Neutral Citation Number: [2023] EWCA Civ 304

Case No: **CA-2022-001142**

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
COMMERCIAL COURT (KBD)
PETER MACDONALD EGGERS KC, sitting a Deputy Judge of the High Court
[2022] EWHC 531 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/03/2023

Before:

SIR GEOFFREY VOS, MASTER OF THE ROLLS
LADY JUSTICE KING
and
LADY JUSTICE FALK

Between:

GEOQUIP MARINE OPERATIONS AG	**Claimant/ Appellant**
- and -	
TOWER RESOURCES CAMEROON SA **TOWER RESOURCES PLC**	**Defendants/ Respondents**

Julia Dias KC and Jason Robinson (instructed by **Clyde & Co LLP**) for the **Claimant/Appellant** (Geoquip)

S J Phillips KC and Rebecca Jacobs (instructed by **Richard Slade & Company**) for the **Defendants** (Tower)

Hearing date: 2 March 2023

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JUDGMENT

SIR GEOFFREY VOS, MASTER OF THE ROLLS:

1. Geoquip claimed in this case against Tower[1] under a contract dated 30 October 2019 (the Contract) and on the basis of estoppel. The Contract obliged Geoquip to provide Tower with offshore geotechnical investigation services and a site survey to be carried out off the coast of Cameroon by Geoquip's vessel *Investigator* (the Vessel). Geoquip brought these proceedings to recover an outstanding balance of the contractual lumpsum of US$610,091.68 and standby charges of US$1,619,541.69 in respect of delay allegedly occasioned by Tower's failure to secure a necessary licence extension and to provide security and permits for the Vessel. Mr Peter Macdonald Eggers KC (the judge) gave Geoquip judgment for the lumpsum, but dismissed the claim for the standby charges both under the Contract and on the basis of any estoppel. He made costs orders in favour of Geoquip on the lumpsum claim, and in favour of Tower on the standby claim.

2. Lord Justice Phillips refused Geoquip permission to appeal the detailed findings of the judge as to estoppel and as to costs, but granted it on the ground that the judge had "erred in law" in holding that Geoquip had no contractual right to standby charges under clauses 4.5 and 34 of the Contract. The error of law was said to involve one question of contractual interpretation and one issue as to the law of causation. One might have been forgiven for thinking that the appeal did not involve any challenge to the judge's detailed findings of fact. In reality, however, Tower's respondents' notice contended that the only operative cause of the delay to the Vessel was "the absence of a Presidential decree confirming [Tower's] licence extension", when the judge had found at [109] that the absence of a Presidential decree confirming the licence extension, the absence of permits for the Vessel, and the absence of security for the Vessel were all "equal causes of the delay suffered by the Vessel", a finding on which Geoquip, initially at least, heavily relied.

3. When Geoquip opened its appeal, it took the court to several extracts from the evidence in an attempt to show that the absence of a Presidential decree confirming the licence extension was irrelevant to the delay for which standby charges were claimed. Ms Julia Dias KC, leading counsel for Geoquip, ultimately realised that, if that was her case, she might need to amend her notice of appeal, which she applied to do. She sought to add an alternative ground to the effect that the judge had been wrong not to find that "the only operative or effective cause of any delay was [Tower's] failure to provide security" – or, to put the matter positively, that the judge should have found that the absence of security was the only cause of delay. The problem, I should say at once, with that submission, as Mr SJ Phillips KC, leading counsel for Tower, pointed out, was that it was significantly different from what Geoquip submitted to the judge. We said during the hearing that we would decide the application for permission to amend Geoquip's appellant's notice in our judgments.

4. Against that background, it can be seen that, cutting away the fine detail, Geoquip submitted to us that the cause of the delay was Tower's failure to provide security for the Vessel, and Tower submitted to us that the cause of the delay was the absence of a Presidential decree confirming Tower's licence extension. The intriguing twist in this

[1] I shall not distinguish in this judgment between the first Defendant, which was the main employer, and its parent, the second Defendant, which was the guarantor under the Contract. The matters that are to be decided here do not necessitate a distinction. It is easier simply to refer to "Tower" throughout.

story is that neither party was in a position to tell us (or apparently the judge) whether such a Presidential decree was ever granted. But despite that, Geoquip's work seems eventually to have gone ahead with security provided by Cameroon's armed forces, the *Battalion d'Intervention Rapide* (the BIR), after a diplomatic meeting that took place on 30 January 2020 between the British High Commissioner and the Secretary General of the Presidency. I shall return to that meeting.

5. The issues that we have to decide may be summarised as follows: (i) whether the proper interpretation of the terms "services" and "facilities" in clause 4.5 of the Contract (clause 4.5) anyway allows Geoquip to claim standby charges for delays caused by Tower's failure to provide security for the Vessel, (ii) whether the judge was right to hold at [106] that Geoquip could not recover standby charges for delay under clause 4.5 on the grounds of a failure to obtain the licence extension, because the Contract was conditional on such an extension having been delivered, (iii) whether the judge ought to have found that the only operative cause of delay was the absence of a Presidential decree confirming the licence extension, (iv) whether Geoquip ought to be allowed to amend its appellant's notice to argue that the only operative cause of delay was Tower's failure to provide security, (v) if so, and in any event, whether this court should disturb the judge's causation findings to find either that the failure to secure a licence extension or Tower's failure to provide security was the sole operative cause of the delay, and (vi) whether the judge's findings that Tower's failure to provide security and Tower's failure to secure the licence extension were independent concurrent causes of the delay ought to have entitled Geoquip to the standby charges under clause 4.5. The logic of considering the issues in this order will become apparent.

6. I have decided that Geoquip is right on both issues of contractual interpretation (at (i) and (ii) in the previous paragraph). On that basis, the parties' competing contentions that there was a single (different) cause of the delay are irrelevant to the outcome and cannot anyway be satisfactorily determined without a new trial. In my judgment, as will appear, Geoquip was entitled to recover its standby charges under clause 4.5 of the Contract.

7. This judgment proceeds to deal with the relevant contractual provisions, the necessary factual background, and the judge's judgment before addressing the 6 issues I have mentioned.

<u>Relevant provisions of the Contract</u>

8. The Contract was contained in a number of documents based on bespoke amendments to the Standard Contracts for the UK Offshore Oil & Gas Industry LOGIC Form (edition 2, October 2003). The judge described the Contract in detail at [7]-[17] (*Geoquip v. Tower Resources* [2022] EWHC 531 (Comm)), to which reference should be made.

9. Section I of the Contract provided that the effective date of commencement of the Contract was to be 30 October 2019, and that the duration of the Contract should be two months.

10. Section II of the Contract provided the General Conditions as amended by the Special Conditions including:

4. [Geoquip's] GENERAL OBLIGATIONS

4.1 [Geoquip] shall provide all management, supervision, personnel, materials and equipment, (except materials and equipment specified to be provided by [Tower]), 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 [Geoquip] shall carry out all of its obligations under the [Contract] and shall execute the WORK with all due care and diligence …

4.5 In order to ensure that performance and completion of the WORK are not delayed or impeded [Geoquip] 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 [Tower]-provided materials, services and facilities. However, [Geoquip] cannot be responsible for the timely delivery of [Tower]-provided materials, services and facilities. If such are delivery [sic] late and cause delay in the performance and downtime of [Geoquip's] equipment, [Tower] shall pay Standby time for such downtime. …

34. PERMISSION AND PERMITS

[Tower] 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.

11. Section III of the Contract concerned "Remuneration" and was specified to be "*[a]s per section 10 of the attached Technical and Commercial Proposal [TCP] P19050*". The TCP comprised two parts under the headings "Pricing" and "Contractual".

12. The "Contractual" part of the TCP included the following at section 10.2 (section 10.2):

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 [15] November and [31] 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 [15] November 2019 and advanced payment of $250,000 to arrive in Geoquip's Swiss bank account prior to departure of the vessel to Cameroon.

Necessary factual background

13. The following outline chronology of events is based on [18]-[79] of the judge's judgment.

14. Tower's original licence from the Cameroon government for its proposed drilling project off Cameroon expired on 15 September 2019 and Tower had applied for an extension.

15. The Contract was, as I have said, dated 30 October 2019, but was signed on 31 October 2019.

16. On 20 November 2019, Mr Asher of Tower told Mr Harmon of Geoquip that he was expecting the formal license extension that week, that he did not expect it to take too long, and that "we already have a security plan agreed with the BIR".

17. On 29 November 2019, Geoquip told Tower that the Vessel was ready to depart from Nigeria for Cameroon. Tower told Geoquip that it should not move the Vessel to Cameroon until "we have the extension letter in hand", and "[a]s you know our contract is contingent on" that (see section 10.2 at [12] above).

18. On 2 December 2019, the Vessel arrived in Cameroon for routine maintenance to be undertaken.

19. On 24 December 2019, Tower emailed Geoquip saying that the license extension letter had just been signed. That letter was the Minister's recommendation to the President to issue the relevant executive order, not the Presidential decree which would have constituted the formal extension.

20. On 29 December 2019, Tower paid the US$250,000 deposit to Geoquip.

21. On 8 January 2020, Tower was informed that the BIR would not provide security for the Vessel because the BIR had not been authorised to do so by Société Nationale des Hydrocarbures, the state-owned oil company (SNH), who had not seen the licence extension.

22. On 15 January 2020, the Vessel sailed for the Work Site, arriving on 16 January 2020, accompanied by a naval security team (not from the BIR). The BIR then required the Vessel to return to port, because SNH had not seen any Presidential decree granting the licence extension. The Vessel returned to the port in Douala on 17 January 2020.

23. On 27 January 2020, Geoquip and Tower concluded a written contract extension agreement (the extension agreement) reciting the two-month duration of the Contract and that the Vessel had accrued 316.75 standby hours in port and 34.75 standby hours at sea between 17.00 on 8 January 2020 and the end of 23 January 2020. The extension agreement provided for an extension of the Contract by two months (to the end of February 2020), and stated that all other terms and conditions of the Contract remained unchanged.

24. On 30 January 2020, Geoquip invoiced Tower for US$1,011,218.75 for standby time (said in the Particulars of Claim to be US$960,657.81), saying a further invoice would follow for the period from 23 January 2020. On the same day, the British High Commissioner met the Secretary General of the Presidency, who said he would give further instructions. The judge did not make specific findings about anything else that happened at or as a consequence of this meeting, but we were shown [55] of Mr Asher's statement saying:

> On 30 January 2020, the British High Commissioner met with the Secretary General of the Presidency and explained the time-critical nature of the problem and the urgency of [Tower] having either or both of the final documentary form of the presidential decree or a direct presidential order to SNH and the BIR that the decree had been validly granted and of the BIR granting security for the survey … This was done and I advised Mr Harmon that evening that the BIR would be attending [the Vessel] the following day, on 31 January, at the port in Douala.

25. On 1 February 2020, the Vessel left port, arriving at the Work Site on 3 February 2020. The survey commenced on 4 February 2020.

26. On 6 February 2020, Geoquip invoiced Tower for standby costs from 23 January to 1 February 2020 in the sum of US$693,561.97 (said in the Particulars of Claim to be US$658,883.88). On 9 April 2020, Geoquip provided Tower with its final field report.

27. On 13 July 2020, Geoquip issued these proceedings against Tower claiming US$1,619,541.69 in standby charges and other sums. After a three-day trial, the judge gave judgment, as I have said, for the lumpsum claimed but dismissed Geoquip's claim for standby charges. Much of the trial was taken up with argument about Geoquip's attempt to establish an estoppel against Tower in respect of the standby charges. Geoquip submitted grounds of appeal in respect of those claims, but was refused permission to appeal on those grounds. For that reason, the focus in this court has been quite different from the focus at first instance.

<u>The judge's judgment</u>

28. The judgment on the contractual issues relating to standby charges occupied just 18 out of 167 paragraphs in the judgment.

29. Significantly, the judge began at [96] by saying that there was "no dispute" that the reasons for the delay to the Vessel's mobilisation was the absence of approval for the Vessel to proceed by the relevant authorities, which approval was lacking (i) by reason of the lack of confirmation of the licence extension "and/or" (ii) by reason of the BIR not agreeing or not being instructed to accompany the Vessel to the Work Site. Such a dispute has, as I have said, appeared in this court with Geoquip saying the sole, or anyway the dominant, cause of the delay was the BIR, and Tower saying it was the absence of a licence extension.

30. The judge then, at [101]-[104], rejected Geoquip's reliance on other clauses to found its claim for standby costs, before turning to clause 4.5 at [105] saying that he found it "the most difficult to construe", but that "[t]aken on its own", he could "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] was responsible under clause 34".

31. At [106], however, the judge decided that that interpretation failed because the whole Contract was (in section 10.2 set out at [12] above) contingent on the required licence extension and permits having been delivered before the Vessel went to Cameroon. The judge thought that there was, therefore "no contract and therefore there were no contractual duties in place unless and until such licence extension and permits were obtained". He held, therefore, 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", and it was "unlikely that the parties objectively intended clause 4.5 to apply to any delay in obtaining the relevant permits or licence extension".

32. The judge's critical reasoning is then at [108]-[109] as follows:

> 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.
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> 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] 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 [emphasis added].

Issue 1: Do the terms "services" and "facilities" in clause 4.5 allow Geoquip to claim standby charges for delays caused by Tower's failure to provide security for the Vessel?

33. Tower argued under this heading that the terms "services" and "facilities" in clause 4.5 had to be construed in the light of the meaning given to the term "facilities" in clause 4.1. In clause 4.1, people resources (management, supervision, personnel) and physical resources (materials, equipment, plant, consumables, and facilities) were referred to. The word "facilities" must, argued Tower, have the same meaning in clause 4.5 in relation to the timely provision of Tower-provided "materials, services and facilities".

34. In my judgment, this argument proves too much. The words "materials, services and facilities" are not even used together in clause 4.1. Clause 4.1 provides for what Geoquip must provide. Clause 4.2 provides for the quality of its provision, and clause 4.5 allocates responsibility for delay. Clause 4.1 really does not say much about the proper meaning of clause 4.5. The words "materials, services and facilities" must be given their natural meaning in the context of the Contract as a whole, where Tower is allocated various obligations including providing "security vessels" and obtaining the required permits and the licence extension (see section 10.2 and clause 34). I think the judge was right to think that the term "facilities" was apt to include these aspects of Tower's obligations. Taken together with "services", the words "materials, services and facilities" are more than sufficient to include Tower's express commitment to provide security, permits and the licence extension. The question, then, of whether that

conclusion permits Geoquip to claim standby charges depends on the answers to the subsequent issues.

Issue 2: Was the judge right to hold that Geoquip could not recover standby charges for delay under clause 4.5 on the grounds of a failure to obtain the licence extension, because the Contract was conditional on such an extension having been delivered?

35. This issue raises the correctness of the judge's reasoning in [106] and [109]. I think the judge was wrong on this point, mainly because he failed to consider the effect of the waiver of the condition precedent to the commencement of the Contract contained in section 10.2. It was common ground before us that, when Tower paid, and Geoquip accepted the payment of, the US$250,000 deposit on 29 December 2019, both parties waived reliance on the condition precedent. It is not clear whether the Contract formally commenced on that date or whether its duration was as specified in the extension agreement (4 months from 30 October 2019). This aspect was not considered by the judge, and probably does not matter to what we have to decide.

36. As it seems to me, the judge may have been right to conclude that clause 4.5 was not objectively intended, when signed, to provide for standby charges in the event that Tower failed to secure a licence extension and the necessary permits. But that was on the premise that the contract only came into effect, as then contemplated, upon the satisfaction of the condition precedent. It was common ground that the Contract should be construed as at the date it was concluded. But even on that basis, as Ms Dias submitted, the parties would have expected that, in the event that they chose to waive the condition precedent, Tower would remain under an obligation to secure the licence extension and the necessary permits. If Tower's failure to do so caused delay after they had agreed to waive the condition precedent, they would have expected clause 4.5 to apply to any delay so caused (as the judge correctly decided it meant). In the event of such a waiver, the parties must be deemed always to have intended that clause 4.5 would apply according to its natural meaning. It was not argued that the same result could be achieved by a necessary implication into the agreed variation effected by the waiver, but I would regard that as an alternative approach. Terms will only be applied if they are necessary to make the contract work. It is, I think, quite obvious that the parties would not have thought for a moment, when they waived the condition precedent, that Tower's obligations to secure the licence extension and permits and to pay standby charges if it failed to do so timeously were in any way abrogated by that waiver.

37. In my judgment, therefore, the judge ought to have held that, following the waiver of the condition precedent, Geoquip could, in theory, recover standby charges for delay under clause 4.5 on the grounds of a failure to obtain a timeous licence extension and permits.

38. It seems to me that the parties did not give this issue the weight that it deserved. If, as I have held, the judge was wrong on this point, then the precise cause of the delay in this case is not important. The judge recorded at [96] was common ground before him, the cause of the delay was **either** the failure of BIR to provide security **and/or** the failure to secure the licence extension. He held at [109] that the three concurrent causes of the delay were the absence of a Presidential decree, the absence of the permits for the Vessel and the absence of security for the Vessel. I cannot see why it matters if one of these causes was the dominant cause, when any one of them would engage clause 4.5

(see issue 1), and Tower was responsible for providing the licence extension, the permits and the security.

39. For this reason, even though the parties have both departed from the common ground that the judge recorded at [96], the causation dispute seems to me to be a sterile one, allowing me to deal with the causation issues briefly.

Issue 3: Ought the judge to have found that the only operative cause of delay was the absence of a Presidential decree confirming the licence extension?

40. Issue 3 arises directly from Tower's respondents' notice, but seems to have been raised by Tower by way of a response to [12.7] of Geoquip's skeleton, which argued that the provision of security was independent from the licence extension. Tower then argued in its skeleton that the evidence demonstrated that the provision of security was dependent upon the promulgation and communication to the SNH of the Presidential decree extending Tower's licence, so that "the predominant, effective or operative cause of the delay was not the absence of security, but the absence of the Presidential [d]ecree".

41. This state of affairs led both parties to direct our attention to parts of the evidence supposedly supporting their respective challenges to the judge's finding of three concurrent causes for the delay (namely the absence of a Presidential decree, the absence of the permits for the Vessel and the absence of security for the Vessel).

42. In essence, Geoquip submitted that the evidence showed that the licence extension had been authorised by 24 December 2019 and that the absence of the formal documentation from the President was not the reason for the delay. Proof positive, submitted Geoquip, was provided by the fact that there was no evidence that any formal licence extension or Presidential decree was in fact ever granted. Security was eventually provided by the BIR following a meeting between the British High Commissioner and the Secretary General of the Presidency on 30 January 2020. There was, however, so far as I can tell, no evidence about what precisely transpired on 30 and 31 January 2020 between the Presidency, the High Commissioner, SNH and BIR. All we know is that the logjam was then unblocked and BIR provided the necessary security. It is, however, of note that, when the Vessel sailed to the Work Site in mid-January 2020 without BIR, it was ordered back to port.

43. Tower's submission was, in essence, that this latter fact showed that the real and operative cause of the delay was the fact that each of SNH and BIR was not provided with, and Tower had not obtained, the necessary licence extension.

44. I have already mentioned the common ground as to causation that the judge recorded at [96]. In addition, Mr Phillips drew our attention to passages in Ms Dias's opening that acknowledged that the underlying cause of the delay was the failure to secure a formal licence extension. That was, he said, why SNH and BIR had refused to allow the Vessel to stay at the Work Site in mid-January 2020.

45. In these circumstances, I do not think that it is either necessary or desirable for us to allow the parties to depart from what was factually common ground before the judge. Much of the evidence was, as I have said, directed at the estoppel issues. We have not had any real or adequate opportunity to evaluate the evidence on the causation issue. Moreover, the judge did not do so, because causation was effectively common ground before him, even if he added the absence of permits as a cause of delay in [109].

46. I do not think that this court can decide between the competing submissions of the parties as to whether (a) there was a single dominant cause of delay, or (b) if there were such a single dominant cause, it was the failure to secure a licence extension or the failure to provide security. It would require a new trial of the facts to determine these questions. Neither party suggested that was appropriate.

47. I am unwilling, therefore, to decide the question raised by Tower's respondents' notice. I do not think Tower can properly depart from what was effectively common ground as to causation before the judge, without seeking a new trial.

48. I do not, therefore, think, as Tower contends, that the judge ought to have found that the only operative cause of delay was the absence of a Presidential decree confirming the licence extension.

Issue 4: Should Geoquip be allowed to amend its appellant's notice to argue that the only operative cause of delay was Tower's failure to provide security?

49. It will now be obvious how this issue should be answered. For exactly the same reasons as I have already adumbrated under issue 3, I do not think that Geoquip ought to be allowed, at a very late stage in this appeal, to amend its appellant's notice to argue that the sole operative cause of the delay was Tower's failure to provide security. In essence: (i) that was not Geoquip's case before the judge, (ii) the judge was not asked to decide the case on the basis that there were competing dominant causes of delay, and (iii) it would require a new trial and a further detailed evaluation of the evidence to determine the question, and (iv) it is unnecessary to do so, bearing in mind the proper interpretation of clause 4.5.

Issue 5: Should this court disturb the judge's causation findings to find either that the failure to secure a licence extension or Tower's failure to provide security was the sole operative cause of the delay?

50. For the reasons I have already given, I do not think that this court is in any position to disturb the judge's factual findings on causation. Specifically, I do not think that this court has the material properly to determine whether (a) Tower is now right to argue that the failure to secure a licence extension was the sole operative cause of the delay, or (b) Geoquip is now right to say that Tower's failure to provide security was the sole operative cause of the delay.

Issue 6: Did the judge's finding that Tower's failure to provide security and Tower's failure to secure the licence extension were independent concurrent causes of the delay entitle Geoquip to the standby charges under clause 4.5?

51. As I indicated above, the causation issues became, in effect, academic once issue 2 had been decided. The judge's error was not to find that there were concurrent causes for

the delay. That was what the parties had effectively agreed. The judge's errors were (i) to decide that the delay provisions, in regard to Tower's continuing obligations to secure a licence extension and necessary permits, did not survive the waiver of the condition precedent, and (ii) having recorded that it was common ground that the lack of confirmation of the licence extension and/or BIR not agreeing or not being instructed to accompany the Vessel were causes of delay and having interpreted clause 4.5 as covering those eventualities, not to decide that standby charges were due.

52. In my judgment, it does not matter which of the two main causes of the delay was dominant. Tower was responsible for them both. Moreover, Tower did not really contest Geoquip's reliance on [171]-[176] of the joint judgment of Lords Hamblen and Leggatt in *FCA v. Arch Insurance (UK) Ltd & Ors* [2021] UKSC 1, [2021] AC 649 (SC) at [171]-[176] as establishing that, where there are two or more concurrent, equally effective causes of an event, and only one engages the contractual provision in question, that provision is engaged.

53. I should mention in conclusion Tower's argument that Geoquip was the author of its own misfortune in that it brought the Vessel to Cameroon before the licence extension had been secured, and, therefore, in violation of section 10.2. That, as it seems to me, does not affect any of the conclusions I have reached because Tower paid the deposit knowing that the Vessel was in Cameroon and that the licence extension and the necessary permits had not been formally obtained, waiving the condition precedent in section 10.2.

54. It ought to have been clear on the judge's own findings in [105] and [109] as to the scope of clause 4.5 and causation that clause 4.5 was engaged such as to entitle Geoquip to the standby charges it claimed.

Conclusions

55. For the reasons I have given, I would refuse Geoquip permission to amend its appellant's notice, but allow Geoquip's appeal on the ground for which it was originally given permission.

56. In the result, Geoquip is entitled to judgment for an additional sum of US$1,619,541.69 in respect of standby charges for delays caused by Tower's failure to secure a necessary licence extension and to provide security for the Vessel.

Lady Justice King:

57. I agree.

Lady Justice Falk:

58. I also agree.