



In this series of articles, we aim to highlight 3 of the most interesting cases in our field decided in the past month. This month: waiver by election; when a claim form is 'issued'; and the doctrine of deemed fulfilment.

Readers with an interest in telecoms may also be interested to read about a number of decisions this month: Queen's Oak Farm¹ and Cornerstone v Firoka² both regarding redevelopment, and Castlemaine House³, regarding various issues including the validity notices which deviate from the Ofcom templates.

NOVEMBER 2025

URE Energy Ltd v Notting Hill Genesis [2025] EWCA Civ 1407

Summary

The Court of Appeal determined that the principle that waiver by election requires knowledge of the right to elect applies in circumstances where the right to elect is a term of the contract.

The claim concerned a contract for a start-up to provide electricity to a housing association. The contract contained provision for the supplier to terminate in a number of scenarios, including if the housing association was amalgamated with another. The clause in question was lengthy and also dealt with termination in case of insolvency.

The housing association amalgamated with another association. The supplier continued supplying electricity. The relationship between the parties then having broken down for other reasons, the supplier served notice of termination, relying on the amalgamation, and claimed a termination payment.

At first instance, the judge dismissed the housing association's argument that the supplier had elected to affirm the contract, finding that the supplier had no knowledge of the right to elect notwithstanding that it was contained within the contract. The Court of Appeal dismissed the appeal.

¹ <https://www.falcon-chambers.com/news/ftt-hands-down-judgment-on-redevelopment-and-paragraph-215-of-the-code-in-queens-oak-farm-telecoms-case>

² https://www.linkedin.com/posts/oliver-radley-gardner-kc-1aab14b5_new-code-decision-on-development-lands-activity-7396945672744153088-xjnX?utm_source=share&utm_medium=member_desktop&rcm=ACoAAC2sN2sBg9TITxVqYHkPzQGRTmKZvjFgmY

³ https://www.linkedin.com/posts/jamestipler_castlemaine-pta-13112025-ugcPost-7396846739804024832-m6sk?utm_source=share&utm_medium=member_desktop&rcm=ACoAAC2sN2sBg9TITxVqYHkPzQGRTmKZvjFSgmY



Why it's important

Although cases in which a party is found not to be aware of a right to elect contained in an express term of a contract are not likely to be common, this case confirms that no different legal principle applies to that scenario.

The case is an interesting illustration of the circumstances in which the presumption that a party with the benefit of legal advice will be aware of their legal rights can be rebutted. In this case, the supplier having waived privilege in the advice it had received, the judge found that the relevant individual had only skimmed through the contract, that he was aware it contained termination rights but not their detail, and that he thought the clause in question dealt with termination in the event of insolvency.

Bali v 1-2 Couriers Ltd [2025] EWCA Civ 1413

Summary

The Court of Appeal determined that a judge had been correct to refuse an application for an extension of time for service of a claim form, in circumstances where the claim form had not been received by the solicitors until after the period for service had expired.

The claim form was received by the court on the final day of the limitation period, in December. Various delays ensued, including because of problems with a help with fees application. For reasons never fully explained, the sealed claim form was not sent out until April, by which time the 4 month period for service had expired. The judge below refused an extension of time for service.

The Court of Appeal dismissed the appeal, and determined that:

1. The claim form had been 'issued' on the date it was sealed, not on some other date (such as the date it was sent out).
2. When considering an application for an extension of time for service, the judge had been right to take into account not only conduct during the time the claim form was physically available to the solicitors to serve, but also the wider circumstances, including efforts that had been made to obtain the claim form once the documents had been lodged with the court.

Why it's important

This case presents a warning which should be heeded by all practitioners lodging claims for issue. It was incumbent upon the solicitors in this case to make efforts to obtain the sealed claim form, such as responding to the court's enquiries in a prompt fashion. In any case where documents have been lodged and inordinate



delay occurs, practitioners should take proactive steps to avoid the result which occurred in this case.

King Crude Carriers SA v Ridgebury November LLC [2025] UKSC 39

Summary

The Supreme Court determined that there is no principle in English law of 'deemed fulfilment', i.e. that where a party wrongfully prevents a precondition to a debt obligation being fulfilled, the precondition is treated as having been fulfilled.

The case concerned a contract for the sale and purchase of ships. The buyers were required to pay a deposit and, in that connection, to cooperate in the opening of the deposit account by providing certain information. In breach of contract, they failed to provide the information. The sellers asserted that the contract had terminated and, relying on the principle of deemed fulfilment, sought payment of the deposit amounts as a debt.

The Supreme Court found for the buyers. It determined:

1. The principle of deemed fulfilment has no application in English law.
2. The requirements concerning the deposit account were true conditions precedent to the accrual of the deposit debt; they did not simply regulate the machinery of payment.
3. On the true interpretation of these contracts, it was not necessary to ignore the conditions precedent in circumstances where the buyers were in breach of contract.

Why it's important

This case brings clarity to the much-debated issue of whether there is any principle of deemed fulfilment in English law. While this case occurred in a shipping context, the decision is of wider application: many property contracts, such as development agreements, also contain preconditions of this type.

The decision is also worthy of note for the analysis of the contractual provisions and whether they created a condition precedent or merely a payment mechanism; such clauses can be found in many property agreements. In light of this decision, practitioners may wish to give consideration to how such clauses are drafted.

STEPHANIE TOZER K.C.

FERN SCHOFIELD