

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port-of-Spain

CLAIM NO. CV 2016-01592

BETWEEN

TUCKER ENERGY SERVICES

Claimant

AND

TN RAMNAUTH AND COMPANY LIMITED

Defendant

Before the Honourable Mr. Justice Seepersad

Date of Delivery: November 15, 2018

Appearances:

Claimant: Ms. Catherine Ramnarine instructed by Ms. Cherie Gopie.

Defendant: Mr. Jagdeo Singh and Mr. Kiel Taklalsingh instructed by Ms. Karina Singh.

JUDGMENT

Introduction

1. Before the Court for its determination is the Claimant's claim which arose in circumstances where the Claimant was engaged by the Defendant to provide wire-line logging services to several oil wells including Well FE 221. While undertaking work on the said well, the Claimant's tool became stuck in the hole and the retrieval process for the tool was unsuccessful. The claim for the lost tool is the sum of US\$803,577.77 according to the statement of case though the sum was expressed as US\$664,536.44 on the claim form.
2. The Defendant in its counterclaim advanced that by virtue of the lost tool which was abandoned by the Claimant, it had to obtain alternate access to the well and incurred expenses of US\$732,498.60 and US\$701,428.00 and had a reserve loss of US\$82,421.88.
3. The evidence in this matter came from the following witnesses:
 - i) Mr. Kenneth King Fook, Business Unit Manager- Open Hole Services of the Claimant, together with exhibits annexed to his witness statement filed on October 2, 2017 on behalf of the Claimant.
 - ii) The Expert Report of Mr. Krishna Lutchman, former Exploration and Production Manager together with exhibits thereto, filed on October 2, 2017 on behalf of the Claimant.
 - iii) The evidence of Mr. Lennox Algoo, Consultant Project Manager.
 - iv) The evidence of Mr. Glenn Massy, Drilling and Workover Consultant on behalf of the Defendant.
 - v) The evidence of Expert Mr. Larry Pragg, Health and Safety Officer and Engineer of the Defendant on behalf of the Defendant.

- vi) The oral evidence adduced into cross-examination by the above-named witnesses at the trial of this matter on the 11th and 12th September 2018.
- vii) The documents comprising the Agreed Bundle of Documents filed on April 13, 2017.
- viii) The documents comprising the Unagreed Bundle of Documents filed on April 13, 2017 to which reference was made in the witness statements or which have been referred to during cross-examination of the above-named witnesses.
- ix) The Defendant's Supplemental List of Documents filed on September 11, 2018 disclosing two documents entitled, "*CT-Crocker Tucker Energy Services – Fishing- Standard Operating Procedure*" dated April 26, 2011 ("the Crocker Tucker document") and "*Tucker Wireline Services Fishing*"– Undated ("the Tucker Fishing document").

4. The undisputed facts, as agreed between the parties are as follows:

- 1) The Claimant and the Defendant entered into an Agreement in or around November 2014 ("the Agreement") for the Claimant to provide to the Defendant wireline logging services ("the Services").
- 2) The Claimant provided the Defendant with a quotation dated November 5, 2014 outlining its fees for the Services. The quotation also stated in bold and italic print that, "**Lost in hole or damaged beyond repair tools will be billed as per replacement cost in addition to all transportation costs from manufacturer to TES- Trinidad; *Charges of Fishing Kit Rental, Fishing Crew and Wireline will apply in the event of Fishing Operations to retrieve lost/left in hole TES logging tools.*"

- 3) The Defendant accepted this quotation by email dated November 11, 2014.
- 4) At the time of hand-over to the Claimant for logging, the Defendant was of the view that the hole was in a proper condition to be logged and informed the Claimant that the well was in a proper condition to be logged.
- 5) The density calliper part of the tool did not open at well -depth of 4295'. The tool was pulled out of the hole and the callipers were checked and functioned well.
- 6) There was no instruction by the Defendant to change the tool when it first malfunctioned.
- 7) Fishing was commenced by the Claimant upon the instruction of the Defendant.

The Issues

5. The issues which fall to be determined by the Court are as follows:
 - a) Whether the Defendant is strictly bound by terms of the quotation (which was an express term of the Agreement) that in the event that any of the Claimant's logging tools became lost in hole or damaged beyond repair during its performance of the agreed Services, that the Defendant would be responsible for covering (i) the costs of any fishing operations to retrieve the tools and (ii) the replacement cost of the tools;
 - b) Whether liability to cover (i) the costs of any fishing operations to retrieve the tools and (ii) the replacement cost of the tools, would accrue to the Defendant, if the tool was lost due to the Claimant's negligence or failure to perform the 'contracted-for services' in an

expert, proficient and efficient manner with adequate, properly serviced and maintained equipment or with adequate properly trained, competent and suitable personnel.

6. The Claimant filed evidential objections in relation to the witness statement of Lennox Algoo. The Court felt that Mr. Algoo was ultimately qualified to give evidence as the Defendant's witness of fact and also felt that the 'Crocker Tucker document' and the 'Tucker Fishing document' were relevant to the issues to be determined by the Court and admitted the said documents into evidence but encouraged the Claimant to review same prior to the commencement of the trial.

7. The critical issue which the Court had to resolve in this matter involved a determination of the correct interpretation which should be given to the phrase "Lost in Hole" and the Court had to consider whether the interpretation was one of strict liability or whether a more flexible approach had to be taken which would require the Court to consider the following matters:
 - i. The conditions of the borehole;
 - ii. Whether the logging crew (Claimant's staff) was competent and/or acted competently according to established/recognised industry standards;
 - iii. Whether properly functioning equipment/ tools were used by the Claimant;
 - iv. Whether the logging operations were conducted recklessly/negligently by the Claimant,
 - v. Whether the Claimant's logging crew was competent and acted responsibly in the fishing exercise.

8. The term “Lost in Hole” was not defined in the contract and the Court felt that it had to determine the purport of the phrase as it would have been reasonably understood by the contracted parties and felt that it could not adopt a rigid application and instead, it had to take into account all of the surrounding factors including the relevant industry practice. Consequently, the Court considered extrinsic evidence in relation to custom and usage and viewed the evidence from the perspective of ensuring that the interpretation of the phrase made commercial sense.
9. The Court felt that the inclusion of the phrase could not translate into an automatic circumstance of strict liability as it felt that such an interpretation would not accord with commercial efficiency nor would such an approach be practical.
10. The Court formed the view, that if, for example, the evidence revealed that the logging exercise was conducted recklessly or negligently, or the tool was not functional or that insufficient or inadequate attempts were undertaken in relation to the fishing process, then liability should not automatically accrue to the Defendant.
11. In arriving at the aforesaid position, the Court considered the dicta by Lord Hoffman in **Investors Compensation Scheme v. West Bromwich Building Society [1997] UKHL 28** and sought to apply an objective meaning to the contractual term, congruent with the need to determine the meaning conveyed to a reasonable person seized of all the knowledge which was reasonably available to the contractual parties when the contract was executed. The Court also adopted a purposive approach, so as to determine the conventional usage and to ultimately achieve an interpretation which accorded with commercial common sense. The phrase “Lost in the Hole” could

not be considered in a vacuum but had to be viewed in the context of the applicable commercial background. The Court was also mindful of its task to construe the contract as a whole and not to adopt an overly literal interpretation of one provision without due regard to the entirety of the commercial arrangement, so as to not frustrate the ultimate commercial intent. Ultimately, the Court felt that the phrase should not be viewed in a special or technical sense.

12. The Court noted the approach adopted in **Wood v Capita Insurance Services Limited [2017] UKSC 24** where it was said at paragraphs 10 to 15 as follows:

“10. The court’s task is to ascertain the objective meaning of the language which the parties have chosen to express in their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole and, depending on the nature, formality and quality of the drafting of the contract, give more or less weights to elements of the wider context in reaching its view as to that objective meaning...”

*12. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and **its commercial consequences are investigated**: Arnold para 77 citing *In re Sigma Finance Corpn [2010] 1 All ER 571, para 10 per Lord Mance. To my mind once one has read the language in dispute and the relevant parts of the contract that provide its context, it does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a**

close examination of the relevant language in the contract, so long as the court balances the indications given by each.

13. Textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation. Rather, the lawyer and the judge, when interpreting any contract, can use them as tools to ascertain the objective meaning of the language which the parties have chosen to express their agreement. The extent to which each tool will assist the court in its task will vary according to the circumstances of the particular agreement or agreements. Some agreements may be successfully interpreted principally by textual analysis, for example because of their sophistication and complexity and because they have been negotiated and prepared with the assistance of skilled professionals. The correct interpretation of other contracts may be achieved by a greater emphasis on the factual matrix, for example because of their informality, brevity or the absence of skilled professional assistance. But negotiators of complex formal contracts may often not achieve a logical and coherent text because of, for example, the conflicting aims of the parties, failures of communication, differing drafting practices, or deadlines which require the parties to compromise in order to reach agreement. There may often therefore be provisions in a detailed professionally drawn contract which lack clarity and the lawyer or judge in interpreting such provisions may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type. The iterative process, of which Lord Mance spoke in *Sigma Finance Corpn* (above), assists the lawyer or judge to ascertain the objective meaning of disputed provisions.

14. On the approach to contractual interpretation, *Rainy Sky* and *Arnold* were saying the same thing.

15. The recent history of the common law of contractual interpretation is one of continuity rather than change. One of the attractions of English law as a legal system of choice in commercial matters is its stability and continuity, particularly in contractual interpretation.”

13. The Court opined that the phrase “Lost in Hole” had to be considered cognisant of its effect and sought to interpret it in a manner that would ensure that liability would only arise where the logging company engaged in a competently initiated logging process with functional equipment manned by experienced, qualified and competent crew. If under such conditions, the tool became stuck and the fishing process was unsuccessfully engaged by skilled and experienced personnel who were suitably qualified to undertake such an exercise, only then would the Defendant be liable.

14. **This Court felt that a reasonable reader armed with the required degree of commercial and business acumen and versed with the relevant operational background information, would not have concluded that the phrase “Lost in Hole” imposed liability where the logging company conducted the logging exercise in a negligent manner and the phrase could not automatically impose a condition of strict liability upon the Defendant. The Court weighed and tested the rival interpretations which the parties advocated and considered the commercial consequences as outlined in Wood v Capital supra and the fact that the meaning of the language in relation to the phrase, was open to question on the facts before the Court. This Court formed the view that if the Claimant’s assertion as to the relevant interpretation was correct, then the Defendant would be liable even if the logging company deliberately jeopardised the well, or the tool used was defective and/or managed in an incompetent, neglectful and/ or reckless manner and such an interpretation would lead to a circumstance which would defy commercial**

logic. The intent behind the phrase was not clear and unequivocally expressed and given the absence of a definition of the phrase, the Court considered all of the prevailing circumstances to determine whether the Defendant would be responsible for the cost of retrieval operations and for the replacement cost of the tool.

Application of the law to the facts

15. Mr. Algoo who testified on behalf of the Defendant, stated that he accepted the Claimant's quotation without reservation or caveat.

16. The Court considered in detail the evidence of the Claimant's expert, Mr. Krishna Lutchman, who stated the following in cross-examination:

Q. J.S: You don't know whether they were experienced. All you were seeing is names on a list. You don't know whether them fellas, ah forget the vernacular, right, you don't know whether them fellas just change dey clothes, brush dey teeth and head down by the well, a pickup side. You don't know whether Tucker send a pickup side there, because you never see any resume. You never see any log of their experience and you don't know them.

Justice Seepersad: Would you think it acceptable if trainees for example, were present when the work commenced as opposed to an experienced logging engineer?

Mr. Lutchman: Er, well, Sir, the—what they do is they would send somebody with more experience and they train people by having them with the crew.

Justice Seepersad: No, my question was, if a job such as the one which you reviewed—

Mr. Lutchman: *Uh-huh.*

Justice Seepersad:—*commenced in the absence of a logging engineer, and in the presence of trainee engineers—*

Mr. Lutchman: *Only trainee engineers?*

Justice Seepersad:—*only trainee engineers, would that be a circumstance which would cause some disquiet in your mind?*

Mr. Lutchman: *Yes, Sir, it would.*

Justice Seepersad: *Yes, Mr. Singh*

Q. *Yes, well let me tell you the evidence. Mr. King Fook admitted to me under cross-examination that he was not there and the job was started by trainee engineers. You would agree with me that that is a fall down of the crew?*

A. *Yes, that's not acceptable.*

Q. *Not acceptable?*

A. *Yeah.*

Q. *And in your report, you say, let us assume that you are right in this lost in the hole business, right, which ultimately is His Ludship's function—*

A. *Uh-huh.*

Q. *—you say, "As such the replacement cost of lost in the hole tools rests with the client except, A, the logging company deliberately did something to jeopardize the well."*

A. *That is correct.*

Q. *"The logging engineer made errors because he was not competent."*

A. *That is also correct.*

Q. *Right?*

A. *Uh-huh.*

Q. *And you have said that it would cause you a grave amount of disquiet, and you'll be very concerned and that was wrong?*

A. *Uh-huh.*

Q. *For H job to be started by trainee engineers in the absence of an experienced logging engineer. You agree with me with that?*

A. *Yes, I would agree with you on that.*

Q. *So you agree with me that conditions one and two applied wholly in this case? And you also agreed with me that the job was commenced without recourse to the data that they should have gotten.*

A. *Fair enough, yes.*

17. Mr. Lutchman's responses under cross-examination cemented in the Court's mind that on a balance of probabilities, the industry standard interpretation of the phrase "Lost in Hole" required that the logging process had to be conducted with competence, using functional equipment, for liability to accrue to the Defendant.

18. The Court noted the testimony of Mr. Larry Pragg where he stated that based on the information which he received, he would have commenced the logging operations. Even if such operations were commenced, the need for the process to be conducted by competent and experienced staff using functional equipment still endured.

19. The Court observed that on its pleaded case, the Claimant asserted that the hole conditions were poor and as such, the tool got stuck and was eventually

lost. If the hole conditions were poor then the logging should not have commenced and the Claimant as a logging expert should have satisfied itself of the hole conditions, before it elected to commence the logging process.

20. The Court felt a significant degree of disquiet with the evidence of the Claimant's witness Mr. King Fook who in cross-examination testified as follows:

Q. *And where were you? When the job started, where were you?*

A. *I was—*

Q. *I know where you were, you know.*

A. *Uh-huh.*

Q. *I going to give you an answer if you tell me the truth. Where were you?*

A. *I was off site in my vehicle.*

Q. *Sorry?*

A. *I was off site in my vehicle.*

Q. *Yes. You know why? Because the same crew was doing other jobs on the same day, logging Petrotrin wells. True, right?*

A. *Correct.*

Q. *Yes. So when you all got there around midnight, how many jobs you all had done before?*

A. *We had done one job earlier.*

Q. *One job earlier. For how long?*

A. *I cannot recall.*

- Q. *So the crew that you carried there start a job at midnight in your absence were two service trainee engineers, two OJT, according to you.*
- A. *[No audible response]*
- Q. *Huh? Ah correct, am I not?*
- A. *Agreed.*
- Q. *Yes. Sayyid Mohammed not a witness in this case. Right?*
- A. *Correct.*
- Q. *Dominic Abraham not a witness in this case?*
- A. *Correct.*
- Q. *Dilip Rambajan who is the winchman, we're getting to him just now, not a witness in this case. Right?*
- A. *Correct.*
- Q. *Evron Hadai, wireline assistant, not a witness.*
- A. *Correct.*
- Q. *Adrian Williams not a witness.*
- A. *Correct.*
- Q. *Ishmat McFarlane, not a witness.*
- A. *Correct.*
- Q. *As a matter of fact, everybody who would have undertaken some task in this case, none of them are witnesses in this case. You agree with me?*
- A. *Agreed.*
- Q. *So you don't know. You cannot assist His Ludship. Let's get to Dilip Rambajan. The internationally accepted protocols for when a winchman experiences sticking in a well, he must do certain things, hold the tension to the maximum and hold, release, all ah that. I could go through the list with you if you want me to.*

A. *No, agreed. I agree with you.*

Q. *Right. So you doh know whether Rambhajan did that.*

A. *At the point where the incident happened I was in the unit.*

Q. *Hold on. You don't know whether Rambhajan did what he was supposed to do because he's not a witness in this case.*

A. *I don't—*

Q. *You doh even have—Mr. King Fook, leh me get to the bottom of it, right?*

A. *Uh-huh.*

Q. *You doh even have a report from Rambhajan attached to any document in this case as to what he did.*

A. *[No audible response]*

Justice Seepersad: You accept that, Sir?

Mr. King Fook: That the witnesses did not attach a statement? That is co—

Justice Seepersad: Yes, there is no report from them?

Mr. King Fook: That is correct, My Lord.

21. Mr. King Fook's evidence revealed that as the person in charge of the logging process at the material time, he was not present and he could not say that the logging process was commenced in a competent manner nor could he testify that same was conducted in accordance with the accepted standards.

22. A further issue was raised in cross-examination with respect to the weak point and whether it was calculated properly. His responses on this issue were as follows:

Q. *Who set the weak point in the cable before you all, er, start the job? It can't be you because you wasn't dey.*

A. *The weak point is not built on—the weak point is*

constructed on two, on two, um, factors.

Q. Who set the weak point?

A. Let me explain. You construct a weak point built—based on the number of runs you would have done with the cable or, if you would have exceeded the maximum pull on the cable head.

Q. I just asked you a simple question.

A. It would have been done by the engineers.

Q. It wasn't you, right?

A. No, it was not, no.

Q. You don't know whether Mohammed and Abraham correctly calculated the weak point because there's a process for calculating the weak point, isn't it?

A. That is correct.

Q. And it's right here. You doh even know whether they correctly calculated that weak point.

A. All I can say is that after a rehead is done they would document the number of strands to what weak point they would be installed in the weak end [Phonetic].

Q. And, and, and where are those documents? Where them? Not there. They're not there. Trust me, they're not there.

A. Okay.

23. During Mr. King Fook's cross-examination he went on to say that:

Q. This morning you told me that you were not present at the start of the logging job.

A. That is correct.

Q. Right? Can I ask you to look at paragraphs 15, 16 and 17 of your witness statement, where you say logging of FE

221 began in the usual way, which was by having a pre-job safety meeting, which was attended by TSL engineers, the Defendant representative, Mr. Algoo, and well service personnel. At this meeting, you say "we", but you were not there?

A. That is correct.

Q. So the "we" is?

A. I'm referring to Tucker Energy, yes.

Q. Right. So all of this in paragraph 15 really is hearsay, is what you were told happened?

A. Agree.

Q. Paragraph 16. "After the pre-job safety meetings the engineers proceeded with rigging up the wireline in order to run all logging tools as per client requirement." Right? All of that again is hearsay? You were not present for that?

A. That is correct.

Q. And this is what was told to you?

A. Correct.

Q. "The logging first took place by first performing all surface checks and verifications which were satisfactory." That is also hearsay? That was what was told to you? You were not there?

A. That is correct.

Q. Now, the logging engineer is in charge of his tools?

A. Correct.

Q. He makes the decision as to what tool to use, when to use it, how to use it, when to change it?

A. That is correct.

- Q. *The client may offer a suggestion?*
- A. *That is correct.*
- Q. *But the logging engineer makes the final decision?*
- A. *That is correct.*
- Q. *So where you say in paragraph 17 there were no instructions to Mr. Algoo to change the tool, really and truly, Mr. Algoo could not give those instructions? You have to agree with me with that.*
- A. *I agree.*

24. The Court found that this witness was evasive in his responses with respect to the issue as to who set the weak point. Mr. King Fook was entrusted with the responsibility of supervising the process and on a balance of probabilities, he failed to discharge his obligations by not being present and by being unaware as to who set the weak point. His failure to discharge his obligations was further highlighted by his inability to say whether the ‘winchman’ properly manoeuvred the equipment or the “starting time of sticking”. The commercial expectation of the Defendant would have been that as a logging professional, the Claimant would have engaged in a professional discharge of the contracted agreed service and this expectation was not met. In fact, Mr. Lutchman expressed his unease with the fact that the process had been commenced by trainee engineers. Mr. King Fook’s inability to account for the conduct of his trainee engineers and to verify the preparatory assessments and the process engaged prior to conduct of the logging process, was an indication of the lack of adequate supervision and amounted to a failure to ensure that the logging process was competently initiated or that it was sufficiently supervised.

25. In its assessment of the evidence the Court noted that the Claimant adduced insufficient evidence, on a balance of probabilities, to establish that this

logging tool was functional at the commencement of the process. Mr. King Fook was unable to properly attest to the documents adduced in relation to the tool and in particular, the unsigned receipt in relation to the replacement cost of the tool which was lost. It was also evident that Mr. King Fook was not involved in the ordering process of the tool and was unable to assist in relation to the maintenance records for the tool.

26. The maintenance records commenced on October 2012. However, the tool was purchased in November 2012 and although the tool was lost on March 28, 2013, there were maintenance records for same up to April 4, 2013.

27. The Court also noted that the tally notes purportedly generated by the trainee engineers were not disclosed and none of the named trainee engineers were called as witnesses.

28. Counsel for the Defendant frontally addressed the anomalies in the maintenance records. Mr. King Fook annexed the said records to his witness statement and exhibited them for the purposes of demonstrating that the said logging tool was in good repair. In relation to the maintenance records, Mr. King Fook's responses under cross-examination were as follows:

Q. Are you seeing that, Mr. King Fook?

A. Yes I am.

Q. Right. So how the maintenance records for this tool start in October when all yuh only buy it in November? You have some more explaining to do, you know, with these maintenance records. Do you agree with me that that is impossible? By your own document, the service records of this tool could not start in October.

Justice Seepersad: Well, Mr. Singh, um, I am at page 35 of the trial bundle—

Mr. Singh: It would be—

Justice Seepersad:—II one.

Mr. Singh: Two one, yes.

Justice Seepersad: All right.

Mr. Singh: It's at the top here, M'Lud. I—we have a clean copy, M'Lord. We could, um—

Justice Seepersad: Is it that part of the photocopy wasn't clear? Because I'm not—[Pause] Page something of 44, on the right-hand—

Mr. Singh: It's 13, M'Lord.

Justice Seepersad: All right. And what's—

Mr. Singh: It's 13.

Justice Seepersad: On my copy, part of it has not been photocopied. There's a heading—[Crosstalk]

Mr. Singh: We have an extra one, M'Lud.

Continued Cross-Examination By Mr. Singh:

Q. Yes, Mr. King Fook.

A. Can you give me a couple minutes? [Pause]

Q. You're seeing the date there?

A. *Yes I am.*

Q. *And this is the service record you put in for this tool because this is the tool you're claiming replacement of. You said so in your witness statement. You didn't make any qualification.*

A. *[Pause]*

Justice Seepersad: What's your response, Sir?

Continued Cross-Examination By Mr. Singh:

Q. *You can't explain.*

A. *I could not explain this, My Lord.*

Q. *And it is because the maintenance records are faulty. You agree with me? And let me take you to another one, Mr. King Fook, that makes it pellucidly plain how faulty these maintenance records are. This tool was lost on the 28th of March, wasn't it?*

A. *Yes it was.*

29. The Court also noted the repetitive nature of the records and Mr. King Fook was cross-examined on this issue and his responses were as follows:

Q. *When you go to 24—*

A. *Uh-huh.*

Q. *—for the rest of the document, it is the same work order all the time.*

A. *That is correct.*

Q. *Cut and paste. Identical.*

A. *I would not say it's cut and paste, Mr. Singh.*

Q. *What you would say, it's a repetition?*

- A. *Each work order is unique to the assignment of the task being performed. Perhaps when the report was run, the way the system was filtered, it just pulled the same report over and over.*
- Q. *So you don't know that? You entered the data for this?*
- A. *I would have gotten this data from my maintenance supervisor.*
- Q. *Mr. King Fook, you don't know, sitting in this witness box today, what were the actual tasks performed. You cannot say sitting in this witness box today as a matter of fact that this is not a cut and paste of the same identical thing over and over? You can't say. You didn't input this data and you are the only witness of fact which the Claimant has called.*
- A. *Mr. Singh, that is correct, because we—*
- Q. *Right.*
- A. *—initiated the work order because there was a tool issue. The people who are performing this—the tasks on this work or—order.*
- Q. *Still in that fancy explanation.*
- A. *—are the maintenance personnel.*
- Q. *I am interested in you—*
- A. *So I will not have—*
- Q. *—answering?*
- A. *Any expertise on that.*
- Q. *My question. Right. You will not have expertise on it?*
- A. *Yes, that is correct.*
- Q. *And you are the only witness that they have called.*

30. The witness went on to say as follows:

Q. *Are you seeing that, Mr. King Fook?*

A. *Yes I am.*

Q. *Right. So how the maintenance records for this tool start in October when all yuh only buy it in November? You have some more explaining to do, you know, with these maintenance records. Do you agree with me that that is impossible? By your own document, the service records of this tool could not start in October.*

Justice Seepersad: *Well, Mr. Singh, um, I am at page 35 of the trial bundle—*

Mr. Singh: *It would be—*

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A. *Yes it was.*

31. Mr. King Fook had no knowledge of the actual maintenance of the tool and his evidence in relation to same was speculative. Having considered the evidence, the Court concluded on a balance of probabilities, that the maintenance records were unreliable and deficient and the Court placed no evidential value upon them and disregarded them in their entirety. Accordingly, the Court found that there was no evidence before it upon which it could conclude the logging tool was functioning properly prior to the commencement of the logging exercise.

The fishing exercise

32. In relation to the fishing exercise, Mr. King Fook's evidence was as follows:

Q. *What about the other one, Tucker Wireline Services?*

A. *I have because that was furnished to us in the open hole school.*

Q. *Right. So let's go to this one. Seeing that you see this one, let's go to this one. This one tells you at 11 of 54—let's go to page 11 of 54. You see what it says there, open hole checklist? You see that?*

A. *Yes I do.*

Q. *Right. "The following information should be obtained from the driller before any hole logging job." And it says: "One: A sketch of the well including depth, deviations and dog legs."*

A. *Correct.*

Q. *"Two: The depth of any pullovers or tight spots experienced by the drill pipe."*

A. *Correct.*

Q. *"Three: The depth of any highly permeable zones."*

A. *Correct.*

Q. *"Four: the depth of any lost circulation zones."*

A. *Correct.*

Q. *"Five, any unusual return such as gas cut, mud or large shale debris."*

A. *Correct.*

Q. *"Six", the same thing you tell me you doh do, "The depth of any unconsolidated formation."*

A. *Correct.*

Q. *"Seven", same thing you tell me you don't do, "Were there any problems with when the previous casing was run?"*

A. *Correct.*

Q. *"Eight: Is the mud rate higher than normal for this type of*

well?”

A. Correct.

Q. “Nine: were there any problems running logs in nearby wells?”

A. Correct. Correct.

Q. And up to today, sitting in that witness box, you cannot tell His Ludship, because you have no document to prove it, there are not witnesses in the case whether Mohammed and Abraham even did the basics of that.

A. That is correct.

Justice Seepersad: Now you understood this open hole checklist to be information which ought to be ascertained before undertaking any open hole logging job?

Mr. King Fook: So, My Lord, this, as I mentioned, was given or shown to us in a school. So this material is really presentation material. What we would have, what we would have done is we’d have taken these steps with you, if you may, or indicators, if you may, and we would have built them into our own procedures.

Justice Seepersad: Right, so they’re incorporated, but it’s— you at the material time when we’re dealing with this particular incident, you would have understood that this information ought to be obtained from the drill logs before any open hole logging job was undertaken?

Mr. King Fook: That is correct, My Lord.

Q. We’re talking about your ultimate responsibility for undertaking the task of fishing. Your quote, and I can get to it, you know, if you want me to quote it? Where’s the

quote?

A. *I'm familiar with the terms of the quotation, Mr. Singh.*

Q. *Yes. The quotation says, which is in your email, says very clearly, that you are to be paid.*

Justice Seepersad: *So you are providing or in this instance when the fishing had to be done Tucker provided not only the equipment but the manpower for this?*

Mr. King Fook: *That we are to assist with the retrieval, that is correct, to assist.*

Justice Seepersad: *What do you mean to assist? Were there TN Ramnauth employees also working in conjunction with the Tucker manpower?*

Mr. King Fook: *It would have been a two-way effort, My Lord. Tucker Well Services and TN Ramnauth. At the time of the exercise beginning, though, there was no TN Ramnauth rep at the well site. It was only Tucker Energy and Well Services.*

Justice Seepersad: *Yes, Mr. Singh.*

Mr. Singh: *M'Lord, just one moment. I want to get a document to put in the witness' hands.*

Continued Cross-Examination By Mr. Singh:

Q. *Right. Now, do you recall your quotation?*

A. *Yes I do. Is it also in the bundles?*

Q. *Yes. But let me read it for you. It says here: "Charges of fishing kit, rental, fishing crew and wireline will apply in the event of fishing operations to retrieve lost left in the hole TS logging tools." So it means then that Tucker Energy was charging Ramnauth for a service it provided to Ramnauth.*

A. *We have not charged anything to Ramnauth on FE 221.*

Q. *That's beside the point. This is what your quote says. Right?*

A. *Correct.*

33. Mr. King Fook accepted that the check list as outlined under the Tucker Wireline Services Fishing Manual was not followed and there was inadequate evidence adduced to lead the Court to find that the fishing exercise was adequately undertaken.

34. **It is evident to this Court that the parties fully appreciated that there existed the possibility that the tool may have been stuck during the logging process and the Claimant had pre-existing protocols and procedures so as to mitigate against situations of sticking as well as to govern the retrieval of a tool which became stuck. These protocols/procedures were not fully engaged. The Court on a balance of possibilities was not satisfied that a competent fishing exercise was engaged. A proficient fishing exercise should have been engaged as a prerequisite for liability to attach under the "Lost in Hole" clause as any contrary circumstance would not accord with commercial sense and would lead to a circumstance of potential abuse, as drilling companies would be at the mercy of logging companies, who would not have any incentive to attempt to retrieve their stuck tool, confident in the knowledge that the drilling company, as a matter of strict liability would be required to compensate them.**

35. **The Claimant was contractually engaged to undertake the logging process and then to carry out the fishing of the tool. Both processes were not properly supervised and/or actualised and the Court finds that the logging process was not competently initiated nor was it executed with the required degree of experience or qualified supervision. The Court was also unable to conclude that the logging tool was functional and further found as a fact that**

when the tool became stuck, the fishing exercise was not conducted with the required degree to skill and expertise which was commercially expected and it was not conducted in a competent and proficient manner as the wrong and/or inadequate retrieval equipment was used. The Court noted that Mr. King Fook went on to state in the incident report that the Claimant should purchase new equipment to conduct a proper fishing exercise. Consequently, the Court found as a fact that it was highly probable that an inappropriate overshot guide was used in the fishing process.

36. In relation to the Defendant's counterclaim, there is no contractual obligation pursuant to the agreement between the parties for the Claimant to bear the cost of associated with the process for the alternate access to the well under any scenario or for compensation for loss of reserves and no evidence was adduced to justify the grant of any relief as sought in the counterclaim.

37. Accordingly, both the claim and counterclaim are hereby dismissed and the parties shall be heard on the issue of costs.

FRANK SEEPERSAD
JUDGE