

Lynne McCafferty KC successful in *Thomas Barnes & Sons plc (in administration) v Blackburn with Darwen Borough Council* [2022] EWHC 2598 (TCC)

1. On 17 October 2022, the Court handed down its judgment in *Thomas Barnes & Sons plc (in administration) v Blackburn with Darwen Borough Council* [2022] EWHC 2598 (TCC). [Lynne McCafferty KC](#) acted for the successful defendant.
2. The case concerned a project for the construction of a new bus station in Blackburn. In 2014 Thomas Barnes & Sons plc (“Barnes”) had been appointed by Blackburn with Darwen Borough Council (“BDBC”) as the main contractor in respect of the construction of the new transport hub for a Contract Price of some £4.4 million under an amended JCT standard form of building contract with quantities 2011. The project suffered with significant cost increases and delay.
3. In June 2015 BDBC terminated Barnes’ employment and appointed a new contractor to compete the works. Barnes subsequently entered into administration, which it claimed had been caused by the combined effect of BDBC’s failure to make interim payments and the wrongful and repudiatory termination of its employment. The administrators commenced proceedings against BDBC for breach of contract, seeking damages amounting to some £1.7 million.
4. Barnes claimed (a) monies said to be due under the contract on a proper valuation of the works done at termination (including claims for loss and expense said to have been suffered as a result of the prolongation of the contract period for matters for which the BDBC was said to be responsible); and (b) damages for wrongful termination representing the claimant’s loss of profit on the remaining works.
5. BDBC denied the claim in whole and claimed that Barnes was liable under the final account for some £1.8 million to cover the cost (which it was entitled to under the contract or general law) of having to employ the new contractor to complete the work, albeit that it did not pursue a counterclaim on the basis that the company was in administration and the administrator’s reports had made clear that there were no prospects of recovery for unsecured creditors.
6. BDBC alleged that Barnes had failed to carry out the works in accordance with the terms of the contract (including by failing to meet its design obligations, failing to adequately resource the works, and failing to perform the works and remedy defects in a proper and workmanlike manner), constituting defaults and/or repudiatory breach for which it was entitled to terminate Barnes’ employment.
7. His Honour Judge Stephen Davies, sitting as a High Court judge, dismissed Barnes’ claim. While it had established an entitlement to prolongation and delay-related damages for 27 additional days beyond the extensions of time already granted to it under the contract, BDBC had been entitled to terminate the contract and/or accept Barnes’ repudiatory breach due to Barnes’ serious and significant breaches of contract in failing to proceed regularly and diligently with the works and substantially suspending the works unless or until BDBC agreed to Barnes’ demands for a significant further extension of time. He found that Barnes’ demands amounted to a request for BDBC to issue a blank cheque for the acceleration of the works.
8. The Judge held that BDBC had not validly terminated under the contractual provisions as it had failed to properly serve the notice in accordance with clause 1.7.4 of the contract. However, he found that BDBC had properly accepted Barnes’ repudiatory breach. The Judge further rejected Barnes’ contention that the invalid notice of

termination constituted repudiatory breach on the part of BDBC. As such, BDBC was entitled to recover and set off the cost of the replacement contractor. Any claim which Barnes might have would therefore be extinguished by BDBC's entitlement. In the circumstances, the Judge concluded that it was not necessary for him to consider the quantum of Barnes' claim.

[Full judgment](#)

[Lexology](#)

[Helen Dennis](#)