

Judgment handed down in Ocean Clap Shipping Limited v Global Offshore Services [2025] EWHC 1591 (Comm)

Judgment has been handed down in [Ocean Clap Shipping Limited v Global Offshore Services](#) [2025] EWHC 1591 (Comm). [James Leabeater KC](#) and [Neil Dowers](#), instructed by Stephenson Harwood LLP, acted for the successful claimants, securing a judgment worth over US\$ 75 million plus interest and costs.

Background and Issues

The claim arose out of two long-term bareboat charterparties (the “**Charterparties**”), by which the First Defendant (“**Charterers**”) agreed to hire and ultimately purchase two platform supply vessels from the Claimants (“**Owners**”).

After a fall in oil prices Charterers failed to pay hire over several years while the parties entered into negotiations with a view to restructuring their relationship, exchanging various draft term sheets that were never executed.

Owners claimed unpaid hire and various ancillary expenses under the Charterparties, as well as sums guaranteed by Charterers’ parent company, the Second Defendant (“**Guarantors**”).

Charterers and Guarantors defended the case on the basis that the Charterparties and guarantees had been cancelled, and all accrued debts waived, by a “General Agreement” formed by conduct during the course of the restructuring negotiations.

Guarantors also argued that on a proper interpretation of clauses 2.1.1(a) and (b) of the Guarantees (the former of which was expressed as a “see to it” obligation and the latter of which was expressed as an obligation to pay sums on demand), a demand was required as a condition of the Guarantors’ liability. Guarantors therefore said the claims on the guarantees were out of time, no demand having been served before the Guarantees expired.

The “General Agreement”

The Court summarised the law on formation of contract by conduct,[1] before concluding that there was no “General Agreement” for the following principal reasons:

- The Defendants’ witness evidence was inconsistent with the pleaded case as to the terms, timing and mode of formation of the alleged agreement;[2]
- The parties exchanged term sheets subject to contract, containing terms inconsistent with the terms of the alleged agreement, and contemplating that the parties would execute a formal agreement in due course;[3]
- The conduct relied upon (Charterers did not pay hire and Owners acquiesced in that, and Owners covered some expenses relating to the vessels) was consistent simply with Charterers having no money and Owners seeking to maximise cashflow under the Charterparties; it was not unequivocally consistent with the formation of a new agreement to cancel the Charterparties.[4]

The Guarantees

The Court also rejected Guarantors' case on the construction of the Guarantees, holding that clause 2.1.1(a) provided for a stand-alone 'see to it' obligation separate from any obligation to pay sums on demand pursuant to clause 2.1.1(b). Guarantors' liability therefore arose upon Charterers' default under the Charterparties: no demand was necessary, and the expiry of the guarantee period did not absolve Guarantors of accrued liabilities.[5]

The Judge also accepted Owners' alternative argument that, even if a demand was required as a condition of liability under clause 2.1.1(a), the demand could be made after the expiry of the guarantee period, provided it related to liabilities accrued before the expiry of the period. A powerful indicator in that regard was that the guaranteed liabilities included any obligation or liability to pay damages, which is the sort of obligation where it might not be known with any degree of assurance during the guarantee period whether there is such an obligation and, if there is, what its quantum is.[6]

Comment

The case sets out a useful summary of the law on formation of contracts by conduct. It is a reminder that factors including the parties' ongoing formal negotiations and intention to execute a formal contract may influence the court's view as to whether conduct is sufficient to give rise to a new contract or variation. Further, where the parties have an existing contractual relationship, the fact that one or both parties behaves inconsistently with that contract will not unequivocally demonstrate that the parties intend to form a new contract on different terms. Finally, the case highlights the need to obtain clear instructions at the stage of pleading an amendment by conduct or oral agreement, to avoid a situation in which the witnesses do not support the pleaded case at trial.

The courts have been at pains to emphasise that cases interpreting bespoke guarantees will be of limited assistance in interpreting other guarantees.[7] Nevertheless, this case may be instructive as to the courts' likely approach to guarantees containing multiple guarantee or indemnity obligations, some of which are expressed as "see to it" obligations and others of which are conditional on the making of a demand. Further, the case provides helpful guidance as to language permitting a demand to be served after the expiry of a guarantee.

The full judgment can be accessed [here](#).

References:

(1) [34][44]

(2) [106]-[108].

(3) [109], [112].

(4) [110]-[111].

(5) [142]-[145].

(6) [145].

(7) See, e.g., *Shanghai Shipyard Co v Reignwood International Investment (Group)* [2021] EWCA Civ 1147, [2021] 1 WLR 5408, at [33], per Popplewell LJ.

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