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AFB Seminar

Trade Finance: Performance Bonds, Injunctions and the Autonomy Principle – CR Construction (UK) Company Limited v Barclays Bank Plc

15 September 2026

Overview

1. **Setup:** parties, instruments, timeline

2. **Hearing:** *American Cyanamid* test

3. **Conclusion:** Judgment, aftermath, takeaways

Section 1 of 3

Setup: parties, instruments, timeline

The Parties

Main Contractor

CR Construction (U.K.) Company Limited

Employer / Beneficiary

Northern Gateway (FEC) No. 7 Limited

Victoria Riverside, Manchester; ~£117m, 634 homes
£117m JCT Design & Build 2016; bond requirement

Surety / Bond Issuer

Barclays Bank PLC

Issuer of the performance bond dated 29 March 2022

The Instruments

Performance Bond

- Dated: 29 March 2022
- Max liability: £11,702,897.30
- English law, English jurisdiction
- Expiry: 17 January 2026

Counter-Guarantee

- Issued by: HSBC (Hong Kong)
- Dated: 4 March 2022
- Hong Kong law, Hong Kong jurisdiction (URDG 758)
- Expiry: 16 February 2026

Dispute Timeline

— **20 February 2025** — FEC terminates the construction contract, alleging CR defaults (labour reduction, subcontractor suspensions)

— **CR disputes the termination** — contends FEC’s termination was itself repudiatory

— **19 December 2025** — FEC makes a written demand on Barclays under the bond for **£2,475,441.02** in liquidated damages for delay

— **Demand accompanied by certificate** under clause 5.3(b), countersigned by Arcadis (Employer's Agent)

— **Early Jan 2026** – Barclays demands under counter-guarantee; CR threatens injunction

— **Mid Jan 2026** – CR issues claim, injunction application, and adjudication; HSBC HK pays Barclays

Relief Sought

1. Declarations that FEC had repudiated the contract and Barclays was discharged from liability under the bond

2. Interim and final injunctions:

   A. Restraining Barclays from making any payment to FEC under the bond

   B. Restraining Barclays from presenting demands to HSBC HK or receiving payment under the counter-guarantee

   C. Mandating Barclays to withdraw any demand and return any payment received from HSBC HK

Section 2 of 3

Hearing: the *American Cyanamid* test

Interim Injunctive Relief – The Test

The court applies the test from *American Cyanamid Co v Ethicon Ltd* [1975] AC 396.

1. **Is there a serious issue to be tried? ***
2. **Are damages an adequate remedy?**
3. **Where does the balance of convenience lie?**

- Exception in bond cases: autonomy principle

- **Against issuer:** fraud exception (*Edward Owen v Barclays Bank International* [1978] QB 159

- **Against beneficiary:** strong case that the contract prohibits the call (*Simon Carves v Ensus UK* [2011] EWHC 657 (TCC)

Limb 1: Step 1 – against the Bank

— CR sought relief against the issuer, not the beneficiary

— No fraud alleged

— **Decision:** “*Application as formulated and as pursued against the Bank simply cannot succeed and must be dismissed*”.

— *Tectronics (International) Ltd v HSBC Bank plc* [2018] EWHC 201 (TCC) - autonomy principle unless fraud applies

Limb 1: Serious issue – against the beneficiary (termination)

— **CR:** Repudiatory breach discharged the Bond

— **FEC / Barclays:** Clause 2.2 – "*no termination … shall reduce liability*"

— **Decision:**

- "Termination" bears its ordinary meaning, covers repudiatory discharge;
- Narrowly arguable, not a strong case

Limb 1: Serious issue – against the beneficiary (notice)

— **CR:** Wrong letterhead; wrong address; signatory issues

— **FEC / Barclays:** Address cured; substance over form; Employer’s Agent countersigned

— **Decision:** Demand plainly from the Employer read as a whole; narrowly arguable, not a strong case

Limb 1: Serious issue – against the beneficiary (instrument nature)

— **CR:** Clause 5.1: “guarantee and not an indemnity”; net of set off provision

— **FEC / Barclays:** Clause 5.3 conclusive evidence clause collapses any distinction

— **Decision:**

- On-demand performance bond;
- Clause 5.1 governs FEC/CR accounting, not Barclays’ obligation;
- Narrowly arguable, not a strong case

Limb 2: Are Damages an Adequate Remedy?

— **CR:**

- £2.48m from working capital; cross-defaults; insolvency
- FEC is an SPV
- Prejudice to tenders

— **FEC/Barclays:**

- CR had already reimbursed HSBC
- No evidence CR Group could not make internal arrangements

— **Decision:** Adequate remedy. On-demand bond allocates interim cash-flow risk. Financial hardship is the ordinary commercial consequence of bargain.

Limb 3: Balance of Convenience

Four factors:

— **Market integrity:** wider systemic concern; *Alternative Power Solution v Central Electricity Board* [2014] UKPC 31

— **Delay:** CR waited 11 months before commencing adjudication

— **Upholding bargain** struck by parties

— **"Pay now, argue later"** in substantive proceedings, not interlocutory application

Section 3 of 3

The Outcome: Judgment, Costs, and Aftermath

Judgment: Application Dismissed

Date	4 February 2026
Judge	HHJ Stephen Davies
Citation	[2026] EWHC 202 (TCC)
Result	Application for interim injunction dismissed on all grounds
Permission to appeal	Refused
Stay of execution	Refused

Costs

CR Construction ordered to pay within 14 days:

Barclays' costs

£75,000 + VAT (6.324%)

= £79,743

FEC's costs (as intervener)

£75,000

(no VAT)

Total costs liability: approximately £154,743

FEC's costs: Judge held FEC had a "substantial and direct interest" because of the tripartite nature of the bond. Recovery limited to costs incurred after reviewing evidence and preparing responses.

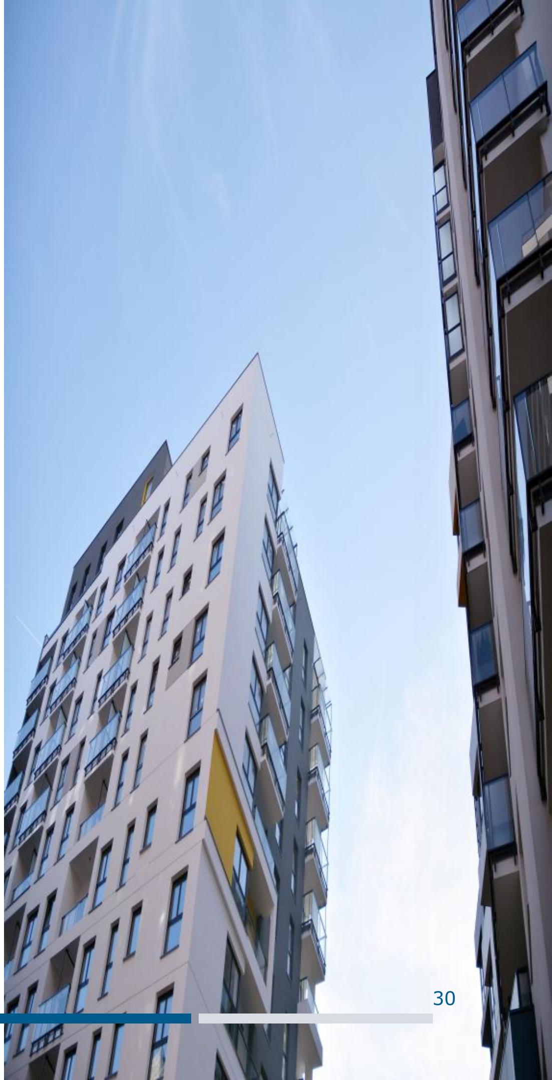
Post-Judgment: Free to Pay

— The voluntary standstill expired upon dismissal of the application

— Expressly recorded in the final order: Barclays' agreement "having expired in light of the dismissal of the Application on 4 February 2026"

— Barclays was free to pay FEC immediately

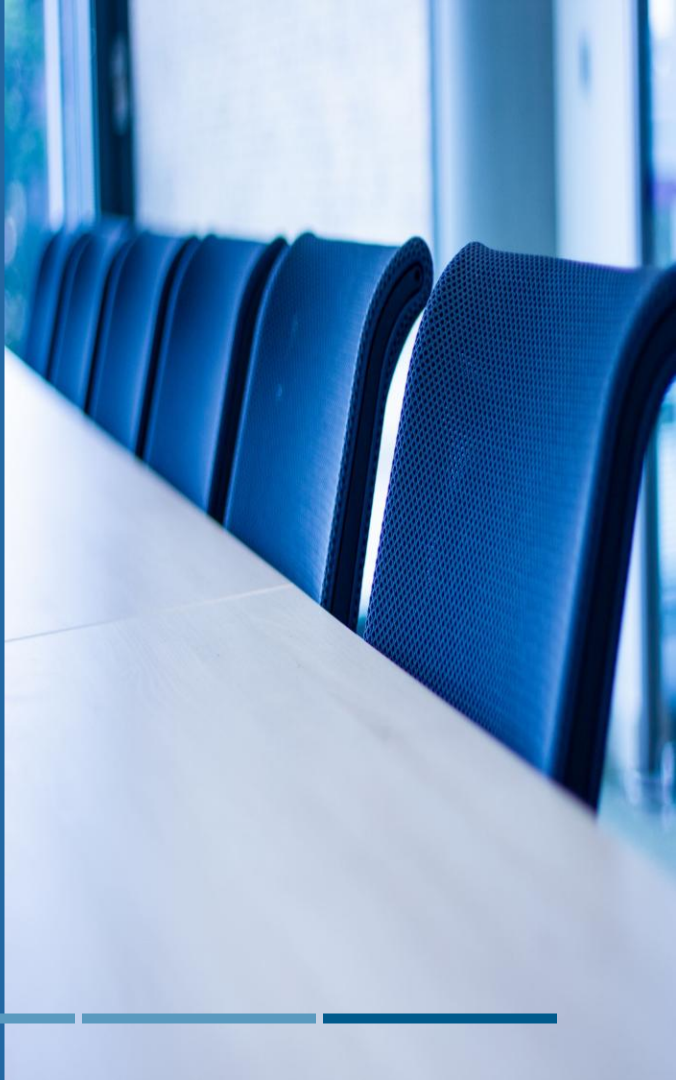
— Permission to appeal refused — no stay to prevent payment



Takeaways

1. Know your instruments
2. Demand procedure
3. Disputes playbook
4. Awareness of:
    A. Conclusive evidence clauses
    B. Autonomy principle
    C. Fraud exception

Any questions?



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