



Repudiatory Breach of Contract: New Guidance from the Court of Appeal

In Telford Homes (Creekside) Ltd v. Ampurius Nu Homes Holdings Ltd [2013] EWCA Civ 577 (judgment 23 May 2013) the CA reviewed the authorities on how serious a breach of contract needs to be before it can be accepted as a repudiatory breach and clarified the approach to be adopted

Principles

In delivering the lead judgment, Lewison LJ said that:

- (1) metaphors such as whether the breach 'goes to the root of the contract' are not helpful
- (2) the same approach should be adopted whether the breach is actual or anticipatory
- (3) the seriousness of the breach has to be judged not as at the date of the breach but as at the date of the acceptance of it as repudiatory
- (4) the proper exercise is to compare the benefit due to the innocent party from the contract with the consequences of the breach, in each case as at the date of acceptance of the breach as repudiatory.

Application

In the actual case, T had delayed construction of buildings, units in which A was going to let on 999 year leases. A had not served notice making time of the essence, but accepted the delay as a repudiatory breach. The Judge was held to have been wrong to hold that delay measured in months that prejudiced the marketing of the units was a repudiatory

breach. He should have focussed on the contractual benefit to A of being able to let the units on 999 year leases, compared to which T's delay in construction was not a repudiatory breach, but would sound only in damages.

Comment

This is an important case which is likely to simplify analysis of such problems in future.

Peter Susman QC

24th May 2013

2 Harcourt Buildings, Temple
London EC4Y 9DB
T 020 7583 9020 F 020 7583 2686
E clerks@hendersonchambers.co.uk
www.hendersonchambers.co.uk
DX 1039 Chancery Lane