

On demand guarantees: don't tie your hands! Shanghai Shipyard Co. Ltd. v. Reignwood International Investment (Group) Company Ltd. [2021] EWCA Civ 1147

December 3, 2021 Andreas Dracoulis, Jack Spence

PRACTICES Shipping, Ship Construction and Conversion, Litigation, Europe, Middle East and Africa, Shipping Dispute Resolution, Offshore Oil and Gas, Offshore Oil and Gas Dispute Resolution

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Facts

Perhaps not coincidentally amidst the sustained period of high oil prices in the early part of the last decade, in September 2011 Reignwood International Investment ("Reignwood") – a company with (at that time anyway) no obvious connection to the offshore drilling sector – came to be involved as an investor in the purchase of a newbuilding offshore drillship from Shanghai Shipyard Co Ltd ("the Shipyard") for US\$200 million. This was in fact one of four drillship newbuilding projects in which Reignwood invested very substantial sums: in total it funded US\$120 million by way of pre-delivery instalments for each of the four drillships.

Reignwood itself initially entered into the shipbuilding contract for the drillship, but it was always envisaged that the contract would be novated to a special purpose company (the "SPV Buyer") owned (indirectly) by Reignwood and, we assume, its (unnamed) partners. The terms of the shipbuilding contract required Reignwood to provide an unconditional letter of guarantee to the Shipyard securing payment of the final (delivery) instalment in the sum of US\$170 million. That guarantee (the "Guarantee") was issued by Reignwood shortly after the contract was concluded, although it was not until a year later that the shipbuilding contract was novated to the SPV Buyer.

The Guarantee included, amongst various others, the following provisions:

Clauses 1, 3 and 10: that Reignwood "**IRREVOCABLY, ABSOLUTELY and UNCONDITIONALLY**" guaranteed "*as the primary obligor and not merely as the surety*" payment of the delivery instalment and interest thereon at a rate of 5% (capped to a maximum of 60 days interest).

Clause 4:

- if the SPV Buyer defaulted in payment of the delivery instalment for 15 days, then, upon the Shipyard's "*first written demand*", Reignwood was to immediately pay the instalment;
- however, in the event (i) there was a dispute between the Shipyard and the SPV Buyer related to payment of the delivery instalment and (ii) that dispute was submitted to arbitration, then Reignwood was entitled to withhold payment until publication of an award ordering the SPV Buyer to pay the delivery instalment.

It is not clear if the project purely fell in to delay, or whether other factors such as the oil price crash in 2014 also played a part, but through various addenda to the shipbuilding contract the original

delivery date of April 2014 was extended. In the end, it was not until December 2016 that the Shipyard gave notice of completion of the drillship. Thereafter, in January 2017, the Shipyard demanded payment of the delivery instalment by the SPV Buyer. By this stage it seems that Reignwood had fallen out with its partners and the SPV Buyer did not pay the delivery instalment. It is not clear if payment was withheld due to a genuine dispute about the deliverability of the drillship or due to cashflow issues (perhaps emanating from the oil price crash). Reignwood subsequently took steps to take control of the SPV Buyer, however it was not until June 2019 that Reignwood commenced arbitration proceedings (in the name of the SPV Buyer) against the Shipyard under the shipbuilding contract – arguing (we assume) that the delivery instalment was not due on the basis that the drillship was not in a deliverable condition.

Read the full article [here](#).