Neutral Citation Number: [2026] EWHC 2047 (TCC)

Case No. HT-20206-000166

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (KBD)

Rolls Building
Fetter Lane, London EC4A 1NL

Date: 4 August 2026

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

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Between :

(1) TTSJV W.L.L.
(a limited liability company incorporated in the Kingdom of Bahrain)
(2) TECHNIP ENERGIES N.V.
(a public limited company incorporated in the Kingdom of the Netherlands)
(3) TÉCNICAS REUNIDAS S.A.
(a public limited company incorporated in the Kingdom of Spain)
(4) SAMSUNG E&A CO. LIMITED
(a company incorporated in the Republic of Korea)

Claimants

- and -

BAPCO REFINING B.S.C. (CLOSED)
(a company incorporated in the Kingdom of Bahrain)

Defendant

- -

Sean Brannigan KC and **Jonathan Schaffer-Goddard** (instructed by **Simmons & Simmons LLP**) for the Claimants

Tom Owen KC and **Alexandra Bodnar** (instructed by **Herbert Smith Freehills Kramer LLP**) for the Defendant

Hearing date: 22 May 2026

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Approved Judgment

This judgment was handed down at 2pm on 4 August 2026
by circulation to the parties by email and by release to the National Archives.

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THE HONOURABLE MR JUSTICE PEPPERALL :

1. By this application made before the issue of proceedings and on short notice, TTSJV W.L.L. ("TTSJV") and its parent companies sought an injunction:
   1.1 to require BapCo Refining B.S.C. (Closed) ("BapCo") (a company incorporated in the Kingdom of Bahrain) to suspend its demand, in the sum of US$484,406,323, on a performance guarantee issued by HSBC Bank Middle East Ltd; and
   1.2 to restrain BapCo from making any further demand on the performance guarantee or upon a retention bond issued by Mashreqbank pending further order of the court or of any emergency arbitrator that might be appointed by the London Court of International Arbitration ("LCIA").

2. Shortly after the hearing, I indicated that the application would be dismissed. This judgment sets out my reasons for refusing injunctive relief in this case.

BACKGROUND

3. This case concerns an Engineering, Procurement & Construction contract dated 2 February 2018 ("the EPC contract") between BapCo and a consortium comprising the following companies, who together constituted the contractor:
   3.1 Technip USA Inc., a company incorporated in Delaware in the United States of America;
   3.2 Technip Italy S.p.A., a company incorporated in Italy;
   3.3 Técnicas Reunidas S.A. ("Técnicas"), a company incorporated in the Kingdom of Spain; and
   3.4 Samsung E&A Co. Ltd ("Samsung"), a company incorporated in the Republic of Korea.

4. By the EPC contract, the contractor agreed to design, engineer, procure, construct, test and complete a modernisation programme to upgrade BapCo's existing oil refinery in Bahrain for the price of US$4,211,000,000. The parties agreed that the EPC contract should be governed by and interpreted under the laws of England & Wales. Further, by clause 25 of and Annex 8 to the EPC contract, they agreed that any dispute would be referred to and

resolved by binding arbitration under the rules of the LCIA and that the seat of the arbitration should be London.

5. The First Claimant, TTSJV, is a joint venture vehicle incorporated in Bahrain by the remaining claimants for the performance of the EPC contract and to whom the contract was subsequently novated on 10 December 2018. The other claimants, being Technip Energies N.V., a company incorporated in the Kingdom of the Netherlands; Técnicas; and Samsung, have provided parent company guarantees and were joined in these proceedings to fortify the cross-undertaking in damages offered by TTSJV.

6. TTSJV contends that the works are substantially complete. The parties are in dispute as to whether the contractor is in breach of the EPC contract in failing to achieve completion or whether TTSJV is entitled to an extension of time:
   6.1 BapCo asserts that TTSJV failed to achieve milestone 12 by 26 October 2025 with the consequence that it became entitled to liquidated and ascertained damages of US$100 million with further daily delay damages thereafter. By the time of the hearing, BapCo argued that it was entitled to liquidated damages in the sum of US$484,406,323, being the contractual cap on such damages calculated as 10% of the adjusted contract price.
   6.2 TTSJV argued that it was entitled to extensions of time because of a devastating accident on 2 May 2025 when a hydrogen leak from an over pressured hydrocracker unit ignited causing an explosion that killed three workers. TTSJV contended that BapCo was responsible for that accident and that site restrictions in its aftermath and the significant inspections and repair works led to delay for which it is entitled to an extension of time. While BapCo had rejected the extension claim, TTSJV has indicated its intention to pursue its claim through arbitration.

7. On 18 May 2026, BapCo formally demanded payment of Delay Liquidated Damages. Further, on Thursday 21 May 2026, BapCo made a call on the performance guarantee issued by HSBC. That same day, TTSJV asked the LCIA to appoint an emergency arbitrator. TTSJV was, however, concerned that if the call was not suspended, HSBC would be likely to pay some or all of the sum demanded before Eid started on Monday 25 May and before any emergency arbitrator could be appointed.

8. This application was supported by the witness statement of Olivier Vidal, the Executive Project Director of TTSJV. Sean Brannigan KC appeared for the claimants together with Jonathan Schaffer-Goddard. The short notice given to BapCo did not allow the company time to file evidence in response but it was able to secure the services of Tom Owen KC and Alexandra Bodnar.

9. I am grateful to all counsel for their helpful submissions but particularly thank Mr Owen and Ms Bodnar for being able to make their excellent and pithy submissions in a complex and high-value dispute at very short notice.

THE PROPER APPROACH TO THIS APPLICATION

SUPPORTING ARBITRAL PROCEEDINGS

10. This application engages section 44 of the *Arbitration Act 1996* under which the court may exercise its powers in support of arbitral proceedings. Sections 44(3), (5) and (6) provide:

> "(3) If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets …
>
> (5) In any case the court shall act only if or to the extent that the arbitral tribunal or the emergency arbitrator, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.
>
> (6) If the court so orders, an order made by it under this section shall cease to have effect in whole or in part on the order of the tribunal, the emergency arbitrator or of any such arbitral or other institution or person having power to act in relation to the subject-matter of the order."

11. Given the terms of the bond, there were good grounds for believing that, absent injunctive relief, funds might well be released before this application could be heard on notice and potentially even later on 22 May. While the LCIA has developed procedures for the appointment of an emergency arbitrator in cases of exceptional urgency, I was therefore satisfied that there was a very real prospect that an emergency arbitrator might not be appointed and practically able to grant effective relief before the funds were released. I therefore considered that this was an urgent application and that, notwithstanding the restriction in section 44(5), the court should entertain this application in support of anticipated arbitral proceedings. Necessarily any relief granted would have been on a short-term basis to hold the ring until the emergency arbitrator could act.

12. Equally I was satisfied that this matter was urgent such that the court should hear the application before proceedings were issued pursuant to rule 25.2(2) of the *Civil Procedure Rules 1998* and that the applicants had acted reasonably in giving only short notice of this application pursuant to rule 25.6(2).

LAW RELATING TO BOND CALLS

13. Mr Brannigan argued that the court can grant injunctive relief to prevent the beneficiary of a bond from making a call where there is a strongly arguable case that, by reason of the terms of the underlying contract, the beneficiary is precluded from making such a call. He submitted that the strongly arguable test was most clearly articulated by Akenhead J in *Simon Carves Ltd v. Ensus UK Ltd* [2011] EWHC 657 (TCC). He particularly relied on a quotation said to be from para. 33 of Akenhead J's judgment but which, on closer analysis, was inaccurate. Mr Brannigan also relied on statements of

principle in *AES-3C Maritza East 1 EOOD v. Credit Agricole Corporate & Investment Bank* [2011] EWHC 123 (TCC) and *Doosan Babcock Ltd v. Comercializadora de Equipos y Materiales Mabe Limitada* [2013] EWHC 3010 (TCC), and [2013] EWHC 3201 (TCC).

14. In his oral submissions, Mr Owen challenged Mr Brannigan's summary of the law. He specifically disagreed with the submission that injunctive relief could be granted to restrain a beneficiary from pursuing a demand under a performance bond merely on the basis of establishing a seriously arguable case of breach of the underlying contract. He argued that the authorities went further and required the applicant positively to establish that there was no entitlement to draw down money under the bond. In support of his submissions, he cited the Court of Appeal's decision in *Sirius International Insurance Co. v. FAI General Insurance Ltd* [2003] EWCA Civ 470, [2003] 1 W.L.R. 2214, Ramsey J's decision in *Permasteelisa Japan KK v. Bouyguesstroi & Banca Intesa SpA* [2007] EWHC 3508 (TCC) and Stuart-Smith J's decision in *MW High Tech Projects UK Ltd v. Biffa Waste Services Ltd* [2015] EWHC 949 (TCC).

15. In my judgment, Mr Brannigan misstated the grounds on which, absent fraud, the court will restrain the beneficiary from calling on a performance bond. Indeed, while acknowledging the severe time pressure under which this application was prepared, it is a matter of some concern that the court was misled as to the key statement of principle from the *Simon Carves* case. I accept Mr Brannigan's fulsome apology and entirely accept that the erroneous quote was an unfortunate error rather than an attempt to mislead the court. It is, however, particularly critical that judges hearing without notice applications at speed should be able to rely on counsel's accurate citation of authority. Nevertheless, I must still grapple with the core question of whether a seriously arguable case is sufficient.

16. The general principle is well known. Irrevocable obligations assumed by banks whether under performance guarantees or letters of credit are, as Kerr J observed in *RD Harbottle (Mercantile) Ltd v. National Westminster Bank Ltd* [1978] QB 146, at pages 155-156, the lifeblood of international commerce. He explained that the court would interfere with such obligations only in exceptional circumstances, adding:

> "Such obligations are regarded as collateral to the underlying rights and obligations between the merchants at either end of the banking chain. Except possibly in clear cases of fraud of which the banks have notice, the court will leave the merchants to settle their disputes under the contract by litigation or arbitration…The courts are not concerned with their difficulties to enforce claims; these are risks which the merchants take. In this case the plaintiffs took the risk of the unconditional wording of the guarantees. The machinery and commitments of banks are on a different level. They must be allowed to be honoured, free from interference by the courts. Otherwise, trust in international commerce could be irreparably damaged."

17. In *Harbottle*, Kerr J observed that there was no evidence of obvious fraud but only a contractual dispute in which the rights and wrongs were not clear. In refusing injunctive

relief, the judge concluded that the plaintiffs would have to pursue their claims against the buyers as best they could.

18. Approving those observations in *Edward Owen Engineering Ltd v. Barclays Bank International Ltd* [1978] QB 159, Lord Denning MR spoke of the need to demonstrate "established or obvious fraud". The court's jurisdiction is, however, wider than that.

19. In *Sirius*, May LJ again stressed the importance of not undermining letters of credit. He observed, at [26]:

> "Absent fraud by the seller presenting documents to the confirming bank seeking payment, the court will not restrain a bank from paying a letter of credit which is payable according to its terms, nor a beneficiary from seeking payment – see *Group Josi Re (formerly Groupe Josi Réassurance SA) v. Walbrook Insurance Co. Ltd* [1996] 1 W.L.R. 1152, 1160-1162. Nor, again absent fraud, will the court restrain a beneficiary from drawing on a letter of credit which is payable in accordance with its terms on the application of a buyer who is in dispute with the seller as to whether the underlying sale contract has been broken – see for both these propositions the *Deutsche Rückversicherung* case [1995] 1 W.L.R. 1017, 1030 where Phillips J considered the authorities. This is the autonomous nature of letters of credit. By means of it, banks are protected and the cash nature of letters of credit is maintained. There is no authority extending this autonomy for the benefit of the beneficiary of a letter of credit so as to entitle him as against the seller to draw the letter of credit when he is expressly not entitled to do so."

20. In *Sirius,* the Court of Appeal confirmed that a contractual undertaking not to draw down on a letter of credit except with written consent could be enforced by injunctive relief. Such agreed restriction on the right to demand payment meant that, to that extent, the letter of credit "was less than the equivalent of cash". On the facts of *Sirius,* the applicant for credit did not simply have a seriously arguable case but had "positively established" that the beneficiary was not entitled to draw on the letter of credit.

21. In *Simon Carves,* Akenhead J considered *Sirius* and extended its application to a case where there was no collateral agreement not to draw down but where the underlying contract clearly and expressly provided that the bond would be null and void upon the issue of an Acceptance Certificate and that it would thereafter be immediately returnable to the contractor. Given the inaccurate quotation in the skeleton argument deployed by TTSJV, it is appropriate to set out what Akenhead J actually said when summarising the authorities at [33]:

> "In my judgement one can draw from the authorities the following:
>
> (a) Unless material fraud is established at a final trial or there is clear evidence of fraud at the without notice or interim injunction stage, the Court will not act to prevent a bank from paying out on an on demand bond provided that the conditions of the bond itself have been complied with (such as formal notice in writing). However, fraud is not the only ground upon which a call on the bond can be restrained by injunction.

(b) The same applies in relation to a beneficiary seeking payment under the bond.

(c) There is no legal authority which permits the beneficiary to make a call on the bond when it is expressly disentitled from doing so.

(d) In principle, if the underlying contract, in relation to which the bond has been provided by way of security, clearly and expressly prevents the beneficiary party to the contract from making a demand under the bond, it can be restrained by the Court from making a demand under the bond.

(e) The Court when considering the case at a final trial will be able to determine finally what the underlying contract provides by way of restriction on the beneficiary party in calling on the bond. The position is necessarily different at the without notice or interim injunction stage because the Court can only very rarely form a final view as to what the contract means. However, given the importance of bonds and letters of credit in the commercial world, it would be necessary at this early stage for the Court to be satisfied on the arguments and evidence put before it that the party seeking an injunction against the beneficiary had a strong case. It cannot be expected that the court at that stage will make in effect what is a final ruling."

22. That passage was followed by discussion of *Permasteelisa* in which Ramsey J observed, at [51]-[52]:

> "51. In my judgment, whilst, as the Court of Appeal indicated in *Sirius,* a court might grant an injunction where there is an express term restricting the circumstances in which a party can draw on a letter of credit and where it is positively established that the party was not entitled to draw down, the same will not apply where there is only a serious, arguable case to that effect. Otherwise, the commercial effectiveness of letters of credit would be eroded: see para 31.
>
> 52. If those principles are applied here, then I consider that the court should not intervene in the manner the claimant seeks. First, in relation to an order preventing Bouygues calling the Bond, no case of fraud has been made out and there is only a seriously arguable case that there has been a breach of the contractual requirements under clause 20.2.1, which form preconditions to the call of the Bond."

23. Akenhead J added that he did not consider that that differed from his own views but that the *Simon Carves* case was somewhat different in that it concerned a bond which, as between the parties, was to be considered null and void in certain circumstances and returnable.

24. I turn then to the two further cases relied on by Mr Brannigan:

24.1 In *Doosan,* Edwards-Stuart J cited Akenhead J's decision in *Simon Carves* and identified that a claimant who wishes to restrain a beneficiary from making a demand under a bond must show that it has a strong case that, under the terms of the underlying contract, the beneficiary is not entitled to make a demand on the

bond: see his judgment on the initial application at [2013] EWHC 3010 (TCC), at [42] and upon the discharge application at [2013] EWHC 3201 (TCC), at [36].

24.2 *AES-3C* was not a claim for interim relief and does not assist.

25. In *MW High Tech,* Stuart-Smith J rightly noted that the Court of Appeal in *Sirius* made plain that a beneficiary is not to be restrained merely because there is a dispute as to whether there had been a breach of the underlying contract. The particular feature in *Sirius* that led to a different outcome was the contractual requirement that the beneficiary should obtain written consent before drawing down funds. Stuart-Smith J then confronted the tension in the authorities. He concluded, at [34]:

> "The second [principle] is that, when considering whether or not to grant an injunction, it is not sufficient that there is a seriously arguable case that the beneficiary was not entitled to draw down. It must be positively established that he was not entitled to draw down under the underlying contract – see the judgment of Ramsey J in *Permasteelisa* … If and to the extent that the subsequent decisions of Akenhead J in *Simon Carves* or Edwards-Stuart J in *Doosan* … suggest that a less rigorous test is to be applied, I respectfully consider that the views of Ramsey J should prevail as being in accordance with the substance of the decisions of higher authority, to which I have referred. It seems to me, both on principle and authority, that the only established exceptions to the rule that the court will not intervene should be where there is a seriously arguable case of fraud, or it has been clearly established that the beneficiary is precluded from making a call by the terms of the contract."

26. I respectfully agree with that analysis. In my judgment, a seriously arguable case of breach of the underlying contract is not sufficient to justify injunctive relief to restrain a beneficiary from drawing down funds on a performance bond. Indeed, that was not what Akenhead J decided on a proper understanding of *Simon Carves.* Any doubt is, in my view, resolved by Akenhead J's express agreement with Ramsey J's conclusion in *Permasteelisa*. I therefore decline to follow Edwards-Stuart J's conclusion that injunctive relief may be granted against a beneficiary on the basis of a seriously arguable case of breach of the underlying contract. In my judgment, relief can only be granted if TTSJV can clearly establish that BapCo was precluded from making the call in this case by the terms of the parties' contract.

THE GROUNDS

27. TTSJV sought to resist the call on the performance bond on three grounds:
    27.1 First, that the liquidated damages clause amounted to a penalty which could not be enforced by way of a call on the performance bond.
    27.2 Secondly, that the call on the performance bond did not comply with the formal requirements under the bond.
    27.3 Thirdly, that the Delay Liquidated Damages claimed were not due and payable.

28. Further, by its fourth ground, TTSJV argued that in any event the retention bond was not security against Delay Liquidated Damages.

GROUND 1: THE PENALTY ARGUMENT

29. Clause 12.5 of the EPC contract permitted BapCo to use the works prior to take over and to retain any revenue generated by operation of the plant. The contract did not, however, contain any corresponding clause adjusting the Delay Liquidated Damages with the consequence that BapCo could operate the plant, retain the revenue generated, and still claim for full liquidated damages. Mr Brannigan argued that in such circumstances the liquidated damages clause did not protect a legitimate interest but instead provided BapCo with an unjustified windfall. Accordingly, and in reliance on *Bramall & Ogden v. Sheffield City Council* (1983) 29 B.L.R. 73, *Braes of Doune Wind Farm (Scotland) Ltd v. Alfred McAlpine Business Services Ltd* [2008] EWHC 426 (TCC), *Doosan* and passages in both *Hudson's Building & Engineering Contracts* (14th Ed.) and *Keating on Construction Contracts* (12th Ed.), Mr Brannigan argued that the liquidated damages clause was penal and that BapCo was limited to its claim in general damages.

30. While BapCo had not had time to file evidence, Mr Owen made plain that the company did not accept the factual picture painted by the application. He pointed out that this was not an entirely new plant but a contract for the modernisation of an existing facility such that some production prior to completion was not surprising. Further, he pointed out that the parties had already agreed that BapCo had an accrued entitlement to delay damages of US$100 million as at 14 July 2024. In addition, Mr Owen relied on O'Farrell J's judgment in *Eco World – Ballymore Embassy Gardens Co. Ltd v. Dobler UK Ltd* [2021] EWHC 2207 (TCC) and argued that each case turns on its own facts. In *Bramall,* he argued, the contractual machinery simply did not work.

31. In *Bramall,* the contract was for the construction of 123 dwellings and other works. An extension of time was granted and thereafter houses were taken over as they were completed over a six-month period. The contract did not, however, make provision for sectional completion and accordingly His Honour Judge Hawser QC held that the contractual machinery, which provided for liquidated damages to be reduced pro rata for each dwelling that had been completed, simply did not work. The judge held that the stipulated liquidated damages were therefore penal in that they could substantially exceed the actual loss sustained.

32. In *Eco World*, the employer under a construction contract had taken over part of the works as completed. Again, it was argued that a liquidated damages clause that did not contain any mechanism for reducing the level of damages to reflect early possession was void as a penalty with the consequence that the employer could only claim general damages. O'Farrell J cited extracts from both *Keating* and *Hudson's* and added, at [68]:

> "It is important not to elevate statements of general principle into an inflexible rule of law. The above extracts do not state that liquidated damages provisions will never be enforceable where sectional completion or partial possession is used without any related reduction in the liquidated damages payable; they identify the potential danger of failing to draft effective provisions to respond in such circumstances. In each case, it is necessary to construe the relevant provisions of the contract in question, adopting the established rules of contractual interpretation,

> to determine whether they give rise to a liquidated damages regime that is certain and enforceable."

33. O'Farrell J then considered *Bramall* and other cases in which the courts had struck down a liquidated damages clause and observed, at [74], that the courts in those cases "did not reject, as automatically fatal, the concept of one rate of liquidated damages for late completion of the works where there is sectional completion or partial possession; rather the express provisions in each case simply did not work because of errors in the drafting".

34. Of course, any consideration of this issue must involve careful consideration of the Supreme Court's decision in *Cavendish Square Holding BV v. Makdessi* [2015] UKSC 67, [2016] A.C. 1172. In *Cavendish*, the court made the obvious but important point that the penalty rule is an interference with freedom of contract and added, at [35], that "in a negotiated contract between properly advised parties of comparable bargaining power, the strong initial presumption must be that the parties themselves are the best judges of what is legitimate in a provision dealing with the consequences of breach". The applicable test, encapsulated by Lord Hodge at [255], is whether the sum stipulated in the contract is "exorbitant or unconscionable when regard is had to the innocent party's interest in the performance of the contract."

35. Further, it is necessary to keep in mind the clear commercial benefits to both parties of an effective provision for liquidated damages as recognised by the Supreme Court in *Triple Point Technology Inc. v. PTT Public Co. Ltd* [2021] UKSC 29, [2021] A.C. 1148.

36. In *Eco World*, O'Farrell J carefully considered the particular liquidated damages clause. She concluded that the fact that the contract did not reduce the rate of liquidated damages in the event of partial completion was a factor to place into the balance. Against that, she considered that the court should be cautious about interfering with the freedom of commercial parties who had negotiated their contract with the benefit of external lawyers and took into account the benefits of certainty in a liquidated damages scheme. She noted that the employer had a legitimate interest in enforcing the primary obligation to complete the works as a whole. Further, she noted that quantification of damages in the case of partial completion of the works would be difficult and that fixing in advance the damages payable avoided the difficulty of calculating and proving the loss. Finally, she considered the actual rate of delay damages in that case and concluded that it was neither unreasonable nor disproportionate. Accordingly, she concluded that the liquidated damages regime was not penal.

37. Here, I consider that the strong initial presumption must be against finding the carefully negotiated provisions for liquidated damages in this contract between commercially sophisticated parties to amount to an unenforceable penalty. The most that can be said is that Mr Brannigan has established a potentially arguable case that the liquidated damages might be penal for failure to reflect the partial take-over of the facility. This is not,

however, a case like *Bramall* in which it has been demonstrated that something went wrong with the drafting so that the contractual scheme is unworkable. Analysis of Mr Brannigan's argument will depend on careful consideration of all of the factors, including the importance of respecting party autonomy in their carefully negotiated contract; the very real benefits of certainty in a scheme for liquidated damages; the fact that this is not a contract for the construction of an entirely new facility but that the works comprise a modernisation scheme; BapCo's legitimate interest in completion of the whole of the works; the apparent concession that at least US$100 million is payable by way of delay liquidated damages; and a fact-sensitive analysis as to the proportionality of the liquidated damages in this case. Such assessment cannot of course be finally made on an urgent interim injunction application heard at very short notice with limited evidence served only on one side.

38. In my judgment, TTSJV has not clearly established that the liquidated damages clause is an unenforceable penalty clause and accordingly BapCo will not be restrained on that basis from pursuing its demand on the bond. Lest, however, I am wrong as to the applicable test, I am not persuaded that Mr Brannigan has achieved his own ambition of seeking to establish a strongly arguable case on the point.

GROUND 2: THE COMPLIANCE ARGUMENT

39. Mr Brannigan argued that the demand under the performance bond was not compliant with the terms of the guarantee. The argument was put on the basis that clause 11 of the guarantee expressly incorporated the Uniform Rules for Demand Guarantees (2010 revision) and that, in breach of article 15(a) of the uniform rules, the demand was not supported by a statement by BapCo indicating in what respect TTSJV was in breach of its obligations.

40. The guarantee required any demand to be substantially in the form of the attached exhibit 1, the material parts of which provided:

> "THE UNDERSIGNED, AN AUTHORISED REPRESENTATIVE OF THE BAHRAIN PETROLEUM COMPANY (B.S.C.) (THE 'BENEFICIARY'), AS BENEFICIARY UNDER LETTER OF GUARANTEE NO. (INSERT NUMBER) DATED (INSERT DATE) (THE 'PERFORMANCE SECURITY') ISSUED BY (INSERT NAME OF BANK) (THE 'ISSUING BANK') IN FAVOUR OF THE BENEFICIARY, DOES HEREBY:
>
> 1. REQUEST PAYMENT UNDER THE PERFORMANCE SECURITY IN THE AMOUNT OF US DOLLARS (.) BY WIRE TRANSFER IN IMMEDIATELY AVAILABLE FUNDS TO (INSERT BANK), ABA NO. (INSERT), GLA NO. (INSERT), FOR CREDIT TO THE (DESCRIBE ACCOUNT), ACCOUNT NO. (INSERT), REF: (INSERT); AND
> 2. CERTIFY THAT THE BENEFICIARY IS ENTITLED TO PAYMENT OF SUCH AMOUNT PURSUANT TO THE (.) AGREEMENT."

41. The demand made by BapCo used the form of words at exhibit 1 and completed the space denoted by the "(.)" in paragraph 2 of the prescribed form by identifying the EPC

contract.

42. In his submissions, Mr Brannigan acknowledged that, on its face, the pro forma demand did not expressly require BapCo to identify the alleged breaches of obligation that triggered the entitlement to make a demand on the performance bond. Further, he acknowledged that clause 11 of the guarantee provided that, in the event of conflict, the terms of the guarantee would prevail over the uniform rules. He argued that the guarantee could, however, be construed consistently with the uniform rules by construing the "(.)" in paragraph 2 of the prescribed form as a placeholder in which BapCo should enter the details of its claim. He argued that if the placeholder were merely intended to provide space in which to identify the EPC contract, then it served no purpose since the defined term "Agreement" already served that purpose.

43. I do not accept Mr Brannigan's argument:
    43.1 First, the placeholder in paragraph 2 was the only place in the prescribed form in which BapCo could identify the underlying EPC contract. The Agreement was a defined term in the letter of guarantee but not in the pro forma demand and accordingly it was necessary for BapCo to insert these details, just as it was necessary to insert details of, among other matters, the letter of guarantee and the issuing bank. The natural and ordinary meaning of the form was that BapCo should insert details of the EPC contract in the space provided and not of its claims in respect of breach of such contract.
    43.2 There is, in any event, no need to construe the placeholder as requiring BapCo to insert the details of its claim since there is nothing in article 15(a) of the uniform rules which requires such details to be given in the body of the demand. Article 15(a) provides:

> "A demand under the guarantee shall be supported by such other documents as the guarantee specifies, and in any event by a statement, by the beneficiary, indicating in what respect the applicant is in breach of its obligations under the underlying relationship. This statement may be in the demand or in a separate signed document accompanying or identifying the demand."

44. Mr Owen told me that although it had not been included in the applicants' evidence, the demand was supported by a statement setting out the details of BapCo's claims as required by article 15(a). Mr Brannigan did not dispute that assertion but explained that there had been no deliberate failure to disclose the supporting document. Quite irrespective of the disclosure point, Mr Brannigan's acceptance for the purpose of the hearing that there had been a supporting statement that had not been put before the court was fatal to his argument that urgent interim relief should be given for alleged breach of the uniform rules.

GROUND 3: THE DUE & PAYABLE ARGUMENT

45. Further, Mr Brannigan argued that on the proper construction of clauses 8.3, 8.6 and 24.1 of the EPC contract and clause 4 of the settlement agreement, delay liquidated damages were only due and payable to the extent that the failure to achieve Provisional Acceptance

by the Further Revised Provisional Acceptance Date was not excused by Relevant Events for which TTSJV was entitled to an extension of time.

46. Certainly clause 8.3 of the EPC contract entitled the contractor to an extension of time if and to the extent that delay was a direct result of certain matters beyond the contractor's control. Clause 8.3(d) made clear that the contractor was not entitled to any extension in the event of there being concurrent delays and at least one of those delays would not give rise to an entitlement to an extension.

47. Clause 24.1 set out the procedure by which the contractor could make a claim for an extension of time. The claim would be determined by BapCo in accordance with the claims determination procedure at clause 3.5. Such procedure required BapCo to consult the contractor and endeavour to reach agreement. Failing agreement, BapCo was required to make a fair determination of the claim in accordance with the contract having due regard to all relevant circumstances. The contractor could then give notice of its dissatisfaction with the determination within a period of 14 days. Provided such notice was given, the dispute could then be referred for determination by arbitration pursuant to clause 25.

48. Mr Brannigan acknowledged that there was no clause that provided that unless or until the extension of time claim was resolved, liquidated damages would not be due and owing. In this context, it seems to me that I should have been referred to clause 3.5(c) which provides:

> "Each Party shall give effect to each agreement or determination even where a notice of dissatisfaction is served pursuant to Clause 3.5(d) (Determinations), and notwithstanding that a dispute has been referred to be determined (and is pending determination) under Clause 25 (Arbitration and Dispute Resolution)."

49. While I have not had the advantage of any adversarial argument on the point, this provision is important since it appears to dispose entirely of ground 3 in providing that the parties were required to give effect to BapCo's rejection of the extension of time claim notwithstanding the contractor's challenge to that determination.

50. In any event, Mr Brannigan's argument came to this. TTSJV asserts that BapCo has wrongly rejected its extension of time claim. The claims were finally rejected in a determination made on 3 May 2026 which enclosed a 34-page report which advanced seven specific grounds for rejection. There has been no attempt to engage with the detail of that determination and, when I asked Mr Brannigan how on the evidence and argument before the court I could properly conclude that it was strongly arguable (let alone that it had been clearly established) that the extension of time claim had been wrongly rejected, he disarmingly responded that that was why this was his third ground.

51. I did not call on Mr Owen to address this ground. Even if Mr Brannigan had been right as to the applicable test, TTSJV has failed to make out a strongly arguable case. Certainly it has not clearly established that delay liquidated damages are not due and payable.

GROUND 4: THE RETENTION BOND ARGUMENT

52. Mr Brannigan initially argued that on its terms the retention bond was not security against the payment of Delay Liquidated Damages. Mr Owen quickly dismantled this argument:

52.1 Paragraph 11(d) of Annex 12 to the EPC contract provides:

> "The Retention Bond may be called on, and sums received applied by the Owner against, in relation to any of the circumstances set out in paragraphs 18.a.i, 18.a.ii and 18.b.i to 18.b.vii (inclusive) *(Owner's Right to Set-off, Deduct or Withhold)* below."

52.2 Paragraph 18.a.ii provides:

> "Without limiting or prejudicing any other rights or remedies of the Owner, the Owner shall be entitled to set-off or deduct from any payment due to the Contractor under the Contract: …
>
> ii. any claim to money that the Owner may have against the Contractor whether for damages (including liquidated damages) or otherwise,
>
> subject to providing the Contractor [with] no less than three (3) days' prior written notice of its intention to set-off or deduct a particular amount and provided that the Contractor has failed to pay such amount before the date on which the set-off or deduction is proposed to be made."

53. There was, therefore, no merit in TTSJV's argument that the retention bond was not given as security against Delay Liquidated Damages and the ground was rightly abandoned in Mr Brannigan's submissions in reply.

CONCLUSIONS

54. For these reasons I refused injunctive relief in this case.