Neutral Citation Number: [2022] EWHC 531 (Comm)

Case No: CL-2020-000441

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/03/2022

Before :

PETER MACDONALD EGGERS QC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

- -

Between :

GEOQUIP MARINE OPERATIONS AG	**Claimant**
- and -	
(1) TOWER RESOURCES CAMEROON SA	
(2) TOWER RESOURCES PLC	**Defendant**

- -
- -

Julia Dias QC and Jason Robinson (instructed by **Clyde & Co LLP**) for the **Claimant**
SJ Phillips QC and Rebecca Jacobs (instructed by **Richard Slade & Company**) for the **Defendants**

Hearing dates: 13th to 16th December 2021

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

PETER MACDONALD EGGERS QC SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

"Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be 10:00 am on 16th March 2022. A copy of the judgment in final form as handed down can be made available after that time, on request by email to the judge's Clerk"

Peter MacDonald Eggers QC:

Introduction

1. This action concerns claims made the Claimant ("Geoquip") under a contract for offshore geotechnical investigation services ("the Contract") carried out off the coast of Cameroon. The counterparty to the Contract was the First Defendant ("Tower Cameroon"). The Second Defendant ("Tower plc") guaranteed Tower Cameroon's obligations under the Contract.

2. The geotechnical investigation services required under the Contract were for the purpose of assessing the ground conditions of a proposed drilling site in Thali, Cameroon with a view to the installation of a Jack-Up Rig. The investigation services and site survey were to be carried out by Geoquip's vessel *Investigator* ("the Vessel").

3. The Vessel arrived in Cameroon in December 2019. The deposit of US$250,000 under the Contract was paid by Tower Cameroon on 29th December 2019. During January 2020, the Vessel was idle. The works under the Contract commenced on 4th February 2020.

4. The works required to be carried out under the Contract were carried out from 4th to 7th February 2020.

5. Geoquip commenced this action seeking to recover (1) the balance of the lumpsum said to be payable for the services provided under the Contract in the sum of US$610,091.68 and (2) standby charges in respect of the delays suffered by the Vessel in the sum of US$1,619,541.69. As to the latter, Geoquip contends that it is recoverable pursuant to the terms of the Contract and, failing that, Tower Cameroon is estopped by convention or by contract from denying liability for the same.

6. The Defendants dispute liability in respect of both heads of claim. As to the claim for the balance of the sum due for the services provided, it is said that the obligation to pay the balance was triggered only upon the provision of a preliminary report containing the specified information within the contractual deadline, and as a compliant preliminary report was not provided until much later, no further sum is due. As to the claim for standby charges, there is no contractual entitlement to such charges and no estoppel by convention or by contract is applicable.

The Contract

7. On 12th September 2019, Geoquip and Tower Cameroon entered into a Letter of Intent, whereby they agreed to work in good faith to prepare and mutually agree upon and execute a Contract for Services in the NJOM field, Offshore Cameroon, to be commenced upon the Vessel completing its schedule of work in Nigeria (where the Vessel then was) not earlier than 1st October 2019 and not later than 1st January 2020.

8. On 30th October 2019, Geoquip (described as "*the CONTRACTOR*"), Tower Cameroon (described as "*the COMPANY*"), and Tower plc (described as "*the GUARANTOR*") entered into the Contract. The Contract was for the provision of geotechnical survey services to be provided by Geoquip. The duration of the Contract was two months.

9. The Contract was structured into four sections: (I) Form of Agreement and Appendix 1; (II) (a) General Conditions of Contract - LOGIC Edition 2 - October 2003, and (b) Special Conditions of Contract; (III) Remuneration; and (IV) Scope of Work.

10. The Contract was signed by Mr Stewart Higginson on behalf of Geoquip and by Mr Jeremy Asher on behalf of Tower Cameroon and on behalf of Tower plc. Mr Asher was described in the Contract as the Chairman of both Tower Cameroon and Tower plc.

11. Section I - Form of Agreement contained the following provisions:

> "*WHEREAS:*
>
> *1) the COMPANY wishes that certain WORK shall be carried out, all as described in the CONTRACT; and*
>
> *2) the CONTRACTOR wishes to carry out the WORK in accordance with the terms of this CONTRACT; and*
>
> *3) the GUARANTOR wishes to guarantee the obligations of the COMPANY under the CONTRACT*
>
> *NOW:*
>
> *The parties hereby agree as follows:*
>
> *1) In this CONTRACT all capitalised words and expressions shall have the meanings assigned to them in this FORM OF AGREEMENT or elsewhere in the CONTRACT.*
>
> *2) The following Sections shall be deemed to form and be read and construed as part of the CONTRACT: [there followed a description of the four sections of the Contract] …*
>
> *The Sections shall be read as one document, the contents of which, in the event of ambiguity or contradiction between Sections, shall be given precedence in the order listed, with the exception that the Special Conditions of Contract shall take precedence over the General Conditions of Contract.*
>
> *3) In accordance with the terms and conditions of the CONTRACT, the CONTRACTOR shall perform and complete the WORK and the COMPANY shall pay the CONTRACT PRICE.*
>
> *4) The terms and conditions of the CONTRACT shall apply from the date specified in Appendix 1 to this Section I - Form of Agreement which date shall be the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT [30th October 2019].*
>
> *5) The duration of the CONTRACT shall be as set out in Appendix 1 to this Section I - Form of Agreement [two months]*

6) The GUARANTOR hereby guarantees the payment obligations of the COMPANY in respect of this CONTRACT …"

12. Section II of the Contract - the General Conditions as amended by the Special Conditions - contained the following provisions:

"***1. DEFINITIONS***

…

1.4 "CONTRACT" shall have the meaning described in Section I - Form of Agreement.

1.5 "CONTRACT PRICE" shall mean the price for the WORK calculated in accordance with Section III - Remuneration, exclusive of Value Added Tax …

1.13 "WORK" shall mean all the work that the CONTRACTOR is required to carry out in accordance with the provisions of the CONTRACT, including the provision of all materials, services and equipment to be rendered in accordance with the CONTRACT …

4. CONTRACTOR'S GENERAL OBLIGATIONS

4.1 The CONTRACTOR shall provide all management, supervision, personnel, materials and equipment, (except materials and equipment specified to be provided by the COMPANY), plant, consumables, facilities and all other things whether of a temporary or permanent nature, so far as the necessity for providing the same is specified in or reasonably to be inferred from the CONTRACT.

4.2 The CONTRACTOR shall carry out all of its obligations under the CONTRACT and shall execute the WORK with all due care and diligence and with the skill to be expected of a reputable contractor experienced in the types of work to be carried out under the CONTRACT …

4.4 Equipment used to provide the service need not be new, without prejudice to the requirement that it shall be of good quality and fit for purpose.

4.5 In order to ensure that performance and completion of the WORK are not delayed or impeded the CONTRACTOR shall be responsible for the timely provision of all matters referred to in Clauses 4.1 and 4.4 and, where provided for elsewhere in the CONTRACT, for the timely request of COMPANY-provided materials, services and facilities. However, CONTRACTOR cannot be responsible for the timely delivery of Company-provided materials, services and facilities. If such are delivery late and cause delay in the performance and downtime of the CONTRACTOR's equipment, COMPANY shall pay Standby time for such downtime …

5. OFFSHORE TRANSPORTATION

…

5.2 The CONTRACTOR shall provide vessel transportation, vessel accommodation and vessel subsistence for up to 2 COMPANY VESSEL REPRESENTATIVE(S) for the duration of the offshore phase of the WORK at the cost of the CONTRACTOR and all such items shall be deemed to be included in the CONTRACT.

COMPANY VESSEL REPRESENTATIVE(S) shall embark / disembark in the port of mobilisation / demobilisation in accordance with the schedule provided by CONTRACTOR. Delays to schedule due to non-availability of COMPANY VESSEL REPRESENTATIVE(S) that delay sailing shall be deemed Standby events and be charged at the applicable Standby Rates.

If the COMPANY requires more than 2 COMPANY VESSEL REPRESENTATIVE on board, the cost for the additional persons will be agreed between Parties.

6. CONTRACTOR TO INFORM ITSELF

…

6.2 Any failure by the CONTRACTOR to take account of matters which affect the WORK will not relieve the CONTRACTOR from its obligations under the CONTRACT. CONTRACTOR can't be made responsible for extra work or time or damage that occurs solely because of a fault in the data or that of personnel supplied by the COMPANY, including loss of time during mobilisation of the vessel caused by COMPANY. If extra work, loss of time or damage is the consequence of a fault or omission by the COMPANY, CONTRACTOR will be entitled to file a VARIATION for extra work or charge Standby Time …

10. EXAMINATION AND DEFECTS CORRECTION

…

10.2 Defects Correction

…

(b) It is the COMPANY'S duty to accept or reject the quality and completeness of data and/or samples as it is acquired and to record such in the Daily Project Report. In the event that data or samples are rejected for reasonable and acceptable reasons to both Parties, CONTRACTOR shall make all reasonable endeavours to re-acquire such data prior to leaving the WORKSITE. In the event data/samples cannot be re-acquired due to factors beyond CONTRACTOR'S direct control, CONTRACTOR and COMPANY VESSEL REPRESENTATIVES shall agree the appropriate course of action.

The times detailed in the Daily Project Report as agreed between COMPANY and CONTRACTOR VESSEL REPRESENTATIVES, are the basis for invoicing. Any disputed times are to be noted as such in the Daily Project Report and are to be agreed between COMPANY and CONTRACTOR prior to completion of demobilisation.

Notwithstanding the foregoing, nothing in this clause shall relieve the CONTRACTOR of its obligation to perform the WORK in accordance with the CONTRACT …

12. FORCE MAJEURE

…

12.6 In the event that a Force Majeure occurrence exceeds 7 days, the COMPANY has the sole option to (i) retain CONTRACTOR on stand-by from first day of Force Majeure event until the Force Majeure event ceases at which point the CONTRACTOR shall recommence the WORK or (ii) terminate the CONTRACT. In the event of (i) above, the time on stand-by shall be paid at the relevant stand-by rate as set out in Section III – Remuneration. In the event of (ii) above, the time on stand-by and in transit to port shall be paid at the relevant stand-by or transit rate as set out in Section III – Remuneration. Additionally, in the event of (ii) above, the CONTRACTOR shall immediately de-mobilise and the de-mobilisation fee shall be paid plus any termination fees as set out in Section III – Remuneration and the COMPANY shall have no further liability to the CONTRACTOR of whatever nature.

For the avoidance of doubt, the CONTRACTOR shall be entitled to payment at the Standby Rate during the first seven (7) days of Force Majeure.

13. SUSPENSION

13.1 The COMPANY shall have the right, by notice to the CONTRACTOR, to suspend the WORK or any part thereof to the extent detailed in the notice, for any of the following reasons;

(a) subject only to Clause 13.3, in the event of some default on the part of the CONTRACTOR; or

(b) in the event that suspension is necessary for the proper execution or safety of the WORK, or persons; or

(c) to suit the convenience of the COMPANY …

13.4 Unless the suspension arises as a result of default on the part of the CONTRACTOR, the CONTRACTOR shall be reimbursed in accordance with the relevant provisions of Section III - Remuneration or, in the absence of such provisions, in accordance with Clause 11. In such case, the CONTRACTOR is entitled to receive at least Standby Rates during the

term of suspension and any additional costs incurred due to this suspension …

14. TERMS OF PAYMENT

14.1 For the performance and completion of the WORK, the COMPANY shall pay or cause to be paid to the CONTRACTOR the amounts provided in Section III - Remuneration at the times and in the manner specified in Section III and in this Clause …

14.3 The CONTRACTOR shall submit to the COMPANY an invoice within thirty (30) days after the end of each calendar month or according to the schedule foreseen in Section III - Remuneration.

Following completion of the whole of the WORK, the CONTRACTOR shall not be entitled to receive any payment on any invoice received by the COMPANY after the time specified in Appendix 1 to Section I – Form of Agreement as the latest time for receipt of invoices. Nevertheless the COMPANY may, at its sole discretion, make payment against any such invoice …

14.6 COMPANY shall make payment of each invoice received as foreseen in the Section III – Remuneration. If no specific terms are foreseen in this Section, then each invoice should be paid within 30 days from date of receipt. Payment shall be done into the bank account of the CONTRACTOR as specified on the invoice.

14.7 If the COMPANY disputes any items on any invoice in whole or in part or if the invoice is prepared or submitted incorrectly in any respect, the COMPANY shall notify the CONTRACTOR of the reasons and request the CONTRACTOR to issue a credit note for the unaccepted part or whole of the invoice as applicable. Upon receipt of such credit note the COMPANY shall be obliged to pay the undisputed part of a disputed invoice.

If any other dispute connected with the CONTRACT exists between the parties the COMPANY may withhold from any money which becomes payable under the CONTRACT the amount which is the subject of the dispute. The COMPANY shall not be entitled to withhold monies due to the CONTRACTOR under any other contracts with the COMPANY as set off against disputes under the CONTRACT, nor shall it be entitled to withhold monies due under the CONTRACT as set off against disputes under any other contract.

On settlement of any dispute the CONTRACTOR shall submit an invoice for sums due and the COMPANY shall make the appropriate payment in accordance with the provisions of Clause 14.6 and Clause 14.9 where applicable.

14.8 Neither the presentation nor payment or non-payment of an individual invoice shall constitute a settlement of a dispute, an accord and

satisfaction, a remedy of account stated, or otherwise waive or affect the rights of the parties hereunder.

In particular the COMPANY may correct or modify any sum previously paid in any or all of the following circumstances:

(a) any such sum was incorrect;

(b) any such sum was not properly payable to the CONTRACTOR;

(c) any work in respect of which payment has been made and which does not comply with the terms of the CONTRACT.

14.9 Interest shall be payable for late payment of correctly prepared and adequately supported invoices. The amount of interest payable shall be based on the then current annual Bank of England 'Base Rate' plus the annual percentage stated in Appendix 1 to Section I – Form of Agreement and shall be calculated pro rata on a daily basis. In the absence of such percentage, the amount of interest shall be based on the then current annual Bank of England 'Base Rate' plus three percent (3%) per annum and shall be calculated pro rata on a daily basis. Interest shall run from the date on which the sum in question becomes due for payment in accordance with the provisions of Clause 14.6 until the date on which actual payment is made. Any such interest to be claimed by the CONTRACTOR shall be invoiced separately and within ten (10) working days of payment of the invoice to which the interest relates. Payment of the invoice claiming the interest shall be in accordance with the provisions of Clause 14.6 hereof …

18. LAWS AND REGULATION

18.1 The CONTRACTOR shall comply with all applicable laws, rules and regulations of any governmental or regulatory body having jurisdiction over the WORK and/or the WORKSITE.

18.2 The CONTRACTOR shall obtain all licences, permits, temporary permits and authorisations required by the applicable laws, rules and regulations for the performance of the WORK, save to the extent the same can only be legally obtained by the COMPANY …

28. GENERAL LEGAL PROVISIONS

…

28.6 Notices

All notices in respect of the CONTRACT shall be given in writing and delivered by hand, by telefax by email or by first class post to the relevant address specified in Appendix 1 to Section I - Form of Agreement and copied to such other office or offices of the parties as shall from time to time be nominated by them in writing to the other.

Such notices shall be effective:

(a) if delivered by hand, at the time of delivery;

(b) if sent by telefax or by email, on the first working day at the recipient address following the date of sending;

(c) if sent by first class post, 48 hours after the time of posting …

28.8 Entire Agreement

The CONTRACT constitutes the entire agreement between the parties hereto with respect to the WORK and supersedes all prior negotiations, representations or agreements related to the CONTRACT, either written or oral. No amendments to the CONTRACT shall be effective unless evidenced in writing and signed by the parties to the CONTRACT …

34. PERMISSION AND PERMITS

Company will be responsible for obtaining all necessary permissions to enable survey work to be carried out, including but not limited to, permits from the appropriate authorities for the vessel to operate in National waters of the country or operations, and for ensuring safe access within the area of survey operations …"

13. Section III - Remuneration was provided to be "*As per section 10 of the attached Technical and Commercial Proposal P19050*". The Technical and Commercial Proposal ("the TCP") had been prepared by Geoquip and was dated 29th October 2019.

14. Section 10 of the TCP comprised of two parts. Section 10.1 was headed "*Pricing*" and stated: "*Please find below Geoquip's rates for this work*." There followed a table setting out work descriptions and rates:

Item	Description	UNIT	QUANTITY	UNIT RATE (USD)	Amount (USD)
1	**Mobilisation**				
1.1	Mobilisation*	LS	1	400,000	400,000
1.2	Demobilisation*	LS	1	89,000	89,000
2	**Field Work**				
2.1	80m Continuous PCPT borehole	Each	3	96,740	290,220
3	**Reporting**	Per site	1	19,300	19,300

				Lump Sum for the Firm Scope	798,520
4	**Rates for Standby Time and Optional Work**				
…					
4.6	Operating Rate	Day	rate only	77,200	rate only
4.7	Standby at Sea	Day	rate only	72,500	rate only
4.8	Standby at Port	Day	rate only	70,150	rate only
4.9	Transit Rate (if additional to mob/demob)	Day	rate only	79,560	rate only
…					

15. Section 10.2 was headed "*Contractual*" and provided:

> "*Please refer to the LOGIC General Conditions of Contract for On- and Off-shore Services (Edition 2 - October, 2003) with Geoquip's Exceptions on which these prices are based.*
>
> *The rates are exclusive any local taxes.*
>
> *It is understood security vessels will be provided from entry into Cameroon waters, during mobilisation, throughout fieldworks, through demobilisation and exit from Cameroon waters.*
>
> *The offer is subject to the Investigator arriving in Cameroon between 15th November and the 31st December 2019, and the contract is also contingent on the permits and license extension required for the site survey having been delivered prior to departure of the vessel to Cameroon.*
>
> *The offer is subject to contract signing by 15th November 2019 and advanced payment of $250,000 to arrive in Geoquip's Swiss bank account prior to departure of the vessel to Cameroon. Invoices will be generated and submitted by email on completion of each milestone (remainder mob, fieldwork, demob, reporting) to be applied first against the deposit and then to be paid within 30 days of delivery of preliminary report.*
>
> *In the event other work is commissioned for the Investigator in direct continuity with this work a reduction of 25% is offered on the mob/mob* fee."

16. Section IV - Scope of Work provided that it was "*As the attached Technical and Commercial Proposal P19050*". Section 8 of the TCP stated as follows:

"***3 SCOPE OF WORK***

The client intends to carry out an offshore geotechnical site investigation to assess ground conditions for development of a jack-up rig, located offshore Victoria, Cameroon. The data obtained will be utilised to progress the design of a viable foundation, enabling the installation of a COSL jack up rig.

Geoquip understands that the base scope of work for the Geotechnical Site Investigation comprises the following geotechnical sampling and testing operations;

- *3 x 80m Boreholes with continuous PCPT*
- *1 x 80 m Boreholes continuous sampling as an option.*

The sample boreholes comprise composite push/piston sampling. In situ testing includes piezocone penetration tests (PCPTs) performed in downhole mode. The scope includes offshore and onshore laboratory testing, factual reporting and jack up penetration analysis.

The water depth at the proposed location is approximately 35 metres …

"***8 REPORTING AND DELIVERABLES***

The following report and deliverables are forecasted. Additional modifications can be included at award of project in agreement with Tower Resources.

8.1 Pre-Project Documentation

On receipt of a Letter of Award (LOA) and prior to commencement on site Geoquip will appoint a PM who will produce the following detailed site-specific documentation:

- *Project Safety Plan (PSP)*
- *Project Execution Plan (PEP)*
- *Emergency Response Plan (ERP)*
- *Any other documentation required by Tower Resources*

8.2 Daily Operations Reports

A Daily Operations Report (DOR) will be prepared by the OPM and provided to the on board Tower Resources representative for approval. This report will contain the following information:

- *Summary of previous 24 hours operations*
- *Time summary breakdown for previous 24 hours and to date*
- *Work completed in previous 24 hours and to date*

- *Observed weather conditions and weather forecast summary*
- *Work planned for the next 24 hours*
- *Lost and damaged equipment details*
- *Number of personnel on board*
- *Health safety and environmental events*

This report will be signed by the OPM and the on board Tower Resources representative and distributed accordingly via electronic mail.

8.3 Field Report

At the end of the fieldwork a preliminary field report will be supplied to Tower Resources representative on board the vessel. In addition to the laboratory testing performed offshore a schedule of onshore laboratory testing will be produced at this time for approval. A final version of the field report will be produced within one week from Geoquip's Geotechnical office.

The field report will contain the following information as appropriate:

…

- *Preliminary engineering assessments*

8.4 Laboratory Testing and Reporting

Laboratory Testing will be performed at one of Geoquip's accredited laboratories followed by assessment of soil parameters for the materials encountered and final engineering assessment. Geoquip Standard Laboratory rates are presented in Appendix D.

Following the results of the onshore laboratory testing and further engineering analyses a final Report will be issued. This final report will be presented approximately six weeks following approval of the laboratory testing schedule.

Reporting evaluation and presentation of the geotechnical parameters, shall comply with Tower Resources requirements.

All details on these reports will be agreed with Tower Resources upon contract award. Higher level reporting can be offered if required."

17. The Contract provided that it would be construed and take effect in accordance with English law (General Conditions, clause 28.5).

The Vessel's arrival in Cameroon

18. The Contract was signed on 31st October 2019. The Contract was for the provision of geotechnical investigation services in connection with Tower Cameroon's proposed

drilling project off Cameroon. Tower Cameroon's licence from the Cameroon government for that project had expired on 15th September 2019 and Tower Cameroon had applied for an extension. That licence extension had to be obtained before Geoquip could commence the Contract Work.

19. The vessel *Investigator* which was used by Geoquip for the purposes of the Contract was a four-point mooring vessel with a fully heave compensated marine drill rig operating through a central moon pool. The Vessel had a permanent soil testing laboratory on board.

20. The first issue confronting the parties was the obtaining of permission for the Vessel to enter Cameroon waters. This was itself dependent on the Cameroon Ministry of Mines, Industry and Technological Development ("the Ministry") granting the licence extension.

21. On 18th November 2019, Geoquip's Project Manager, Mr Jack Harmon, sent an email to Mr Jeremy Asher, chairman of each of the Defendant companies and Chief Executive Officer of Tower plc. In that email, Mr Harmon asked for updates relating to project permits. Mr Asher replied stating that "*We met with the Prime Minister on Friday, who confirmed our extension would be granted, so we are currently working on extracting a physical letter to that effect. We hope to have that in the course of this week*".

22. On 20th November 2019, Mr Harmon asked for a timescale for the receipt of the permits required for the contractual operations. Mr Asher replied stating that Tower Cameroon was "*expecting the formal license extension this week. We can then move directly to the specific permits required for the MV Investigator. I do not expect that this will take too long, and as previously noted we already have a security plan agreed with the BIR*". Mr Asher concluded by asking Mr Harmon when Geoquip would be ready to move assuming that the permits were in place. The "*BIR*" is a reference to the Cameroon security forces (Battalion d' Intervention Rapide).

23. On 21st November 2019, Mr Harmon asked Mr Asher for a "*more definitive timeline for the permit receipt*". Mr Asher replied that "*we are talking days rather than weeks, but anything more definitive is simply speculation*". Mr Asher asked Tower Cameroon's Country Manager, Mr Honore Dairou, whether there was any news.

24. On 22nd November 2019, Mr Harmon sent an email to Mr Dairou, suggesting that it might be worth explaining to the Ministry that Geoquip was ready to mobilise the Vessel to Cameroon by the end of the following week, but if the extension and permits were not obtained, Geoquip "*may want to find another job while we are waiting, and then we could lose weeks rather than days*".

25. On 25th November 2019, Mr Harmon had been informed by Geoquip's Cameroon agent, Navitrans, that the Cameroon government had to grant the Vessel a "*temporal admission*" (also referred to as the "*ATN*"). Mr Harmon asked later that day whether it would be possible to bring the Vessel into Douala, Cameroon to carry out maintenance and repairs prior to the temporal admission. At that time, the Vessel was in Nigeria.

26. Later that day, Mr Asher sent an email to Mr Harmon stating that it would be best if Tower Cameroon imported the Vessel for Geoquip, but said that he did not know how the maintenance work could be handled. Mr Dairou added that Tower Cameroon would

make the request for the temporal admission and asked when Geoquip was planning to sail to Cameroon. Mr Harmon replied on 26th November 2019 stating that the Vessel would be ready to leave on Friday 29th November 2019 and that the sailing time was approximately 40 hours.

27. Mr Dairou co-operated with Mr Harmon with a view to the Vessel sailing to Douala for maintenance and repairs. Mr Harmon asked where the BIR escort would meet the Vessel on arrival into Cameroon and requested that the BIR meet the Vessel as far offshore Cameroon as possible to allow safe passage into Douala.

28. On 29th November 2019, Mr Harmon informed Mr Asher and Mr Dairou that the Vessel was ready to depart from Nigeria that day and that he intended to submit an invoice for the advance payment to allow the Vessel's departure and proceeding to Douala. Mr Harmon asked for confirmation that the funds were in place to allow the payment to be made. Mr Asher replied that Tower Cameroon had US$250,000 on hand ready to send to Geoquip and stated that "*you should not move the vessel to Cameroon until we have the extension letter in hand and the importation permit at least underway. As you know our contract is contingent on both being already in place*".

29. In early December 2019, the Vessel proceeded to Cameroon to carry out routine maintenance work. The Vessel arrived at Douala on 2nd December 2019.

The delay in awaiting approval for the Vessel to proceed to the Work Site

30. On 8th December 2019, Mr Harmon sent an email to Mr Dairou asking "*when we are likely to receive the ATN, permits and licence extensions for the scope of work to be completed by the MV Investigator. As you know the Investigator is alongside Lima Base currently and will remain there most of this upcoming week conducting some TPI's that we require. On completion of all the works needed to be done on-board, if there are no further developments on the ATN, Permits and licences Geoquip would have to consider the vessel returning to Nigeria due to other client demands*".

31. On 9th December 2019, there was a board meeting of Tower plc, attended by Mr Asher and two non-executive directors. In the minutes of that meeting, it is recorded under the heading "*Cameroon*" that "*The Minister has told us that he has approved a license extension and written a letter but has not sent it because he wished to inform M Moudiki of SNH as a courtesy before doing so, and has not yet been able to see M Moudiki. The licence extension has also been strongly supported by the Prime Minister. In the meantime Geoquip's MV Investigator is now in Douala and secured by the BIR, and an ATN (import permit) is being issued to allow the MV Investigator to execute the site survey at Njonji …*". The reference to SNH was a reference to the Societe Nationale des Hydrocarbures, a state-owned oil company.

32. On 19th December 2019, Mr Asher on behalf of Tower plc wrote to the Prime Minister of Cameroon in connection with the application for a one year licence extension for Thali Block. Mr Asher's letter referred to the meeting between the Prime Minister, the British High Commissioner, Mr Asher and Mr Dairou on 15th November 2019 and stated that:

> "*… In the month since you promised to support Tower with the extension to conduct the geotechnical survey and finalise the drilling of the well, we have done*

> *a great deal to ensure we meet our commitment … However, we are still waiting for the extension itself to be signed by the Minister, which is now threatening the project itself.*
>
> *Following our meeting a contract was quickly signed with Geoquip Marine for their geotechnical vessel (MV Investigator) …*
>
> *We have been granted a Normal Temporary Admission (ATN) by the customs office to clear the vessel, and the Rapid Intervention Battalion (BIR) has secured the vessel and the crew to avoid any security incident while in Cameroon water territory …*
>
> *Your Excellency, Tower has kept it[s] word and has accelerated the arrival of the vessel into Cameroon as soon as we left your office. The vessel has been performing maintenance activity in Douala while waiting for the extension letter to be delivered so that it can commence work. But this maintenance work has been completed some days ago, and we are now facing the risk of the vessel leaving Cameroon to undertake other work elsewhere if the promised extension is not received this week.*
>
> *If the vessel leaves Cameroon without conducting the survey, this will have a very negative impact on the project. It may be difficult to persuade Geoquip to return without extraordinary assurances, which may be costly. In the meantime, the stand-by rate to keep the vessel doing nothing at the port is between 70,000 to 80,000 US dollar per day, and this is simply not sustainable.*
>
> *As we have explained to you, Tower has already spent 12 million US dollars on this project, and is about to invest 15 million more in the coming months with the drilling of the Njonji Marine 003 well, and tens of millions of dollars after that on the subsequent development if all goes well …*
>
> *The one (1) year extension will allow us to complete the current work in progress in the First Exploration Period …*
>
> *We are still waiting for the extension letter this week, as promised by the Minister of Mines, Industry and Technological Development …*
>
> *Your Excellency, may we ask for your full support for getting the extension letter signed and delivered to us this week, to allow us to keep the Survey vessel in Cameroon. Otherwise we may lose this unique opportunity, which will delay all the work and increase costs …*"

33. On 23rd December 2019, Mr Harmon sent an email to Mr Dairou stating that "*Every aspect must be in place and the vessel allowed to be working latest* ***31st December 2019****, if it isn't the vessel will have to depart Cameroon for other work commitments*".

34. On 24th December 2019, Mr Asher sent an email to Mr Harmon stating that the "*license extension letter has just been signed*" and attached a photo of the letter. In fact, according to the written and oral evidence of Mr Asher, this was not the Presidential Decree which constituted the formal extension, but instead the Minister's recommendation to the President to issue the relevant executive order. Later that day,

Mr Asher informed Mr Harmon by email that "*We should now send you the $250,000 deposit for the survey*".

35. On 24th December 2019, the Vessel proceeded to an anchorage to perform outward clearance.

36. On 27th December 2019, in an exchange of emails between Mr Harmon, Mr Dairou and Mr Asher, it became clear that Tower Cameroon did not yet have the licence extension, but only the Minister's recommendation for the licence extension.

37. On 27th December 2019, Mr Harmon wrote to Mr Dairou setting out a timeline prior to the start of the Contract works, culminating in the Vessel sailing to the Work Site on 5th January 2020.

38. On 29th December 2019, Tower Cameroon paid the deposit of US$250,000 to Geoquip.

39. On 4th January 2020, Mr Dairou sent an email to the Head of the BIR proposing a security briefing prior to the Vessel's departure to the Thali Block the following week for the geotechnical investigation.

40. On 6th January 2020, Mr Dairou informed Mr Asher that everything was ready from Tower Cameroon's side in terms of logistics for security and the BIR's availability.

41. In an exchange of emails on 7th January 2020 between Mr Harmon, Mr Asher and Mr Dairou, it was said that the Vessel could proceed to the Work Site ahead of the ATN being granted.

42. Although the Vessel was intending to sail on 8th January 2020 for the Work Site from Douala, Tower Cameroon was informed that the BIR would not provide security for the Vessel because the BIR had not been authorised by SNH who had not seen the licence extension approval. Geoquip was not prepared to carry out the survey without the security detachment.

43. On 9th January 2020, Mr Asher sent an email to SNH asking for their authorisation to the BIR to proceed with the Vessel, adding that it was "*very costly to keep a vessel like the MV Investigator on standby it costs as much as a jack-up rig. As you see, the project (and the license extension) has the approval of [the Minister] and the Prime Minister. I do not understand why the problem has arisen …*".

44. On 9th January 2020, Mr Asher on behalf of Tower plc wrote to the President of the Republic of Cameroon and referred to the Minister's recommendation for the issue of the licence extension and stated that:

> "*… Presently, the crew is on board the vessel and waiting for the BIR to accompany the vessel for security purpose as usual, and as previously agreed with the BIR.*
>
> *Unfortunately, at the last minute the National Hydrocarbons Corporation interrupted the security measures put in place with the BIR for the escort and patrol during the offshore operation … and the vessel cannot operate without the*

> *security escort of the BIR. The cost to keep this survey vessel idle at port is over $80,000/day …*
>
> *Your Excellency Mr President, this is an important project for Cameroon and for Tower and blocking the operation is … an existential threat to our project …*
>
> *On behalf of Tower Resources plc, I humbly ask your highest authority of your urgent assistance to ensure the continuation of this activity, as approved by both your Minister … and your Prime Minister …*"

45. On 9th January 2020, Mr Harmon sent an email to Mr Dairou stating that, although he was sure Mr Dairou was doing everything he could to allow the Vessel to depart, "*this is becoming increasingly frustrating. As mentioned yesterday, this is now having a knock on affect on our subsequent client and we cannot afford this to drag on any more. In addition to this, Tower Resources as of yesterday afternoon are now incurring costs for the MV Investigator sitting alongside which is of course in no one's interest to happen …*".

46. Later that day, Mr Asher replied to Mr Harmon stating that "*I appreciate the difficulty and share your frustration … I agree that there is no sense in incurring unnecessary standby costs*". A little more than half an hour afterwards, Mr Asher wrote to Mr Harmon stating that Mr Dairou had returned from the Prime Minister's office and the authorisation had just arrived from the President and suggested that the Vessel should stay where it is.

47. On 11th January 2020, Geoquip issued a Weekly Client Project Report, which included an entry that "*MOD require authorisation from PM for BIR to attend the vessel … Tower Resources incurring daily standby charges on the vessel alongside Lima Base. As of DOR 08 for 10.01.2020 55 hours charges are incurred*". The DOR is a reference to a Daily Operation Report for 10th January 2020 which was signed on behalf of both parties.

48. On 12th January 2020, Mr Asher sent an email to the British High Commissioner providing an update and stating that the Vessel was still in port at Douala and that if the BIR attended the Vessel that day "*the total delay of five days will have cost something like $450,000. If not, then the cost is mounting by something like $90,000 per day. This is very bad for both us and the Republic because in the short term we have to finance it, and in the long term it will be paid for by the Republic out of the cost recovery from production*".

49. On 13th January 2020, according to Mr Asher's evidence, Tower Cameroon had been informed by the Prime Minister's office that the Office of the Presidency had written to SNH to confirm that the President had approved the licence extension but had still not provided Tower Cameroon with an official decree and that the BIR would attend the Vessel that evening. Mr Asher relayed this information to Geoquip. The BIR, however, did not attend the Vessel that day.

50. That day, Mr Dairou had written to an adviser to SNH stating that the Vessel required an escort to the Work Site, that the BIR was ready to provide the escort and "*We are*

asking you to accompany us in this operation, in order to avoid all the daily standby costs …".

51. On 14th January 2020, Tower Cameroon received a letter from the Minister stating that the President had approved the licence extension but it did not contain an actual Decree from the President.

52. That day, Mr Harmon sent an email to Mr Asher attaching a "*WCPR 02 so as to keep you well informed with the charges being incurred by Tower Resources whilst the Investigator remains awaiting BIR attendance, which is currently the only item preventing her departure to the project site*". In reply, Mr Asher said "*I am acutely aware!*". The WCPR is a Weekly Client Project Report.

53. On 14th January 2020, Mr Harmon sent an email to a colleague within Geoquip, Mr Hans Hanse, raising the question "*where we draw the line with Tower Resources*". Mr Harmon set out his "*main concerns*" as including "*TR are accumulating costs for standby alongside as of midday today USD336,000. I have severe doubts on their budget and whether this extra cost may lead to them not paying us full remaining contract value*". Mr Harmon reported that he had issued the WCPR to Tower Cameroon and advised them that they were "*incurring costs*" and that he was going to issue this report daily (the email in fact said "*not going to issue this report daily*", but this was a typographical error). Mr Hanse replied stating that he agreed with Mr Harmon's concern that Tower Cameroon could not afford the standby costs and "*so they will only get data once they have settled the invoices*". Mr Hanse agreed that it was better if the Vessel were to wait at Tower Cameroon's cost than Geoquip's cost. Mr Harmon responded by stating that he and Mr James Miller (Head of Projects at Geoquip) had discussed the data transmission and agreed that "*preliminary spudcan analysis and borehole logs would be released but nothing further until payments were received*".

54. On 14th January 2020, Geoquip issued a further Weekly Client Project Report in terms similar to that quoted above.

55. On 15th January 2020, Mr Stewart Higginson, the Chief Executive Officer of Geoquip, sent an email to Mr Harmon asking him to speak to Mr Asher and ask the real reason for the delay and added that "*When you speak to them regarding the delay, please also seek their guarantee that a) this standby time is accepted by them, and b) that they are able to pay the charges as … and when they fall due …*".

56. On 15th January 2020, Mr Harmon spoke to Mr Asher, where Mr Asher explained the reason for the delay, which suggested that the President did in fact sign the extension letter on 24th December 2019. Mr Harmon reported on this conversation to his colleagues within Geoquip and added that "*Relating the standby time, TR have accepted that this will be charged and the DOR's are all be signed off based on that time being considered standby and therefore chargeable to Tower Resources. He did also assure me there is no issue with funds for the original contract value, however he did backtrack to a degree when I requested to invoice the standby time ahead of the fieldworks given the increase in project value … Invoicing schedule he said could not be brought forward ahead of what is listed contractually, including standby time charges. So this invoice will be submitted on completion of fieldworks …*".

57. On 15th January 2020, a naval security team (not the BIR) arrived at the Vessel, which set sail that day, anchored overnight, and arrived at the Work Site on 16th January 2020. However, the BIR received orders to require the Vessel to return to port, because SNH had not seen the Presidential decree granting the licence extension. The Vessel returned to Douala on 17th January 2020.

58. On 16th January 2020, Mr Asher sent an email to the British High Commissioner reporting on these events and stating that "*We have already incurred some $600,000 of stand-by costs because of SNH's refusal to accept the instructions that were given before, and another day will cost close to $90,000 more. There will come a point when the MV Investigator will simply leave Cameroon without doing the survey …*".

59. On the same day, Mr Dairou on behalf of Tower Cameroon wrote to the Prime Minister stating that despite the authorisation received from the President, SNH had given instructions to the BIR to stop the operation. Mr Dairou stated that the Vessel was at the anchorage with soldiers and the geotechnical crew on board and stated that "*In addition to that the project has seriously been impacted due to the standby time spent waiting for the military support. Your Excellency, each delay cost 90,000 $ to Tower Resources which is pre-financing …*".

60. On 22nd January 2020, there was a board meeting of Tower plc, attended by Mr Asher and two non-executive directors. In the minutes of the meeting, it is recorded that "*the survey had been disrupted by the BIR, which had been informed (contrary to fact) by SNH that the license was not being extended and was no longer valid. JA reported that while the Ministry and the PM's office had rebuffed SNH's objections … it was only the Secretary General and the President that have the authority to give fresh orders to the BIR, and the Company was waiting for this to happen. There was considerable discussion of the best approach to take to this situation, and to the recovery of the standby costs (which the Board believed should be for SNH's account, but which should in any case be cost recoverable in due course), and it was agreed that for the time being the vessel must remain ready to begin the survey as soon as the security situation was resolved …*".

The Extension Contract

61. On 22nd January 2020, following a telephone call between them, Mr Harmon wrote to Mr Asher stating that an extension agreement should be agreed given the extended duration of the project to date. Mr Harmon also said that on signing the extension agreement, "*given the contract value has changed significant[ly] since initial contract signing, Geoquip will submit an invoice covering solely standby time that has been incurred during this period to date. This will be on the contractually agreed 30 day terms … Within the invoice we will make it very clear from what point the standby was charged from and up until …*". Mr Harmon attached a draft of the proposed extension agreement. On 23rd January 2020, Mr Asher replied stating that he had read it and "*it is short and looks fine, but I need to check how it dovetails with the original agreement. I won't be able to do this until later today …*".

62. On 24th January 2020, Mr Harmon submitted another Weekly Client Project Report (no. WCPR 03) and an updated project schedule based on an assumed vessel departure to site on 25th January 2020. The Report stated that "*MOD require authorisation from*

SG for BIR to attend the vessel … Tower Resources incurring daily standby charges on the vessel alongside Lima Base. As of DOR 21 for 23.01.2020 Chargeable Standby port time: 316 hrs:45 mins Chargeable Standby sea time: 34 hrs:45 mins".

63. Mr Asher replied that although he agreed in principle with the extension of the Contract to the end of February 2020, he was not then in a position to agree to the draft extension agreement. Mr Harmon responded that Geoquip "*would need to see the STB [standby] costs invoice which sum these to the date (mentioned within the WCPR) accepted to be remitted on the contractually agreed payment terms alongside this extension agreement*". Later that day, Mr Asher wrote to Mr Harmon raising some queries about the standby hours quoted in the weekly report and asking about the possibility of a "*volume discount on the standby rate*"; Mr Asher added that "*we don't have to finalise this now, but I don't want to pre-empt the topic either*". These matters were further discussed in emails on 24th and 25th January 2020.

64. On 26th and 27th January 2020, Mr Higginson on behalf of Geoquip and Mr Asher on behalf of Tower Cameroon respectively signed an Agreement for the Extension of Contract Duration.

65. The Extension Contract contained the following provisions:

WHEREAS:

- *Parties signed a CONTRACT on 30th October for the execution of a geotechnical investigation offshore Cameroon.*

- *This CONTRACT referred to the Effective Date of Commencement of 30th October 2019 and mentioned a duration of 2 months.*

- *CONTRACTOR was ready to mobilise the VESSEL and crew within the validity of the CONTRACT, and VESSEL and crew mobilisation took place in the period up to 17:00 on 8th January, 2020; and since that time up to end of 23rd January 2020 VESSEL has accrued 316.75 standby hours in port and 34.75 standby hours at sea, as documented in CONTRACTOR's weekly reports to OPERATOR;*

- *The VESSEL continues to accrue standby hours since 23rd January 2020, and OPERATOR and CONTRACTOR wish to confirm the continuation and extension of the contract to cover the longer duration of the operations.*

THEREFORE, IT IS NOW DECIDED:

1. Duration of the CONTRACT

The PARTIES agree to extend the Duration of the CONTRACT by 2 months bringing it to 4 months from the Effective Date of Commencement of the CONTRACT which is 30th October 2019.

2. General

All other terms and conditions of the CONTRACT remain unchanged and valid for the whole Duration of the CONTRACT."

66. It is to be observed that Tower plc was not named as a party to this Extension Contract.

The carrying out of the Works

67. On 29th January 2020, Mr Harmon sent an email to Mr Asher stating that unless the Vessel received the authorisation required to proceed to the Work Site by 31st January 2020, Geoquip would commence the process of demobilising the Vessel from the project. If the authorisation was not received, Geoquip made a proposal allowing for the demobilisation of the Vessel to Nigeria and for a suspension of the standby costs and a discount of 5% upon prompt payment, with a view to returning to carry out the Contract works after the completion of the work in Nigeria.

68. On 30th January 2020, Mr Harmon sent an email to Mr Asher attaching an invoice covering the Vessel's standby time from 8th January 2020 to 22nd January 2020 (in the sum of US$1,011,218.75) and indicating that a further invoice would be issued for the period from 23rd January 2020 to the date of demobilisation.

69. Later that day, Mr Asher thanked Mr Harmon for his email and expressed the hope that the problem would be resolved that afternoon.

70. On 30th January 2020, Mr Asher on behalf of Tower plc wrote to the Minister stating that it had the Vessel waiting at Douala for over three weeks for the BIR or the Navy to provide security, but they have not been given the authorisation to do so. In this letter, Mr Asher stated that "*We have incurred standby costs of over $1 million while the vessel has been waiting*". Mr Asher informed the Minister that unless the Presidential order can be given to the BIR and the Ministry of Defence, the Vessel would have to leave the following day.

71. On 30th January 2020, Mr Asher informed Mr Harmon that the British High Commissioner had met the Secretary General of the Presidency, who indicated his surprise that his previous instructions had not been fully implemented and that he would give further instructions.

72. The Vessel left port on 1st February 2020 and arrived at the Work Site on 3rd February 2020. The survey was commenced on 4th February 2020 and data from the boreholes was collected by 7th February 2020.

73. On 6th February 2020, Geoquip issued an invoice to Tower Cameroon in respect of mobilisation (US$150,000 plus tax) and in respect of standby costs in port from 23rd January 2020 to 1st February 2020 (in the sum of US$693,561.97). In response, Mr Asher wrote to Mr Harmon confirming receipt and stating that "*we'll review and process the invoices*".

74. Further invoices were issued by Geoquip to Tower Cameroon on 10th February 2020.

75. On 14th February 2020, Mr Harmon sent an email to Mr Asher attaching a link to the "*Field Report for the Geotechnical Site Investigation conducted at Tha[l]i Block by the MV Investigator*". However, this preliminary report omitted preliminary spud can penetration analysis, meaning Geoquip's preliminary assessment of the Rig's legs' penetration into the seabed.

76. On 19th February 2020, Mr Asher sent an email to Mr Harmon stating that it may take time to process payment in light of the need to put financing together, given the amount of the standby costs. In this email, Mr Asher asked about the possibility of a discount. On 21st February 2020, Geoquip refused to offer a discount.

77. On 2nd March 2020, Geoquip issued a Payment Notice relating to the late payment of one of its invoices issued on 23rd January 2020.

78. In reply, on 2nd March 2020, Mr Asher informed Mr Harmon that he disagreed with the contents of Geoquip's email. Mr Asher stated that none of the invoices are due for payment until 30 days from receipt of the preliminary report, but this report had not yet been received. Mr Asher recorded that Geoquip would not be providing any of the laboratory analysis until a payment schedule was agreed. Mr Asher also said that he did not accept that Geoquip had submitted US$1 million of "*undisputed invoices*", and said that although the "*field invoice*" was agreed, it was not yet due for payment.

79. On 9th April 2020, Mr Miller of Geoquip provided to Mr Asher its Final Field Report containing the preliminary engineering information.

The issues in dispute

80. As I mentioned at the outset, Geoquip maintains two claims, one for the balance of the payment for the services due under the Contract and the other for Standby Costs. The Defendants dispute these claims.

81. The following questions need to be addressed to resolve the parties' dispute in respect of these claims:

    (1) Is Geoquip entitled to payment of the balance of the lumpsums claimed for the work done under the Contract either pursuant to the Contract or on a *quantum meruit* basis?

    (2) Is Geoquip entitled to recovery of the Standby Costs pursuant to the terms of the Contract?

    (3) If Geoquip is not entitled to the recovery of the Standby Costs pursuant to the Contract, is it entitled to such recovery on the basis of an estoppel by convention?

    (4) If Geoquip is not entitled to the recovery of the Standby Costs pursuant to the Contract, is it entitled to such recovery on the basis of an estoppel by contract?

    (5) If Tower Cameroon is liable in respect of either or both of Geoquip's claims, is Tower plc liable as guarantor?

82. Most or all of these issues require the Court to construe the terms of the Contract and the Extension Contract. There was no substantial dispute between the parties as to the approach to be adopted towards identifying the parties' objective intention as revealed by the terms of their agreements. The Court's iterative inquiry is into the meaning of the contractual language, by reference to its natural and ordinary meaning and its meaning in light of the commercial purpose of the parties' contract and of the individual provisions in that contract, as well as the factual background to the contract as known to or reasonably available to the parties. For this purpose, the parties' subjective intentions or understandings or their negotiations towards concluding the contract are not admissible, save to the limited extent that any evidence dealing with such understandings or negotiations identifies the relevant contextual background. See, by way of example, *Arnold v Britton* [2015] UKSC 36; [2015] AC 1619; *Wood v Capita Insurance Services Ltd* [2017] UKSC 24; [2017] AC 1173.

83. There is also an issue relating to an alleged estoppel by convention. In that respect, the Court's inquiry will range further afield than in any contractual interpretation exercise.

84. In addressing these issues, the parties adduced the factual evidence of three witnesses who gave their evidence orally: Geoquip called Mr Jonathan Spivey (who had been Commercial Director of Geoquip until November 2019) and Mr Jack Harmon (the Project Manager for Geoquip); and the Defendants called Mr Jeremy Asher (the Chairman and CEO of both Defendants). Their evidence was most relevant to the issue of estoppel by convention. On the whole, although the evidence presented was geared towards the perspective of the parties who called them, I considered that the witnesses sought to give their testimony honestly. In the present case, however, there is a wealth of contemporaneous correspondence which is of much assistance to the Court. The witnesses' evidence was largely framed by reference to that documentary evidence and was also of much assistance in resolving these issues.

Issue (1): The claim for the balance of the Contract price for the Work

85. Ms Julia Dias QC, who appeared with Mr Jason Robinson on behalf of Geoquip, submitted as follows:

    (1) Geoquip carried out the work required by the Contract and the Extension Contract, and supplied the data required by Tower Cameroon on board the Vessel, in real time as the survey work was being carried out, in a preliminary field report sent on 14th February 2020, and in a further field report (which included the spud can analysis) on 9th April 2020.

    (2) Assuming that the 14th February 2020 preliminary report was insufficient to trigger payment under the Contract, the late provision of the 9th April 2020 preliminary field report was at most a technical breach of the Contract, which caused Tower Cameroon no loss (and indeed no claim for damages is made for any such breach).

    (3) Accordingly, Tower Cameroon has no basis on which to refuse to pay the balance of the lumpsum claimed.

86. Mr SJ Phillips QC, who appeared with Ms Rebecca Jacobs on behalf of the Defendants, submitted that:

(1) By sections 8.3 and 10.2 of the TCP, the trigger for payment under the Contract was the delivery of Geoquip's preliminary report and that report had to contain certain information, in particular the preliminary spud can penetration analysis and that report had to be produced "*At the end of the fieldwork*".

(2) The contractual requirement in section 10.2 of the TCP that invoices be submitted within 30 days of the delivery of the preliminary report meant a report with the information included as specified in the Contract.

(3) The specified condition for payment was not met within the lifetime of the Contract.

(4) The fact that a report containing the relevant spudcan analysis was produced on 9th April 2020 is contractually irrelevant, because: (a) that was not a preliminary report within the meaning of the Contract, and (b) the report was not produced within the lifetime of the Contract (which expired at the end of February 2020) and was not produced "*At the end of the fieldwork*", as required by section 8.3 of the TCP.

87. Ms Dias QC's reply to the Defendants' submissions was that:

(1) There was no requirement in the Contract that the provision of the preliminary report must have taken place before the end of the duration of the Contract. The duration of the Contract was relevant only to the mobilisation of the Vessel (clause 5 of Section II of the Contract). Accordingly, if the Vessel's operations were concluded on the final day of the Contract period, no reasonable person would have assumed that the preliminary report would have to be provided that day. There are a number of provisions in the Contract which continue in effect after the end of the Contract period.

(2) There is no express term in the Contract, or indeed any indication in the factual background to the Contract, that the time for the delivery of the preliminary report was of the essence.

(3) Even if time were of the essence, the result would be that any breach of Geoquip's obligation in this respect entitled Tower Cameroon to terminate the Contract prospectively and the Contract was not terminated, certainly not before the compliant preliminary report was provided on 9th April 2020.

(4) If there is no contractual entitlement to the balance of the lumpsum due under the Contract, Geoquip is entitled to a *quantum meruit* for the work done in respect of the survey and the production of the report.

88. In my judgment, Geoquip is plainly entitled to the balance of the lumpsums (*i.e.* the balance after the deposit of US$250,000 already paid) due under the Contract.

89. I accept that, by the terms of the Contract, the obligation on Tower Cameroon to pay the invoice for the said lumpsum balance was conditional on the completion of the work and services required to be performed by Geoquip. This is evident from section 10.2 of the TCP which provides that "*Invoices will be generated and submitted by email on completion of each milestone (remainder mob, fieldwork, demob, reporting) to be*

applied first against the deposit and then to be paid within 30 days of delivery of preliminary report".

90. In this case, it appears from the correspondence that Geoquip provided a (final) preliminary report on 14th February 2020 which deliberately omitted the spudcan analysis data (because of Geoquip's concern about Tower Cameroon's ability to pay) which was required to be included in the preliminary report. As section 8.3 specified that such data should have been included in the preliminary report, the report provided on 14th February 2020 was non-compliant and, given the importance of this data (paragraph 15 of Mr Harmon's witness statement), there would have been no obligation on Tower Cameroon to pay the invoices unless and until a compliant preliminary report had been produced.

91. However, once the missing spudcan analysis data were provided, the obligation of Tower Cameroon then engaged. This is so, even though the missing information was not provided in accordance with the timetable set in section 8.3 of the TCP, namely within one week from the completion of the fieldwork. Section 8.3 was not expressed to be a condition of the Contract or a term which rendered time of the essence. Indeed, there are detailed provisions in clauses 13 and 14 of Section II of the Contract which deal with remedies in the case of default and the obligations of the parties as regards payment.

    (1) Clause 13.1 allowed Tower Cameroon to suspend the Work or any part thereof by notice in the event of a default on the part of Geoquip. However, there was no intimation by Tower Cameroon that there would be such a suspension. This is no doubt because the spudcan analysis data were of importance to Tower Cameroon and a suspension would have kept the information out of its hands.

    (2) Clause 14.1 required Tower Cameroon to pay Geoquip the amounts set out in Section III of the Contract, namely within 30 days of production of the preliminary report (section 10.2 of the TCP).

    (3) Clause 14.3 permitted Tower Cameroon not to pay an invoice issued after the time specified in Appendix 1 to Section I of the Contract, *i.e.* "*two months*", which, with the amendment introduced by the Extension Contract, meant that any invoice issued after 29th February 2020 did not have to be paid.

    (4) Clause 14.7 contained a procedure for the parties to follow in the event that there was a dispute about invoices.

92. There are no provisions which stipulated that Tower Cameroon was excused from paying an invoice issued in time and after the production of the compliant preliminary report, even if that report were tendered late.

93. I would add that there is no requirement in the Contract that any preliminary report had to be produced by 29th February 2020. I accept Ms Dias QC's submission that the duration of the Contract was concerned principally with the mobilisation of the Vessel, and was not concerned with the production of the preliminary report.

94. Even if there were a provision that the time for the production of a compliant preliminary report was of the essence or even if the relevant obligations on Geoquip

were contained in a condition, the remedy for breach of such a term is that the innocent party is entitled to terminate the Contract prospectively and/or to claim damages. In this case, no such remedy has been exercised or claimed. There therefore remained a contractual obligation on Tower Cameroon to pay the balance of the lumpsums due for the Contract Work upon the production by Geoquip of a compliant preliminary report.

95. As a result of this decision, there is no need to consider Geoquip's claim for a *quantum meruit*. It is a difficult claim to assess in the circumstances of a fully developed and detailed Contract. I have some, but only some, sympathy with Mr Phillips QC's submission that such a claim should not be permitted to subvert or side-step the provisions of the Contract, which was not terminated, and where the absence of payment was the result of a breach of contract on the part of Geoquip in deliberately not producing a compliant preliminary report. That said, it was a breach which was cured subsequently. In these circumstances, I prefer to say no more about the validity of the claim for a *quantum meruit*, because it does not arise.

Issue (2): the claim for the Standby Costs under the Contract

96. Geoquip's claim for Standby Costs is for the period from 8th January 2020 to 4th February 2020, when the Vessel finally arrived at the Work Site offshore Cameroon. There is no dispute that the reasons for the delay to the Vessel's mobilisation to the Work Site was the absence of approval for the Vessel to proceed by the relevant authorities, which approval was lacking by reason of the lack of confirmation of the licence extension to Tower Cameroon by Presidential decree and/or by reason of the BIR not agreeing or not being instructed to accompany the Vessel to the Work Site.

97. Ms Dias QC submitted on behalf of Geoquip that:

(1) Geoquip suffered significant periods of wasted time giving rise to standby charges under the Contract and the Extension Contract. Such delays arose by reason of the time spent waiting for the provision of the licence extension to Tower Cameroon and the governmental approvals for the Vessel to operate at the Work Site offshore Cameroon.

(2) The Standby Costs were incurred and properly invoiced in accordance with the Contract and the Extension Contract.

(3) The table in section 10.1 of the TCP sets out the pricing for the work to be performed: the remuneration for this particular piece of work was divided into two parts, namely (a) a lumpsum for the firm scope of the work (mobilisation, demobilisation, fieldwork and reporting) and (b) further fixed or day rates payable for services which might or might not be required outside the firm scope of work, such as standby at sea or in port.

(4) Even if that is wrong, all the standby charges claimed here fall squarely in any event within the scope of express contractual provisions.

(5) Under clause 4.5 of Section II of the Contract, Tower Cameroon was responsible for the timely provision of their "*materials, services and facilities*". Clause 4.5 is not limited to matters falling within clauses 4.1 and 4.4 but includes materials, services and facilities provided for elsewhere in the Contract, in particular the

responsibility of Tower Cameroon under clause 34 to obtain "*all necessary permissions to enable survey work to be carried out, including but not limited to permits from the appropriate authorities for the vessel to operate in National waters of the country or operations, and for ensuring safe access within the area of survey operations*". These matters are "*facilities*" required for the performance of the work. Tower Cameroon must therefore pay the claimed standby charges.

(6) Clauses 13.1(b) and/or (c) and clause 13.4 of Section II of the Contract provide for Geoquip to be reimbursed for Standby Costs during the period of suspension of the Contract. The reference to "*WORK*" in clause 13 is broad enough to encompass everything Geoquip was required to do, including mobilisation and so any delays necessary for the proper execution or safety of the work are for Tower Cameroon's account. Every time that Tower Cameroon informed Geoquip that the Vessel could not proceed or that work could not commence because they had not obtained the requisite permits and licences, or when Geoquip asked for an update and was told by Tower Cameroon that the requisite permits and licences had not been obtained, or when Tower Cameroon signed a Daily Operations Report acknowledging that Standby Costs were being incurred for Tower Cameroon's account, there was in effect a notice of suspension under clause 13.1

(7) By clause 14.6 of Section II of the Contract, Tower Cameroon was obliged to pay each invoice within 30 days and, by clause 14.7, if Tower Cameroon wished to dispute any item on any invoice, they had to notify Geoquip of the reasons for the objection, upon receipt of which Geoquip would be required to issue a credit note. Absent any objection to an invoice submitted by Geoquip in accordance with clause 14.7, those invoices were necessarily undisputed.

98. Mr Phillips QC on behalf of the Defendants submitted that:

(1) The Contract contains specific provisions dealing with Geoquip's right to charge Standby Costs, namely clauses 4.5, 5.2, 6.2 and 12.6 of Section II of the Contract, but these provisions are not applicable. By contrast, the provisions relied on by Geoquip, namely clauses 14.6 and 34 of Section II and section 10.1 of Section III, do not create any equivalent right.

(2) Clause 4.5 is inapplicable because the licence extension or other government approvals are not "*materials, services and facilities*". This provision is concerned with the physical, not the legal, aspects of the survey to be carried out under the Contract.

(3) Clause 6.2 is inapplicable because it is concerned only with any fault on the part of Tower Cameroon in providing data or personnel.

(4) Clause 13.4 is of no assistance to Geoquip, because it is concerned with an express right of Tower Cameroon to suspend the work and so such suspension can be brought into effect only once the work has commenced. No notice of suspension was tendered by Tower Cameroon.

(5) Geoquip's reliance on clause 14.6 is misplaced, because it is concerned with the obligation and timing of payment of an invoice, but not with Geoquip's entitlement to issue an invoice for a particular item. The reference to Section III of the Contract does not detract from this. Clause 14.6 does not of itself create an entitlement to payment of an invoice.

(6) Geoquip's delay costs were the result of its own decision to bring the Vessel to Cameroon when it was under no obligation to do so in accordance with the Contract, because the Contract provided in section 10.2 of Section III that "*the contract is also contingent on the permits and license extension required for the site survey having been delivered prior to departure of the vessel to Cameroon*". Mr Phillips QC however made it clear during oral submissions that he was not submitting that there was no effective Contract in January 2020.

99. In dealing with this issue, I start by considering the specific provisions which the parties have referred to in their submissions.

100. Section 10.1 of Section III of the Contract makes provision for "*Pricing*" and sets out not only the lumpsums chargeable for various phases of the Contract work, but also the rates for Standby Time and Optional Work, including while the Vessel is at standby at Sea and at Port, the rates being US$72,500 per day and US$70,150 per day respectively. This provision on its own does not impose any obligation on Tower Cameroon to pay Standby Costs.

101. The provisions in the Contract which specifically deal with Standby Costs are clauses 4.5, 5.2, 6.2, 12.6 and 12.4. I shall consider clause 4.5 last.

102. Clauses 5.2 and 6.2 are not applicable because the delay suffered while the Vessel was waiting at Douala in January 2020 was not the result of the unavailability of "*COMPANY VESSEL REPRESENTATIVE(S)*" or of any fault in the data or personnel provided by Tower Cameroon. Clause 12.6 is not applicable because there was no relevant defined Force Majeure event.

103. Clause 13.4 is not applicable, because there was no suspension of the work upon notice issued by Tower Cameroon. I accept that that there were numerous exchanges between the parties by way of updates explaining the delays and the prospects of obtaining the necessary approvals and/or security team for the Vessel. However, none of those exchanges amounted to a notice of clause 13.1 of Section II of the Contract. I would have expected that any such notice would comprise the following features, namely (a) it should have described itself as a notice under clause 13.1, (b) it should have called on the work to be suspended, (c) it should have identified the relevant reason for the suspension in accordance with the permissible reasons identified in clause 13.1, and (d) it should have identified whether the entirety of the work or a part of it was being suspended. There was no notice given which fits these requirements.

104. I also consider that there is force in Mr Phillips QC's point that no work could be suspended until it had begun and as the work had not begun, then there was nothing to suspend. However, I think this takes the matter only so far, because it is well possible that the work commenced on 15th January 2020, when the Vessel started its voyage to the Work Site, only to be recalled. Nevertheless, for the reasons explained above, I do not consider that clause 13.4 entitles Geoquip to charge Standby Costs.

105. I found clause 4.5 of Section II of the Contract the most difficult to construe. Taken on its own, I can well see that the reference to "*facilities*" might well include the requisite approvals and security team to allow the Vessel to proceed to the Work Site for which Tower Cameroon was responsible under clause 34 (although this is to be read with clause 18.2).

106. However, when one considers that the Contract - when it was agreed in October 2019 - provided that it was "*contingent on the permits and license extension required for the site survey having been delivered prior to departure of the vessel to Cameroon*", meaning that there was no contract and therefore there were no contractual duties in place unless and until such licence extension and permits were obtained, it would follow that any delay suffered by the Vessel after the Contract entered into force by reason of the unavailability of the relevant licence extension and permits would not have been within the parties' contemplation as falling within the scope of clause 4.5, because the Contract contemplated that it came into force only after the licence extension and permits were obtained. It is therefore unlikely that the parties objectively intended clause 4.5 to apply to any delay in obtaining the relevant permits or licence extension. This consideration also applies to the other provisions referred to above.

107. I note, however, that even though section 10.2 of the TCP expressly provides that the Contract is contingent on the licence extension and permits being obtained, clause 34 provides that the responsibility for such permits rests with Tower Cameroon (although this is to be read with clause 18.2). Nonetheless, I think these provisions can be reconciled in that clause 34 makes it clear that the obtaining of the permits is the responsibility of Tower Cameroon, rather than Geoquip's, and that the Contract's entry into force was dependent on such permits being obtained.

108. Of course, in the event, the Vessel proceeded to Cameroon before the permits were obtained and indeed it is accepted by the parties that the Contract was nevertheless in force by January 2020. However, that of itself - absent an estoppel - does not alter the meaning to accorded to clause 4.5 or indeed any other provision at the time of the agreement of the Contract.

109. This last consideration might not have been relevant had the cause of the delay been solely the refusal of the BIR to provide security for the Vessel. However, the evidence was that the security was a condition of the permits required for the Vessel (paragraph 28 of Mr Harmon's witness statement). That said, section 10.2 of Section III of the Contract in addition to expressing the Contract to be contingent on the obtaining of such permits also provides, separately, for the provision of security for the Vessel. However, a review of the events summarised above makes it clear that the absence of a Presidential decree confirming the licence extension, the absence of the permits for the Vessel and the absence of security for the Vessel were all equal causes of the delay suffered by the Vessel. In those circumstances, there is no provision in the Contract entitling Geoquip to Standby Costs on the facts of this case.

110. As far as clauses 14.6 and 14.7 are concerned, I do not read these provisions as binding Tower Cameroon to accepting the validity and legitimacy of any invoiced charged unless the invoice was disputed in accordance with the procedure set out in clause 14. There is no express provision to that effect. Moreover, if the intention were to bind Tower Cameroon to accepting an invoice as payable unless it disputed it in accordance

with the procedure set out in clause 14.7, I would have expected the provision to say so, but there is no such provision. Indeed, there is no time period identified in clause 14 within which any disputed item(s) should be notified to Geoquip.

111. In addition, I accept Mr Phillips QC's submission that the role of clause 14.7 is concerned with the mechanics of billing, rather than with the imposition of charges for which there is no independent contractual entitlement. That said, a dispute as to an item listed in an invoice might well extend to items which are not properly chargeable in accordance with the terms of the Contract. Accordingly, I am not certain how far this last consideration goes.

112. Finally, clause 14.8 expressly provides that "*Neither the presentation nor payment or non-payment of an individual invoice shall constitute a settlement of a dispute, an accord and satisfaction, a remedy of account stated, or otherwise waive or affect the rights of the parties hereunder*". It seems to me that the mere provision of an invoice, which is not disputed, will not lead to a waiver of the recipient's right to object to the validity or legitimacy of the invoice at a later date.

113. For these reasons, in my judgment, Geoquip is not entitled to Standby Costs pursuant to the terms of the Contract.

Issue (3): The claim for the Standby Costs by reason of estoppel by convention

The parties' submissions

114. Ms Dias QC on behalf of Geoquip submitted that Tower Cameroon is estopped from disputing its liability to pay Standby Costs by reason of a shared common assumption between the parties, or an assumption held by Geoquip in which Tower Cameroon acquiesced, for the following reasons:

(1) Throughout January and February 2020, Tower Cameroon represented to the Cameroon authorities, including the President and Prime Minister, and to the British High Commissioner that the Vessel was incurring Standby Costs by reason of the delay and that this was a cost which in the first instance must be borne by Tower Cameroon. This evidences the assumption which Tower Cameroon made at the relevant time. Moreover, Tower Cameroon's assumption in this respect is reflected in the minutes of Tower plc's board meeting dated 22nd January 2020.

(2) Tower Cameroon also acknowledged that this was its assumption in its dealings with Geoquip, in particular in correspondence and in Tower Cameroon's signature of Daily Operation Reports and the submitted Weekly Client Project Reports. The Daily Operation Reports identified the standby time and marked the entry with the code "*STB*". Tower Cameroon did not dispute the Daily Operation Reports as required by clause 10.2(b) of Section II of the Contract.

(3) Tower Cameroon expressly acknowledged in the preamble to the Extension Contract that Standby Costs had accrued under the Contract (for which it would be liable) and by virtue of that acknowledgement and/or its conduct is now estopped from alleging otherwise.

(4) At no point of time did Tower Cameroon suggest to Geoquip that standby charges were not accruing or dispute any invoices issued by Geoquip in respect of Standby Costs.

(5) Geoquip would not have agreed to extend the Contract unless Tower Cameroon acknowledged that it was liable to pay for the Vessel's idle time. In that event, Geoquip would have undertaken work for another client.

(6) It is no answer to Geoquip's case on estoppel by convention that Geoquip is relying on the estoppel to create a right where none otherwise existed, because there are provisions in the Contract dealing with Standby Costs and the estoppel relied on prevents Tower Cameroon from disputing that the reasons for the Vessel's delay at Douala fall within the scope of contractual provisions dealing with Standby Costs.

115. Mr Phillips QC on behalf of the Defendants submitted that there was no such estoppel by convention:

(1) As a matter of general principle, an estoppel cannot be relied on to create contractual rights where no such rights existed. Given that the Contract made no provision for Standby Costs by reason of the delay in obtaining the licence extension and the relevant permits, an estoppel cannot be relied on.

(2) There was no common assumption shared by or acquiesced in by Tower Cameroon. Mr Asher's evidence was that he gave no real thought to whether standby charges were payable and regarded this as a matter to be resolved at a later date.

(3) No unequivocal communication crossed the line.

(4) Geoquip's reliance on the Daily Operation Reports signed on behalf of Tower Cameroon provide no support for the alleged estoppel, because all the Daily Operation Reports did was to record the activity carried out by the Vessel and the time period associated with that activity. This was all that was required in the Daily Operation Reports in section 8.2 of Section IV of the Contract. Clause 10.2(b) of Section II of the Contract made provision only for disputing the time taken for the relevant activity.

(5) Geoquip did not determine its dealings with Tower Cameroon in reliance upon any common assumption. This is because Geoquip had decided to stay in Cameroon irrespective of whether Tower Cameroon paid the Standby Charges, as evident from Geoquip's internal email exchange on 14th January 2020. Moreover, Geoquip did not want to lose this profitable contract and gave an ultimatum to Tower Cameroon that it would have to leave by the end of January 2020 to meet alternative employment.

(6) The date by which Geoquip said that the Vessel would have to leave Cameroon unless the permits were obtained - 31st January 2020 - undermined the suggestion that the Vessel was being left in Cameroon in reliance upon a shared assumption as to Tower Cameroon's liability to pay Standby Costs.

(7) There is no evidence of future employment opportunities for the Vessel.

The law of estoppel by convention

116. The parties were largely agreed as to the requirements for an estoppel by convention. There are in fact two species of estoppel by convention, one based on a shared common assumption and the other based on an assumption held by one party in which the other party acquiesces. These two types of estoppel by convention were outlined in *Republic of India v India Steamship Co Ltd (The Indian Endurance and The Indian Grace) (No 2)* [1998] AC 878, Lord Steyn said at page 913:

> "*It is settled that an estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by them both or made by one and acquiesced in by the other. The effect of an estoppel by convention is to preclude a party from denying the assumed facts or law if it would be unjust to allow him to go back on the assumption … It is not enough that each of the two parties acts on an assumption not communicated to the other. But it was rightly accepted by counsel for both parties that a concluded agreement is not a requirement for an estoppel by convention*."

117. In *ABN AMRO NV v Royal & Sun Alliance Insurance plc* [2021] EWCA Civ 1789, Sir Geoffrey Vos, MR confirmed this and said (at para. 78) that:

> "*As is clear from the seminal speech of Lord Steyn in Republic of India … an estoppel by convention can arise* ***either*** *where parties to a transaction act on a shared assumed state of facts or law* ***or*** *where one party to a transaction has made an assumption as to the state of facts or law and the other party acquiesces in that assumption*."

118. The principles underlining an estoppel by convention, especially of the first type (a shared assumption), have been the subject of a number of important decisions. In *Revenue and Customs Commissioners v Benchdollar Ltd* [2009] EWHC 1310 (Ch); [2010] 1 All ER 174, Briggs, J set out the principles underlining an estoppel by convention, having regard principally to a shared common assumption, rather than one arising from acquiescence, at para. 52:

> "*52. In my judgment, the principles applicable to the assertion of an estoppel by convention arising out of non-contractual dealings, to be derived from Keen v. Holland, and the cases which comment upon it, are as follows: (i) It is not enough that the common assumption upon which the estoppel is based is merely understood by the parties in the same way. It must be expressly shared between them. (ii) The expression of the common assumption by the party alleged to be estopped must be such that he may properly be said to have assumed some element of responsibility for it, in the sense of conveying to the other party an understanding that he expected the other party to rely upon it. (iii) The person alleging the estoppel must in fact have relied upon the common assumption, to a sufficient extent, rather than merely upon his own independent view of the matter. (iv) That reliance must have occurred in connection with some subsequent mutual dealing between the parties. (v) Some detriment must thereby have been suffered by the person alleging the estoppel, or benefit thereby have been conferred upon*

the person alleged to be estopped, sufficient to make it unjust or unconscionable for the latter to assert the true legal (or factual) position."

119. Subsequently, in *Stena Line Ltd v Merchant Navy Ratings Pension Fund Trustees Ltd* [2010] EWHC 1805 (Ch); [2010] Pens LR 411, at para. 137, Briggs, J amended the first of the requirements of an estoppel by convention stated in para. 52 of *Revenue and Customs Commissioners v Benchdollar Ltd* to include the statement that "*the crossing of the line between the parties may consist either of words, or conduct from which the necessary sharing can properly be inferred*". A similar modification to the statement of principle was approved by the Court of Appeal in *Blindley Heath Investments Ltd v Bass* [2015] EWCA Civ 1023; [2017] Ch 389, at para. 92, where the Court said that "*we do not think there must be expression of accord: agreement to the assumption (rather than merely a coincidence of view, with both proceeding independently on the same false assumption) may be inferred from conduct, or even silence … However, something must be shown to have "crossed the line" sufficient to manifest an assent to the assumption*".

120. This statement of principle, as amended, was approved by the Supreme Court in *Tinkler v Commissioners for Her Majesty's Revenue and Customs* [2021] UKSC 39, where Lord Burrows said at para. 51-53:

"*51. It may be helpful if I explain in my own words the important ideas that lie behind the first three principles of Benchdollar. Those ideas are as follows. The person raising the estoppel (who I shall refer to as "C") must know that the person against whom the estoppel is raised (who I shall refer to as "D") shares the common assumption and must be strengthened, or influenced, in its reliance on that common assumption by that knowledge; and D must (objectively) intend, or expect, that that will be the effect on C of its conduct crossing the line so that one can say that D has assumed some element of responsibility for C's reliance on the common assumption.*

52. It will be apparent from that explanation of the ideas underpinning the first three Benchdollar principles that C must rely to some extent on D's affirmation of the common assumption and D must (objectively) intend or expect that reliance. This is in line with the paragraph from Spencer Bower, The Law Relating to Estoppel by Representation, 4th ed (2004) p 189, which was cited by Briggs J just before his statement of principles:

> *"In the context of estoppel by convention, the question here is whether the party estopped actually (or as reasonably understood by the estoppel raiser) intended the estoppel raiser to rely on the subscription of the party estopped to their common view (as opposed to each, keeping his own counsel, being responsible for his own view)."*

For a similar statement, using the same wording of C's reliance on "the subscription" of D to the common assumption, see the present edition of that work, Spencer Bower: Reliance-Based Estoppel, 5th ed (2017), para 8.26. But this is not to suggest that C must be relying solely on D's affirmation of, or subscription to, the common assumption as opposed to C relying on its own mistaken assumption. It is sufficient that, as D intended or expected, D's

> *affirmation of, or subscription to, the common assumption strengthened, or influenced, C in thereafter relying on the common assumption.*
>
> *53. As I have already said, both counsel submitted that the Benchdollar principles, subject to the Blindley Heath amendment to the first principle, applied in this case. I agree. This judgment therefore affirms that those principles, as amended by Blindley Heath, are a correct statement of the law on estoppel by convention in the context of non-contractual dealings. What I have also sought to do is to explain the ideas underpinning the first three principles which may provide assistance in the understanding and application of those principles*."

121. It is also worth observing that the cases which Lord Burrows was considering in *Tinkler v Commissioners for Her Majesty's Revenue and Customs* and Briggs, J was considering in *Revenue and Customs Commissioners v Benchdollar Ltd* were non-contractual cases and dealings. However, Lord Burrows said at para. 78:

> "*… While it is possible that there may be some differences required by the relevant contractual or non-contractual context …, it would appear that the Benchdollar principles are being viewed as general principles applicable to estoppel by convention. It is significant in this respect, that the present edition of Spencer Bower: Reliance-Based Estoppel, 5th ed (2017), chapter 8, centres its whole analysis of estoppel by convention on the Benchdollar principles. Although it is unnecessary to decide this in this case - and we heard no submissions on it - there appears to be no good reason to confine them to non-contractual dealings. In my view, the five Benchdollar principles, with the Blindley Heath amendment to the first principle, comprise a correct statement of the law on estoppel by convention for contractual, as well as non-contractual, dealings*."

122. There is one issue which was not discussed, at least not expressly, in the recent decisions explaining the doctrine of estoppel by convention, namely whether there is a requirement that the relevant assumption must be clear or unambiguous, in the same way that an estoppel by representation or a promissory estoppel requires such unambiguity. At first blush, it would be difficult to justify the lack of any such requirement in the context of an estoppel by convention, because the very nature of an estoppel in connection with contractual dealings is to allow one contracting party to enforce or defend claims in circumstances not catered for by the contract agreed between them and to give effect to non-contractual statements or assumptions which lack the backing of consideration. If therefore there were to be an extra-contractual assumption, just as with a representation or promise, which can benefit or prejudice the parties, it should be one which is clearly expressed and not subject to any doubt. Indeed, it is difficult to understand how the parties could have shared an assumption or assumed a responsibility for it without clarity in the assumption itself.

123. In *SmithKline Beecham plc and others v Apotex Europe Ltd* [2006] EWCA Civ 658; [2007] Ch 71, Jacob, LJ said at para. 102, both with respect to estoppel by convention and estoppel by representation: "*It was not disputed that for either kind of estoppel, the representation or common assumption as the case may be, must be unambiguous and unequivocal. That is inherent in the very nature of an estoppel*". However, this appears at least superficially to be at odds with the decision of Carnwath, LJ in *ING Bank NV v*

Ros Rosa SA [2011] EWCA Civ 353, [2012] 1 WLR 472, at para. 63 and 64(ii), who had approved the earlier comments of Sir John Arnold, P in *Troop v Gibson* [1986] 1 EGLR 1.

124. This possible conflict of opinion was addressed by Picken, J in *Aras v National Bank of Greece SA* [2018] EWHC 1389 (Comm), at para. 114-115 (see also *First National Trustco (UK) Ltd v Page* [2019] EWHC 1187 (Ch), para. 104):

> "*114. In order to found an estoppel (whether by convention or by representation), Mr Parker submitted, relying upon what Jacob LJ had to say in SmithKline Beecham plc v Apotex Europe Ltd [2007] Ch 71 at [102], that the assumption (in the case of the former) or the representation (in the case of the latter) must be "unambiguous and unequivocal" since that "is inherent in the very nature of an estoppel". Mr Parker submitted that this requirement stands notwithstanding that in ING Bank NV v Ros Rosa SA [2011] EWCA Civ 353, [2012] 1 WLR 472, when considering a submission to the effect that the shared common assumption must be sufficiently certain, Carnwath LJ (as he then was) described there being a qualification as far as estoppel by convention is concerned. Specifically, explaining that the submission under consideration arose out of a passage in the judgment of Ralph Gibson LJ in Troop v Gibson [1986] 1 EGLR 1 at page 6D-F, Carnwath LJ stated as follows at [64(ii)]:*
>
> > *"… With respect, I find more persuasive the way in which the point was expressed in the leading judgment of Sir John Arnold P. After referring to the extensive argument on the need for a 'representation' to be clear and unequivocal to found an estoppel, he said that the same question did not arise in relation to estoppel by convention:*
> >
> > > *'Since this is of a consensual character and the terms of the convention, just as those of a contract once the language is established by the evidence, must be interpreted by the court and the only true meaning is that decided upon by the court.' …".*
>
> *115. Mr Parker submitted that this apparent conflict between two decisions of the Court of Appeal (three, if Troop is itself included) ought to be resolved by the Court favouring SmithKline Beecham, an authority which it appears was not cited to the Court of Appeal in ING Bank. His submission was that the analogy with a contract favoured by Sir John Arnold P in Troop (and approved by Carnwath LJ in ING Bank) is inapposite in an estoppel by convention case where the inquiry is as to the parties' conduct (or assumption) rather than as to what the language used in a contract means. Whether there is, indeed, a conflict, however, as suggested by Mr Parker is something about which I am not convinced since it seems to me that, in truth, what is required (consistent with all three authorities) is that there is clarity over what comprises the common assumption (if there is such a common assumption) as determined by the Court and not by the parties. If there is no such clarity, then, there will be no relevant convention and so no operable estoppel. In any event, as Mr Valentin acknowledged, the present case is not a case which turns on such subtleties.*"

125. If it were the case that the assumption giving rise to an estoppel by convention were only a matter of interpretation, no matter how vaguely or ambiguously the assumption was expressed, that would be to elevate any supposed understanding to an enforceable commitment perhaps at odds with the parties' own contract. The requirement of clarity or unambiguity is important not only for the purposes of identifying and describing the relevant assumption, but also to ensure that the parties' expressed contractual intention should not be lightly dislodged (see *Baird Textiles Holdings Ltd v Marks & Spencer plc* [2001] EWCA Civ 274; [2002] 1 All ER (Comm) 737, para. 30 and 38). Indeed, the high evidential standard required to establish a right to rectification of a contract by reference to an earlier outward show of an agreement or an accord is consistent with this approach.

126. It follows that in order to establish an estoppel by convention, it must be proved by the person asserting the estoppel that:

(1) There must have been an assumption of fact or law made by and shared between both parties (a shared or common assumption) or an assumption made by one party and acquiesced in by the other.

(2) The assumption must be clear in its meaning, in its scope and in its impact on the legal relationship between the parties.

(3) Something - whether words spoken or in writing or conduct - must have crossed the line between the parties which manifested an assent to the assumption.

(4) The person alleging the estoppel must in fact have relied upon the common assumption, to a sufficient extent, rather than merely upon his or her own independent view of the matter. However, that reliance need not be exclusive in that the assumption may have strengthened or influenced the party raising the estoppel in his or her reliance. Reliance must be established by the evidence. I do not consider that it is inevitable that there will be such reliance (*cf. Mears Ltd v Shoreline Housing Partnership Ltd* [2015] EWHC 1396 (TCC), para. 51(d)).

(5) That reliance must have occurred in connection with some subsequent mutual dealing between the parties.

(6) It must be unjust or unconscionable for the person alleged to be estopped to be permitted to resile from the assumption and to assert a legal or factual position contrary to that assumed. Such injustice or unconscionability is generally manifested by detrimental reliance by the person raising the estoppel or the accrual of a benefit by reason of the assumption by the person alleged to be estopped.

(7) The expression of the assumption by the party alleged to be estopped must be such that he or she may properly be said to have assumed some element of responsibility for it, in the sense of conveying to the other party an understanding that he or she objectively expected or intended the other party to rely upon it.

127. There is a further question: can an estoppel by convention be used to create a cause of action where none otherwise existed? In *Baird Textiles Holdings Ltd v Marks & Spencer plc* [2001] EWCA Civ 274; [2002] 1 All ER (Comm) 737, at para. 34 and 88, Mance, LJ held that an estoppel by convention cannot create a cause of action, and said (at para. 88):

> "*How far an estoppel may assist in bringing about a cause of action, without standing alone as 'a cause of action in itself', has remained a matter of dispute over subsequent years. It may enlarge the effect of an agreement, by binding parties to an interpretation which would not otherwise be correct: see e.g. De Tchihatchef v Salerni Coupling Ltd [1932] 1 Ch 330; The Karen Oltmann [1976] 2 Ll Rep 708; and per Robert Goff J in Amalgamated Investment at p. 106A. In the Amalgamated Investment case itself, Lord Denning MR and, on the view I would prefer, Brandon LJ held that both the company and the bank were bound by their Conventional treatment of the company's guarantee of its subsidiary's indebtedness to the bank as extending to such subsidiary's indebtedness to the bank's subsidiary ('Portsoken'), thus entitling the bank to set up sums due under the guarantee, read in this extended sense, against the obligation that it otherwise had to account to the company for realisations which it had made*."

128. In *Tinkler v Commissioners for Her Majesty's Revenue and Customs*, Lord Burrows commented on this limitation of an estoppel by convention at para. 74-76, but did so without the assistance of submissions by counsel:

> "*74. I have considered whether this submission about the scope of estoppel by convention relates to the question whether estoppel by convention can create a cause of action (acting as a "sword") or, in contrast, can operate only as a defence (acting as a "shield"). In Amalgamated Investment Brandon LJ examined this question in the context of estoppel by convention and said, at pp 131-132:*
>
> > *"while a party cannot in terms found a cause of action on an estoppel, he may, as a result of being able to rely on an estoppel, succeed on a cause of action on which, without being able to rely on that estoppel, he would necessarily have failed. That, in my view, is, in substance, the situation of the bank in the present case."*
>
> *75. As a general proposition about the law on estoppel, Brandon LJ's comment is too sweeping because it is clear that while, for example, promissory estoppel cannot create a cause of action (Combe v Combe [1951] 2 KB 215, Baird Textiles Holdings Ltd v Marks & Spencer plc [2002] 1 All ER (Comm) 737), proprietary estoppel can (Crabb v Arun District Council [1976] Ch 179).*
>
> *76. The particular concern about allowing promissory estoppel and estoppel by convention to create a cause of action is that this might undermine the requirement of consideration for the validity of a contract. However, that concern is not relevant to the facts of this case which do not concern contractual dealings. In any event, in the context with which we are concerned, even if one were to insist that the estoppel by convention can support, but must not create, a cause of action in relation to the mutual dealings between HMRC and a taxpayer, it would*

> *appear that that restriction is satisfied. The underlying duty to pay tax is imposed by statute and the estoppel relates merely to the dealings between HMRC and the taxpayer in connection with the procedure by which HMRC determine the correct amount of tax to be paid under the statute*."

129. There is no doubt about the ability to raise an estoppel to defend or defeat a cause of action. However, the role of an estoppel - and in particular an estoppel by convention - to establish or create a cause of action is more difficult. As explained by the Court above in earlier cases, an estoppel may be used to allow the enforcement of a contractual obligation even though, without the estoppel, the contractual obligation would not be enforceable. For example, if a contract on its true construction required a particular document to be delivered by a particular date, but the parties conducted themselves on the basis of a convention or assumption that the document had to be delivered by an earlier date, the fact that the document was delivered after the earlier date but before the date set by the contract on its true construction, may give rise to a claim for a breach of contract, with the assistance of an estoppel by convention. By contrast, where there was in fact no contract at all between the parties, the estoppel could not be used to establish a breach of contract. The dividing line between these two examples sets the boundary between the proverbial sword and shield.

Analysis

130. In this case, it is plain that Mr Harmon and Geoquip assumed that standby charges were being incurred for Tower Cameroon's account (transcript, day 2, pages 142 and 161-162; day 3, page 12). This is evident for example in Mr Harmon's oral evidence and his email to his colleague, Mr Hanse, on 14th January 2020 where he refers to Tower Cameroon's accumulating costs for standby, although he expresses "*severe doubts*" that this extra cost may result in Tower Cameroon being unable to pay all that was due under the Contract.

131. Mr Asher's understanding appears to have been more uncertain and it seems to me not marching in time with that of Mr Harmon.

132. On 19th December 2019 and 9th January 2020, Mr Asher sent separate emails to the Prime Minister, SNH and to the President of Cameroon, saying that there was a cost of keeping the Vessel idle, without expressly saying who bore that cost. Mr Dairou on behalf of Tower Cameroon sent similar correspondence. However, by 16th January 2020 and again on 30th January 2020, Mr Asher was informing the British High Commissioner and the Minister respectively that Tower Cameroon was incurring Standby Costs. These could be explained, as Mr Asher did, as comments made to encourage the Cameroon government to expedite the permits required for the Vessel to carry out the Contract work.

133. The position stated in the minutes of Tower plc's board meeting on 22nd January 2020 are in a different category, but they are not clear that Tower Cameroon accepted responsibility for the Standby Costs. The minutes consider how such costs might be recouped.

134. Mr Asher's written comments to Mr Harmon in connection with Standby Costs were often reactive to Mr Harmon's assertions and either took Mr Harmon's statements on

faith or sought to defer discussion of the Standby Cost invoices, but in either case without committing to them. Indeed, Mr Asher's comments in reply to Mr Harmon could be described as non-committal. For example, on 9th January 2020, Mr Harmon wrote to Mr Asher stating that Tower Cameroon "*as of yesterday afternoon are now incurring costs for the MV Investigator sitting alongside which is of course in no one's interest to happen* …". Mr Asher replied that there was no sense in incurring unnecessary Standby Costs, without expressly accepting that they were for Tower Cameroon's account. Similarly, on 14th January, in response to Mr Harmon attaching a "*WCPR 02 so as to keep you well informed with the charges being incurred by Tower Resources whilst the Investigator remains awaiting BIR attendance, which is currently the only item preventing her departure to the project site*", Mr Asher said "*I am acutely aware!*". There was no express acceptance of any responsibility on the part of Tower Cameroon for Standby Costs.

135. During his oral evidence, Mr Harmon appeared to accept that there were no clear statements by Mr Asher accepting responsibility for Standby Costs.

(1) During his evidence, by reference to paragraph 47 of his witness statement, Mr Harmon accepted that there were limited, if any, occasions in which Mr Asher accepted that Tower Cameroon was responsible for Standby Costs (transcript, day 3, pages 2-3):

> "*Q. It's not correct, is it, that there were numerous occasions on which Mr Asher accepted that standby charges were payable by Tower Resources?*
>
> *A. Not in email correspondence, no.*
>
> *Q. So why did you write that sentence?*
>
> *A. I believe that I was probably referring to actual oral correspondence as well over the telephone, as detailed 2 also within the statement. We got telephone calls on 15th, 22nd and also 24 January, where myself and Mr Asher corresponded regarding the standby charges and this is sort of all related to when we were talking about the extension agreement.*
>
> *Q. What you're saying in paragraph 47 is that there were numerous occasions in email correspondence that Mr Asher accepted that and that's not right, is it?*
>
> *A. No, I accept that's not completely correct, in hindsight*."

(2) Later, during his oral evidence, Mr Harmon accepted that by 14th January 2020, when he was corresponding with Mr Hanse, Mr Asher had not by then accepted that Tower Cameroon was responsible for Standby Costs (transcript, day 3, pages 9-10) and again, by reference to para. 42 of Mr Asher's witness statement:

> "*Just pausing there. That's consistent with what he told you in these telephone conversations, isn't it?*
>
> *A. He didn't say that he didn't believe they were due at all.*

Q. But as you've already told us, he didn't say that -- that Tower were accepting that they were due. He never said that, did he?

A. Not directly

Q. He never said it, did he, Mr Harmon?

A. No."

(3) On 22nd January 2020, Mr Harmon had proposed to Mr Asher that there ought to be an extension of the Contract agreed. During his evidence, Mr Harmon stated that:

Q. And that was the main concern on your part at this point, that the contract had actually come to an end; is that right?

A. Absolutely, yes.

Q. Because you'd received no assurance from Tower that the, at this point, standby charges were going to be paid, had you?

A. No.

Q. You never received such an assurance from Tower, did you, Mr Harmon?

A. You believe in the signing of this contract extension it gave us a level of assurance that Tower Resources were at least aligned with Geoquip on where we stood at the project to date.

Q. The level of assurance that you're talking about is an assurance that your own interpretation of the contract was correct; that's what you were talking about, isn't it?

A. Yes, it has to be of Geoquip's interpretation of the contract, yes, of course."

(4) Towards the end of his evidence, Mr Harmon said further as follows (transcript, day 3, page 69):

"*Q. … I want to ask you this, please: throughout January 2020 -- in fact, at all stages, you and everybody else within Geoquip believed that Tower was liable under the contract that you'd signed for standby charges, correct?*

A. Correct.

Q. You were never told by Mr Asher, were you, that Geoquip was entitled to levy those charges under the contract?

> *A. Other than the points I've already directed you to, not a direct email stating those exact words, no*."

136. However, on 15th January 2020, there was a telephone conversation between Mr Asher and Mr Harmon, during which Mr Asher is said to have confirmed that Tower Cameroon would pay the Standby Costs. This conversation was reported that day to Mr Higginson of Geoquip by Mr Harmon in an email. During his oral evidence, Mr Harmon reiterated that such a conversation had taken place (transcript, day 3, pages 35-36). However, Mr Harmon also accepted that Mr Asher said it would be helpful to have the Standby Costs invoices to help persuade the Cameroon authorities to grant the requisite permits and that Mr Asher was seeking to negotiate on Standby Costs. Indeed, this became apparent in the written correspondence. On 24th January 2020, Mr Asher queried the Standby Charges invoices and asked if a discount could be possible. This request was made more than once.

137. Later in his evidence, Mr Harmon said in response to Mr Asher's witness statement, at paragraph 42, in relation to this telephone conversation (transcript, day 3, pages 37-38):

> "*Q. And Mr Asher goes on to say: "Whilst I did not wish to treat Geoquip's views disrespectfully, I did not believe that standby hire should be due under the contract because we had agreed lump sums for mobilisation, the field work and the demobilisation and the structure of the agreement had been that mobilisation could not take place until everything was ready for the survey to take place." Just pausing there. That's consistent with what he told you in these telephone conversations, isn't it?*
>
> *A. He didn't say that he didn't believe they were due at all.*
>
> *Q. But as you've already told us, he didn't say that -- that Tower were accepting that they were due. He never said that, did he?*
>
> *A. Not directly.*
>
> *Q. He never said it, did he, Mr Harmon?*
>
> *A. No*."

138. Mr Asher's evidence was more prolix in this respect, but he made it clear that Tower Cameroon had a number of issues to contend with in January 2020 and his objective was not to commit to Standby Costs at that stage (transcript, day 3, pages 169-171). He said during his evidence that "*What I knew at the time was they were wanting to charge for standby, that's clear, and that they thought they were entitled to charge for standby, though I wasn't quite sure why and they wanted me to accept liability for it but it was premature for me to even really think about that and my main concern at the time was solving the problem and minimising whatever might need to be sorted out. And that was what I was concerned about*."

139. Having regard to this evidence, I am not satisfied that there was a relevant common assumption shared between Geoquip and Tower Cameroon or made by Geoquip and acquiesced in by Tower Cameroon that Standby Costs were payable by Tower

Cameroon under the Contract or that Tower Cameroon assumed responsibility for the assumption, and thereby the Standby Costs, for the following reasons.

140. First, the email correspondence represented assertions by Mr Harmon that Standby Costs were due by Tower Cameroon. Mr Asher never responded clearly accepting that that was the case. There is no explicit statement by Mr Asher in written correspondence with Geoquip that Tower Cameroon accepted that the Standby Charges were for Tower Cameroon's account.

141. Second, Mr Harmon's evidence indicated that there was nothing in the written correspondence with Tower Cameroon which supported such an unequivocal acceptance that Tower Cameroon was responsible for the Standby Costs. There was however his evidence of a telephone conversation on 14th January 2020, which is corroborated by his email report to Mr Higginson. Nevertheless, his evidence concerned only one side of the conversation. Moreover, during his oral evidence, Mr Harmon was less than certain in this respect. At one point, as quoted above, he accepted that Mr Asher made no statement during the telephone conversation in this respect.

142. Third, Mr Asher's position was more fluid in that he was concerned to obtain the permits the Vessel needed, and using the Standby Costs as a reason to encourage the Cameroon authorities to provide the permits. That explains the stance taken by Tower plc through Mr Asher in correspondence with the Cameroon authorities and the British High Commissioner. At the same time, Mr Asher sought to defer the issue of Standby Costs until after the Vessel was permitted to proceed to the Work Site. Mr Asher's evidence was that he "*did not believe that "standby hire" should be due under the contract because we had agreed lump sums for mobilization, the field work, and the demobilization, and the structure of the agreement had been that mobilization could not take place until everything was ready for the survey to take place. However, as previously explained, my priority was to resolve the operational issue, and I felt that any contractual questions such as "standby hire" could and should be resolved later when the operational problem was resolved*" (paragraph 42 of his witness statement).

143. Fourth, the signature of the Daily Operation Reports was no more than a record of time as envisaged in clause 10.2(b) of Section II of the Contract. Furthermore, clause 8.2 of the TCP envisaged that the Daily Operation Reports represented statements of facts. The words "*standby*" and "standby client" were used in these reports, but I do not consider that they constituted a clear acceptance that Standby Costs were legally payable by Tower Cameroon. They are a report produced by Geoquip and signed on behalf of Tower Cameroon as required by the Contract.

144. Fifth, the record of standby hours in the Extension Contract was nothing more than that. There was no provision whereby Tower Cameroon accepted legal responsibility for those charges.

145. In these circumstances, I do not consider that Geoquip can make good its case on estoppel by convention. Moreover, if necessary, I would not have found that there was evidence of detrimental reliance by reason of Geoquip entering into the Extension Contract. This is especially so where Geoquip had understood the risk that it might not be paid the Standby Charges (see the email exchange between Mr Harmon and Mr Hanse on 14th January 2020) and where there was no specific or concrete evidence

about future prospects of employment which had been forgone by reason of the Extension Contract. Indeed, the Extension Contract represented an opportunity to Geoquip to earn its fee from its services in circumstances where the Contract would have expired without the extension. Indeed, it was Geoquip who proposed the Extension Contract and who had said that it could wait until 31st January 2020 before the Vessel had to leave for future employment. Mr Harmon seemed to accept during his evidence that nothing Mr Asher had said caused Geoquip not to look for other work for the Vessel (transcript, day 3, pages 68-69).

146. As to Mr Phillips QC's point that the proposed estoppel by convention was being used to create a cause of action and so was not permissible in principle, this is a more difficult issue to contend with. Absent the estoppel, on my finding, no Standby Costs were due. The difficulty in establishing the estoppel was the fact that the relevant alleged assumption was in general terms about Standby Costs being due under the Contract without identifying the particular basis on which such Standby Costs were due by reference to a particular provision in the Contract. If the assumption had been, for example, that "*facilities*" in clause 4.5 of Section II of the Contract included the obtaining of permits, I think that would have been a sufficient and legitimate use of an estoppel by convention. However, the relevant assumption was not so clear, at least not in the correspondence and conversations between Mr Harmon and Mr Asher. I would have been inclined to hold that the estoppel by convention was being used in the present case to create a cause of action where none had existed, but I have no confidence in that inclination.

147. In my judgment, therefore, Geoquip is unable to establish an estoppel by convention binding Tower Cameroon to pay Standby Costs.

Issue (4): Estoppel by contract

148. Ms Dias QC on behalf of Geoquip contended that there is in any event an estoppel by contract by reference to the statements in the recitals to the Extension Contract. In particular, the recitals stated that:

> "- *CONTRACTOR was ready to mobilise the VESSEL and crew within the validity of the CONTRACT, and VESSEL and crew mobilisation took place in the period up to 17:00 on 8th January, 2020; and since that time up to end of 23rd January 2020 VESSEL has accrued 316.75 standby hours in port and 34.75 standby hours at sea, as documented in CONTRACTOR's weekly reports to OPERATOR;*
>
> - *The VESSEL continues to accrue standby hours since 23rd January 2020, and OPERATOR and CONTRACTOR wish to confirm the continuation and extension of the contract to cover the longer duration of the operations.*

149. Mr Phillips QC on behalf of the Defendants submitted that no such estoppel can exist insofar as the recitals venture beyond a statement of fact. These recitals record no more than a statement of facts and of themselves are incapable of estopping Tower Cameroon from denying that it is legally responsible for Standby Costs.

150. I accept the Defendants' submissions in this respect. In *Raiffeisen Zentralbank Österreich AG v Royal Bank of Scotland plc* [2010] EWHC 1392 (Comm); [2011] 1 Lloyd's Rep 123, Christopher Clarke, J said at para. 230 and 250:

> *230. Parties to a contract may agree that a particular state of affairs is to be the basis upon which they are contracting, regardless of whether or not that state of affairs is true. A line of authority establishes that such an agreement may give rise to a contractual estoppel, precluding the assertion of facts inconsistent with those that have been agreed to form the basis of the contract …*
>
> *250. The authorities to which I have referred, other than Lowe v Lombank [1960] 1 WLR 196, show that parties can agree that their dealings shall be conducted on a particular basis of fact (including as to what has or has not occurred) even if the true facts are different and that, if they do, a contractual estoppel will arise. It is not easy to reconcile that position with the apparently absolute statement in Lowe v Lombank that a statement as to past facts known to be untrue cannot be converted into a contractual obligation and is not a contractual promise. If Lowe v Lombank means that an agreement that something has not happened is incapable of being a contractual obligation or promise, and is no more than a representation, which is ineffective unless the three Lowe v Lombank conditions have been fulfilled, then it cannot found a contractual estoppel*."

151. Christopher Clarke, J said he was not bound by the decision in *Lowe v Lombank.*

152. Consistently with this, Lewison, *The Interpretation of Contracts,* (7th ed., 2020), para. 10.66 stated the position as follows:

> "*An estoppel will only arise where the recital recites a statement of present fact. It will not arise where the recital purports to state the legal effect of the document. In CP Holdings Ltd v Dugdale, Park J said:*
>
> > *"X and Y enter into an agreement: 'Whereas we believe that the effect of the new agreement will be MNO, we now agree as follows.' X later wants to argue that the effect of the new agreement on its true construction is not MNO, but is PQR instead. He is not estopped from doing so. He may have an uphill struggle in his arguments on construction, but he is not estopped from putting them forward. In a case like that it is rectification or nothing."*
>
> *This is a reflection of the principle that although the parties are free to contract in whatever terms they please, the legal effect of what they have agreed is a question of law for the court*."

153. The recitals to the Extension Contract record the standby hours recorded and to be incurred by the Vessel. There is no statement as to the legal responsibility for those standby hours. Even if there were, the question would arise not whether there was an estoppel, but whether the Extension Contract as a matter of construction imposed a legal liability on Tower Cameroon for such Standby Costs. There is no such provision.

154. In my judgment, the Extension Contract does not create an estoppel by contract which assists Geoquip in recovering the Standby Costs.

Issue (5): Tower plc's liability as guarantor

155. The rule in *Holme v Brunskill* (1878) 3 QBD 495 is that if there is a material variation of the terms of the contract between the creditor and the debtor, any contract of guarantee between the creditor and the guarantor will be discharged, unless the guarantor consented to the variation (see *Chitty on Contracts*, (34th ed., 2021), para. 47-108, 47-116).

156. The question in this case is whether the agreement of the Extension Contract, to which Tower plc as guarantor was not named as a party, operated to discharge Tower plc as a guarantor.

157. Ms Dias QC submitted on behalf of Geoquip that Mr Asher is avowedly the authorised representative of both Tower Cameroon and Tower plc, and in circumstances where neither party intended to vary the Contract other than as set out in the Extension Contract, Mr Asher consented to the Extension Contract on behalf of Tower plc and that the Extension did not, on its true construction, abrogate Tower plc's obligation to guarantee Tower Cameroon's liabilities.

158. Mr Phillips QC submitted that Tower Cameroon and Tower plc are separate legal entities and therefore the mere fact that there are common directorships between the two companies does not mean that Tower plc agreed to the Extension Contract.

159. Based on my findings above, this issue arises in connection with Geoquip's entitlement for the outstanding balance of the lumpsums due under the Contract, and not in respect of Standby Costs. Of course, if I had come to a different conclusion on Standby Costs, this issue would have been relevant to that item of claim as well.

160. In my judgment, Tower plc's obligation as guarantor has not been discharged by the Extension Contract for the following reasons.

161. First, Mr Asher's role as chairman and/or CEO of both companies - Tower Cameroon and Tower plc - indicates that he was intimately familiar with the operations of both companies, and that the activities of both companies were closely connected, Tower plc operating its business through its subsidiaries (transcript, day 3, pages 82-83), although he did say during his evidence that he was not operating Tower Cameroon day to day (that was Mr Dairou's responsibility (transcript, day 3, page 84)).

162. Accordingly, as Mr Asher signed the Contract on behalf of both Tower Cameroon and Tower plc and signed the Extension Contract on behalf of Tower Cameroon, it seems likely that Tower plc - through Mr Asher - was approving the extension. Indeed, Mr Asher wrote to the Minister on 30th January 2020 in his capacity of chairman of Tower plc, updating the Minister and the British High Commissioner about the Vessel.

163. Second, clause 28.6 of Section II of the Contract provided that "*... No amendments to the CONTRACT shall be effective unless evidenced in writing and signed by the parties to the CONTRACT*". This provision means that either the Extension Contract is not effective, because it is not signed by Tower plc (being one of the parties to the Contract), or the Extension Contract is effective because Tower plc by this provision allowed the principal parties - Tower Cameroon and Geoquip - to amend the Contract in accordance with this provision. There is no suggestion that the Extension Contract is not valid and

therefore it seems likely that by this provision Tower plc agreed to the variation effected by the Extension Contract.

164. It would have been remarkable had Tower plc been able to avoid its obligations as guarantor in circumstances where it had signed a Contract as a party and, through its chairman who was also chairman of Tower Cameroon, was aware of the Extension Contract signed by the same individual (Mr Asher), by the mere happenstance that Tower plc was not a party to the Extension Contract.

165. Therefore, Tower plc remains liable as guarantor.

Conclusion

166. For the reasons explained above, in my judgment,

(1) Geoquip succeeds in its claim for the balance of the lumpsums due under the Contract in the sum of US$610,091.68.

(2) Geoquip's claim for Standby Costs fails.

(3) Tower plc is liable as guarantor for the sums owing by Tower Cameroon to Geoquip. Its liability as guarantor was not discharged by the conclusion of the Extension Contract.

167. I am very grateful to all counsel for their very helpful written and oral submissions.