under section 2 of the Construction Contracts Act 2013, and, in particular, the words "*dwelling*", "*occupy*" and "*residence*". It is the combined effect of these terms, when considered in conjunction with the legislative purpose of the exception, that produces the above interpretation. Of course, each legislative regime must be considered on its own terms. There are other statutory contexts where a company may be treated as capable of being resident in a particular country for tax purposes or as capable of occupying a property for the purposes of commercial rates. This judgment does not detract from that.

31. In interpreting section 2 of the Construction Contracts Act 2013, I have carefully considered the provisions of section 18(c) of the Interpretation Act 2005 as follows:

> "'Person' shall be read as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual, and the subsequent use of any pronoun in place of a further use of 'person' shall be read accordingly"

32. This is subject to the overarching proviso under section 4 of the Interpretation Act 2005 to the effect that its provisions apply to an enactment except in so far as the contrary intention appears in the enactment itself. The proper approach to the application of this proviso has been explained in *Friends of the Irish Environment CLG v. Legal Aid Board* [2023] IECA 19. The Court of Appeal emphasised that the starting point in the interpretation of a statute is the language used in the provision under consideration, but that the words used in the

provision must still be construed having regard to the relationship of the section to the statute as a whole, the place of the statute in the legal context in which it was enacted, and the connection between those words, the whole Act, that context, and the discernible objective of the statute.

33. The Court of Appeal framed the inquiry to be carried out as follows (at paragraph 41):

> "[…] I would frame the inquiry […] by reference to whether the '*substance and tenor*' of the Act as a whole is inconsistent with the word '*person*' as it appears in the relevant provisions of the Act as including a body corporate and would stress the conclusion reached in that case that it is not appropriate that a fundamental shift in the policy of an Act as evident from the gist of the legislation as a whole be effected *via* the application of an Interpretation Act. The language used in the Act under consideration is thus central to this exercise, but there is no requirement that the inclusion of bodies corporate within the term be expressly negated. It is sufficient if a construction of the Act as a whole in context demonstrates a different intent. As I have earlier noted, this can certainly arise (as the applicant suggests) where as a matter of fact or law a reference in legislation can only be to natural persons and it can arise (as the applicant also suggests) where to construe the words in any other way would do violence to them. But it can also arise where the language, subject matter and context of the Act are clear and decisively probative of an intent to displace the construction that would otherwise follow from the provisions of s. 18."

34. For the reasons discussed above, I am satisfied that both the subject matter and context of the Construction Contracts Act 2013 are clear and are decisively probative of an intent to confine the residential occupier exception to domestic construction operations which have been commissioned by home occupiers as consumers. It is intended to shield ordinary householders from the rigours of a rapid adjudication process. The exception is not available to a company.

35. For all these reasons, then, the written agreement constitutes a "*construction contract*" and does not come within the residential occupier exception under

subsection 2(1)(b) of the Act. Accordingly, the adjudicator had jurisdiction to determine the payment dispute.

CASE LAW FROM ENGLAND AND WALES

36. Counsel on behalf of the respondent company referred me to two judgments from England and Wales which addressed the similarly worded exception under the equivalent UK legislation. The judgments are those in *Westfields Construction Ltd v. Lewis* [2013] EWHC 376 (TCC) and *RBH Building Contractors Ltd v. James* [2025] EWHC 2005 (TCC), 222 ConLR 1.

37. The principal issue in those proceedings had been the identification of the point in time at which the contracting parties' intention is to be assessed. The consensus of the judgments is that the relevant time for determining whether the residential occupier exception applies is the time of contracting, but post-contract events could be taken into account as shedding light on the employer's intention at that time.

38. Crucially, however, the judgments do not address the specific issue which arises on the uncontested facts of the present case, namely whether the exception is available where the individuals seeking to rely on the residential occupier exception were not a "*party*" to the contract the subject matter of the adjudication. In each instance, the entity seeking to rely on the residential occupier exception had been a natural person who had been a party to the contract at issue.

39. The more relevant judgment from England and Wales is that in *Edenbooth Ltd v. Cre8 Developments Ltd* [2008] EWHC 570 (TCC). Coulson J. pointed out that whereas a company may occupy a premises for commercial purposes, it is

difficult to imagine how a company could ever be a residential occupier. In *Edenbooth*, where the defendant company was engaged in property development as its stated purpose, and the (second) adjudication was started in the name of the company, it was not open to the respondent to argue that a director's (possible) status as a residential occupier should or could affect the dispute resolution provisions of the contract to which he was not a party, and in respect of which he had no formal status or role. Coulson J. ultimately concluded that, in such circumstances, the adjudicator therefore had the necessary jurisdiction to reach the decision that he did.

40. For the reasons explained in *Aakon Construction Services Ltd v. Pure Fitout Associated Ltd* [2021] IEHC 562 (at paragraphs 39 to 46), case law from foreign jurisdictions must be approached with a degree of caution and cannot simply be "*read across*" to the Construction Contracts Act 2013. Accordingly, whereas the case law referenced above is of interest, it has not influenced the outcome of the enforcement application. The case has been determined by reference to the statutory language of the Construction Contracts Act 2013 alone. As it happens, the case law from England and Wales would not have assisted the respondent company.

FAILURE TO RAISE JURISDICTIONAL OBJECTION

41. It should be explained that the respondent company failed to raise, in front of the adjudicator, the jurisdictional objection now relied upon to resist these enforcement proceedings. As discussed in detail in *Tenderbids Ltd v. Electrical Waste Management Ltd* [2026] IEHC 5, the failure of a participant to raise a point before an adjudicator will, generally, be fatal to any attempt to rely on that

point to resist subsequent enforcement proceedings. This general rule may have to be adjusted in circumstances where the (previously unarticulated) point is one which goes to the very jurisdiction of the adjudicator to embark upon the adjudication proceedings. This would be the position where, for example, the adjudication proceedings had not been validly served, and the other party did not participate in the adjudication process (*Tenderbids Ltd v. Electrical Waste Management Ltd* [2025] IEHC 139).

42. It is not necessary to address this issue further for the purpose of these enforcement proceedings. This is because the argument in relation to the residential occupier exception has been disposed of on its merits. The fact that the argument has been resolved *against* the party who failed to raise the point in front of the adjudicator means that the overall outcome of the enforcement proceedings would have been the same *irrespective* of whether the procedural objection was well founded or not. It is not necessary, for the disposal of these enforcement proceedings, to determine the point conclusively and I would prefer to leave it over for determination in another case where it has been more fully argued.

ALLEGED BREACH OF FAIR PROCEDURES

43. The default position is that an adjudicator shall reach a decision within twenty-eight days beginning with the day on which the referral is made. To achieve this expedition, the adjudication process will, of necessity, be less elaborate than conventional arbitration or litigation. This is not an accident; rather this is the precise purpose of the legislation. The Oireachtas has put in place a special dispute resolution mechanism, at first instance, for construction contracts which

is intended to fulfil the need for prompt payments in the construction industry. This does not affect the right of either party to pursue arbitration or litigation thereafter. The dispute will be heard *de novo* with no deference required to be shown to the outcome of the adjudication process.

44. It would undermine the legislative policy of "*pay now, argue later*" were the court to refuse to enforce an adjudicator's decision merely because the adjudicative process failed to replicate that of conventional arbitration or litigation. An adjudication is intended to be more streamlined: it will, for example, be rare for there to have been an oral hearing.

45. Leave to enforce an adjudicator's decision will generally be allowed once the formal proofs, as prescribed under the Construction Contracts Act 2013 and Order 56B of the Rules of the Superior Courts, have been established. The logic of the "*pay now, argue later*" principle is that the appropriate remedy for a party, who is aggrieved by an adjudicator's decision, will normally be to pursue the issue in subsequent arbitral or court proceedings. In the interim, the party is expected to discharge the sums awarded in the adjudicator's decision; these payments can be recouped if the arbitral or court proceedings are ultimately successful. The High Court will only refuse leave to enforce an adjudicator's decision on the grounds of procedural unfairness where there has been a blatant or obvious breach such that it would be unjust to enforce the immediate payment obligation.

46. The nature and extent of this discretion has been described as follows in *John Paul Construction Ltd v. Tipperary Co-Operative Creamery Ltd* [2022] IEHC 3 (at paragraphs 9 to 12):

> "Importantly, the High Court retains a discretion to refuse leave to enforce an adjudicator's decision. This is so

notwithstanding that, on a narrow literal interpretation of section 6 of the Construction Contracts Act 2013, there might appear to be an automatic right to enforce once the formal proofs have been met.

The High Court will not lend its authority to the enforcement of an adjudicator's decision, even on a temporary basis, where there has been an obvious breach of fair procedures. This restraint is necessary to prevent an abuse of process and to uphold the integrity of the statutory scheme of adjudication. It would, for example, be inappropriate to enforce a decision in circumstances where an adjudicator had refused even to consider a right of set-off which had been legitimately asserted by the respondent. It would be unjust to enforce such a lopsided decision.

The existence of this judicial discretion represents an important safeguard which ensures confidence in the statutory scheme of adjudication. It should be reiterated, however, that once the formal proofs as prescribed under the Construction Contracts Act 2013 and Order 56B of the Rules of the Superior Courts have been established, then leave to enforce will generally be allowed. The default position remains that the successful party is entitled to enforce an adjudicator's decision *pro tem*, with the unsuccessful party having a right to reargue the underlying merits of the payment dispute in subsequent arbitral or court proceedings. The onus is upon the party resisting the application for leave to demonstrate that there has been an obvious breach of fair procedures such that it would be unjust to enforce the adjudicator's decision, even on a temporary basis. The breach must be material in the sense of having had a potentially significant effect on the overall outcome of the adjudication.

One inevitable consequence of the existence of this judicial discretion is that parties, in an attempt to evade enforcement, will seek to conjure up breaches of fair procedures where, in truth, there are none. At the risk of belabouring the point, the discretion to refuse to enforce is a narrow one. The High Court will only refuse to enforce an adjudicator's decision on the grounds of procedural unfairness where there has been a blatant or obvious breach such that it would be unjust to enforce the immediate payment obligation. The court will not be drawn into a detailed examination of the *underlying merits* of an adjudicator's decision under the guise of identifying a breach of fair procedures."

47. The respondent company submits that leave to enforce the adjudicator's decision should be refused by reason of an alleged breach of fair procedures. To assist the reader in understanding this objection, it is necessary to rehearse the statutory provisions governing the timeframe within which an adjudication decision must be made.

48. Subsections 6(6) and (7) of the Construction Contracts Act 2013 provide as follows:

> "(6) The adjudicator shall reach a decision within 28 days beginning with the day on which the referral is made or such longer period as is agreed by the parties after the payment dispute has been referred.
>
> (7) The adjudicator may extend the period of 28 days by up to 14 days, with the consent of the party by whom the payment dispute was referred."

49. As appears, the default position is that an adjudicator shall reach a decision within twenty-eight days beginning with the day on which the referral is made. There are two contingencies in which the twenty-eight day period may be extended. The first entails bilateral action by the parties: the parties must both agree to extend time. There is no outer limit on the length of the extension, and it is permissible to agree a second and subsequent extensions.

50. The second entails unilateral action on the part of the referring party in response to a request by the adjudicator, and allows for a once-off extension for a maximum period of fourteen days.

51. In the present proceedings, the adjudicator obtained the consent of the referring party to a fourteen day extension. The objection now advanced in resistance to the enforcement application is that the respondent company was *excluded* from any consideration or involvement in extending time. It is submitted that this was unfair in circumstances where, or so it is said, the adjudicator had been clearly

aware that the responding party was not legally represented and not in a position to respond to legal and other queries raised within the restricted timeframe imposed.

52. This submission is predicated on a very specific interpretation of the statutory provisions which allow for the possibility of an extension of the default twenty-eight day period. The contended-for interpretation runs as follows: if either an adjudicator or referring party is of the view that an extension of time is required, then it is a necessary first step that the responding party be notified of this view, in order to establish whether the parties can mutually agree an extension. It is said the adjudicator "*disregarded*" or "*skipped*" this step in the present case.

53. With respect, this is not the correct interpretation of the interaction between the two subsections. The two mechanisms are addressed to different actors. The first mechanism is party-driven, it contemplates the parties agreeing an extension of time between themselves. The adjudicator has no function in this regard. The second mechanism is adjudicator-driven. It is implicit in the use of the term "*consent*" that the adjudicator must approach the referring party and seek its unilateral approval to an extension of time. There is no obligation to consult with the responding party. Rather, the legislation treats the referring party as *dominus litis*, i.e. the driving force behind the adjudication process. The *referring party* is always entitled to insist on compliance with the default twenty-eight day timeframe. Time may only ever be extended if the referring party consents to a request by the adjudicator for an extension, or agrees an extension with the responding party. In a sense, therefore, the responding company's argument proves too much. If and insofar as a referring party has a preferential

status, this is by design of the legislation not by dint of any unfairness on the part of the adjudicator.

54. Crucially, the fact that an adjudicator had sought and obtained a fourteen day extension would not inhibit the operation of subsection 6(6). Even after a fourteen day extension has been consented to under subsection 6(7), it remains open to the parties to agree a further extension of time under subsection 6(6). Indeed, there is no inhibition on there being a series of extensions. This is because the two subsections are complementary, rather than mutually exclusive.

55. The fact that the referring party had consented to a fourteen day extension did not cause any prejudice to the respondent company. The extension did not preclude a further extension of time by agreement of the parties. In the event, the respondent company never wrote to the referring party to seek an extension of time. Instead, the respondent company purported to demand that the adjudication process be terminated. These demands came in the ultimate week of the forty-two day period, at a point when the time for the exchange of submissions had already expired. The last week had been set aside to allow the adjudicator to prepare his written decision.

56. The chronology of the adjudication process has been discussed in detail at paragraphs 9 to 16 above. For present purposes, the key events can be summarised as follows:

9 September 2025	Referral to adjudicator
23 September 2025	Reply submitted by respondent company
30 September 2025	Rejoinder submitted by referring party
1 October 2025	Adjudicator allows 2 days to respond to rejoinder
13 October 2025	Revised deadline for response to rejoinder

15 October 2025	Demands to end adjudication process
20 October 2025	Final Day for adjudicator's decision
23 March 2026	High Court hearing of enforcement application

57. There was no breach of fair procedures in the present case. The adjudicator had laid down a timetable which was fair and reasonable. The respondent company had been allowed a period of two weeks to submit its reply to the claim. Thereafter, the respondent company had, ultimately, been allowed a period of ten days within which to reply to the rejoinder. These periods were reasonable in the context of an adjudication process which had to be determined within six weeks.

58. The fact, if fact it be, that one of the directors of a company suffers ill-health does not allow an adjudicator to extend time unilaterally. The company is a distinct legal entity, and it alone is the party to the adjudication. If a director is unavailable, then arrangements must be made to have someone else represent the company in the adjudication process. On the facts of the present case, the respondent company had made a substantive submission without demur. The issue of the director's health was not raised until *after* the time period for submissions had expired and during the period set aside for the preparation of the written decision.

59. It is telling that the respondent company has never explained, not even in outline form, what additional submissions it would have made. An alleged breach of fair procedures will only ground the refusal of leave to enforce an adjudicator's decision where a responding party can assert that the breach is material in the sense of having had a potentially significant effect on the overall outcome of the adjudication.

CONCLUSION AND PROPOSED FORM OF ORDER

60. The written agreement entered into between Gael Property Investments Ltd and BMC Renovation Ltd in respect of demolition and alteration works at the property constitutes a "*construction contract*" as defined for the purposes of the Construction Contracts Act 2013. The residential occupier exception does not apply in circumstances where the contractual party, who commissioned the construction operations, is a company and not a natural person. Accordingly, the objection that the adjudicator lacked jurisdiction to embark upon the payment dispute fails.

61. The onus is upon the party resisting an application for leave to enforce an adjudicator's decision to demonstrate that there has been an obvious breach of fair procedures such that it would be unjust to enforce the adjudicator's decision, even on a temporary basis. The breach must be material in the sense of having had a potentially significant effect on the overall outcome of the adjudication.

62. Here, the respondent company has failed to discharge this onus. The argument that there had been a breach of fair procedures is predicated on a misconception as to the interaction of the two statutory mechanisms by which time may be extended. As explained at paragraphs 48 to 59 above, the two mechanisms are addressed to different actors. The first mechanism is party-driven, in that it contemplates the parties agreeing an extension of time between themselves. The second mechanism is adjudicator-driven. Contrary to what has been contended for by the respondent company, there was no obligation upon the adjudicator to consult with it prior to seeking a fourteen-day extension pursuant to subsection 6(7).

63. Finally, it should be explained that, if and insofar as the respondent company contends that the adjudicator's decision is incorrect, it has a remedy open to it by way of court proceedings under the general law of contract. In the interim, and in accordance with the principle of "*pay now, argue later*", the respondent company is now required to discharge the sum awarded by the adjudicator.

64. Accordingly, and subject to hearing further from the parties, it is proposed to make the following orders:

    (1). An order pursuant to Section 6(11) of the Construction Contracts Act 2013 and Order 56B of the Rules of the Superior Courts granting the applicant leave to enforce the adjudicator's decision of 19 October 2025 which decision directs the respondent to pay to the applicant the sum of €119,162.46.

    (2). An order pursuant to Section 6(11) of the Construction Contracts Act 2013 and Order 56B of the Rules of the Superior Courts entering judgment in the sum of €119,162.46 (plus VAT as applicable) against the respondent company.

    (3). The applicant, having been entirely successful in the proceedings, is entitled to recover the costs of the proceedings against the respondent company pursuant to Section 169 of the Legal Services Regulation Act 2015. Such costs to be adjudicated in default of agreement. The costs include the costs of the written legal submissions and all reserved costs.

65. The sum of €119,162.46 is the figure referenced in the originating notice of motion. It comprises the principal sum of €99,168.57, statutory interest to 27 October 2025 of €6,308.04, the adjudicator's fees of €10,225 plus VAT at

23% (€12,576.75), together with continuing interest at €21.74 per day from 28 October 2025 to mid-December 2025 (circa 51 days).

66. The proceedings will be listed before me on 31 March 2026 for submissions on the final form of order. The parties may agitate any aspect of the proposed order.

Appearances

David Colgan for the applicant instructed by Sherwin O'Riordan LLP
Tom O'Donnell for the respondent instructed by Poe Kiely Hogan Lanigan Solicitors LLP