



Case No: HT-2020-000453

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (QBD)
[2021] EWHC 2278 (TCC)

Royal Courts of Justice
Rolls Building, London, EC4Y 1NL

Date: 11/08/2021

Before :

MRS JUSTICE O'FARRELL DBE

Between :

(1) THE ROYAL PARKS LIMITED
(2) THE SECRETARY OF STATE FOR DIGITAL,
CULTURE, MEDIA AND SPORT

Claimants

- and -

BLUEBIRD BOATS LIMITED

Defendant

Ms Camilla Chorfi (instructed by Bates Wells) for the Claimants
Mr Kevin Leigh (instructed by RIAA Barker Gillette (UK) LLP) for the Defendant

Hearing dates: 4th & 5th May 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

“Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties’ representatives by email and release to Bailii. The date and time for hand-down is deemed to be Wednesday 11th August 2021 at 10:30am”

.....
MRS JUSTICE O'FARRELL DBE

Mrs Justice O'Farrell:

1. This is the expedited trial of a dispute concerning the ownership of a boathouse and jetties ("the Boathouse") located on the north west side of the Serpentine Lake, Hyde Park, London.
2. The freehold land known as Hyde Park is owned by the Crown. The First Claimant is a charity incorporated on 19 February 2016 at the instigation of the Second Claimant to assume the functions previously carried out by one of its executive agencies, the Royal Parks Agency, including the management of Hyde Park.
3. Since 1998, the Defendant has operated boating facilities at the Serpentine for the public.
4. By a concession contract dated 17 December 2004, made between the Second Claimant and the Defendant ("the Contract"), the Defendant agreed to replace the existing boathouse and jetties with the Boathouse and to provide boating services at the Serpentine Lake.
5. The original contract period of fifteen years was extended by agreement of the parties to 10 November 2020 but thereafter the Contract expired. The Defendant's concession has not been renewed, although it has been extended on an interim basis pending resolution of a challenge in separate proceedings by way of judicial review.
6. In these proceedings, the Claimants seek declaratory relief as to the ownership of the Boathouse, together with orders to restrain the Defendant from continuing to trade from the Boathouse and from removing the Boathouse from Hyde Park.
7. The Claimants' case is that the Boathouse is part of Hyde Park; it was constructed to form part of the land and belongs to the Crown. The Defendant has no right to remove the Boathouse on expiry of its interim concession rights in October 2021.
8. The Defendant's case is that it retained ownership of the Boathouse which remained a chattel and was not a fixture to the land; alternatively the Claimants are estopped from denying the Defendants' ownership of that part of the Boathouse that can be removed. It was designed so that it could be assembled in parts at the lakeside and subsequently dismantled. The Boathouse was a substantial capital investment for the Defendant and was intended to be removeable in the event the concession ended by effluxion of time or otherwise.

Background to the dispute

9. By a contract made on 1 April 1998, the Second Claimant granted the Defendant a concession for operating a boating service on the Serpentine Lake from the boat house and jetties then located at the lakeside.
10. In about 2002, the Claimants took the decision to re-tender the concession. Mr McErlean, former employee of the Royal Parks Agency, explained in his witness statement that the intention was to provide enhanced boating facilities that would generate income for the Claimants and for the operator. It was recognised that the existing boathouse and infrastructure required investment. As a result, applicants were

required to include within their bids provision for replacing the existing boathouse and jetties at their own cost.

11. The Specification of Requirements document provided that the concession holder would be required to operate a boating service on the Serpentine. The concession holder would also be required, at his expense, to replace the existing boathouse and jetties, and to maintain them throughout the term of the concession. The Contract duration would be a minimum of ten years but subject to the investment proposals from the tenderer.
12. Paragraph 5.1.1 of the Specification provided that the price for a ten year concession was replacement of the existing boathouse and jetties i.e. that was the minimum level of capital investment required from the Defendant.
13. Paragraph 6.1.1 of the Specification stated that factors relevant to the Claimants' assessment of the tenders included the level of capital investment, the terms of the offer and the percentage share of gross profits that would be paid to the Claimants.
14. On 30 January 2004 the Defendant made its initial tender submission. On 8 June 2004 the Second Claimant invited the Defendant to re-submit the tender in accordance with specification and tender documents sent to the Defendant by email.
15. On 12 July 2004 the Defendant re-submitted its tender, including the following option:

“The present boathouse, nearing the end of its useful aesthetic life, will be replaced.

The new boathouse will be relocated nearer to the water's edge by 1 metre. This will allow the pavement to be reclaimed for pedestrians.

The kiosk AND ice-cream unit will be re-housed in the new boathouse's north-eastern corner, allowing Serpentine Road to be cleared.

Ernie Colicci has indicated his willingness to relocate to this new location if he wins the new mobile catering contract, and will pay a nominal rent to BlueBird. BlueBird will remain solely responsible for the entire building.

A new jetty will be floated on the south side of the new boathouse.

The existing jetties will be re-furbished with new decking timber, 'D' fenders and trim.

A new ferry and ferry service will run to a new jetty located near the Diana Memorial Fountain.”

16. The financial offer made by the Defendant was for a contract term of 15 years. Payments to the Claimants would comprise ten percent of gross annual turnover in respect of the boating service and five percent in respect of retail sales, with a minimum guaranteed income of £85,000.

17. Expenditure models produced by the Defendant showed indicative capital costs of £573,625 for the new building and £89,000 for the new jetties if they were extended; alternatively, £429,875 for the building and £76,000 for the new jetties, if a simpler design were used.
18. By letter dated 4 November 2004 the Defendant clarified that, if awarded the contract, the capital investment in the Hyde Park project would include £430,000 in respect of replacement of the existing boathouse and £76,000 in respect of the new/refurbished jetties. The financial schedules attached to the letter showed depreciation of the Defendant's capital investment over a period of 15 years to £0.
19. By letter dated 17 December 2004 the Claimants awarded the Defendant the Contract pursuant to which the Defendant would provide boating services at Hyde Park and Greenwich Park, stating:
 - “1. On behalf of the Secretary of State for Culture, Media and Sport, I accept your offer to provide the above services on the basis of your tender submitted on 12 July 2004 and varied as follows:
 - (i) You will invest the amounts detailed in your letter of 4 November 2004 (Scott/Pennington) to the timetable shown, unless otherwise agreed with the Authority. ...
 - (iv) You will pay the Authority 10% of net [sic] turnover for the boating operation but will guarantee a minimum payment of £85K per annum...
 2. This letter, your tender submission (as varied by the above) together with the following documents, will form a binding contract between the Secretary of State and your Company.

Schedule 1 – Specification of Requirements

Schedule 2 – Conditions of Contract (as varied)

Schedule 3 – Tender Submissions and Price Schedule dated 12 July 2004 (as varied)...”
20. The Contract Period commenced on 17 December 2004, with a term of 15 years, expiring on 30 November 2019.
21. By a licence dated 10 October 2007, the Second Claimant granted the Defendant permission for the demolition of the old boathouse and the initial preparation work for the construction of the new boathouse (“the Demolition Licence”).
22. By a further licence dated 22 February 2008, the Second Claimant granted the Defendant permission to carry out the works to construct the Boathouse (“the Construction Licence”).

23. Practical completion of the Boathouse was achieved on 9 September 2008.
24. By an agreement dated 14 January 2009, the parties agreed to vary the terms of the Contract, including a concession for the Defendant to sell additional items from the Boathouse and provision for events giving rise to compensation (“the Variation Agreement”).
25. By a further agreement set out in the Claimants’ letter dated 19 March 2019, signed by the parties, they agreed to extend the duration of the Contract from 30 November 2019 to 10 November 2020 and to increase the percentage of gross turnover payable by the Defendant from ten percent to fifteen percent.

Proceedings

26. In 2020 the Defendant sought to renew the concession beyond November 2020 but the Claimants refused to do so. The Defendant issued a claim for judicial review, seeking to quash the First Claimant’s decision not to extend the concession and requiring it to retake its decision, together with an injunction requiring the First Claimant to allow the Defendant to continue trading from the Boathouse.
27. On 9 December 2020 the Claimants issued these proceedings, seeking the following declarations:
 - i) the Defendant does not own the Boathouse;
 - ii) the boathouse jetties are attached to the land as fixtures and, as such, form part of the land at Hyde Park;
 - iii) the boathouse building has become part and parcel of the land at Hyde Park;
 - iv) the Boathouse is the property of the Crown (in the alternative, the Second Claimant);
 - v) the Defendant has no right to remove from Hyde Park or retain the Boathouse.
28. Further, the Claimants seek orders (if and to the extent necessary):
 - i) restraining the Defendant from continuing to trade from the Boathouse and/or at Hyde Park (and/ or at Greenwich Park);
 - ii) restraining the Defendant from removing the Boathouse (or any part of it) from Hyde Park;
 - iii) requiring the Defendant to remove its equipment and other chattels from the Boathouse.
29. On 17 December 2020 permission was granted to the Defendant to bring the judicial review proceedings but refusing to grant interim relief.
30. Pending resolution of the dispute between the parties, the First Claimant has granted an interim contract to the Defendant until 30 October 2021 to permit boating services to continue over the summer season.

The Witnesses

31. The following factual witnesses gave evidence:

- i) Mr Greg McErlean, former director of major developments at the Royal Parks Agency;
- ii) Mr Stephen Edwards, former manager of Hyde Park, who evaluated the tenders for the concession contract (now Head of Special Projects);
- iii) Mr Peter Scott, Director of the Defendant.

32. The parties relied on the following expert evidence:

- i) Mr Ellingworth, the Claimants' building surveying expert, prepared a report dated 19 April 2021;
- ii) Mr Ford, the Defendant's architectural expert, who designed the boathouse, prepared a report dated 16 April 2021;
- iii) the experts produced a joint statement dated 9 April 2021.

The Issues

33. Although there was a degree of movement on the identification of the issues during the hearing, by closing submissions the parties agreed the following formulation:

- i) Issue 1: Does the Boathouse comprise the superstructure (the part attached to but sitting on the concrete slab) for the purposes of considering its removal for re-use or does it comprise both the superstructure and concrete slab for these purposes?
- ii) Issue 2: Has the Boathouse become part of the land? What is its degree of annexation and what is the purpose of its design and erection?
- iii) Issue 3: Do the terms of the 2004 Contract preclude the Defendant from removing the Boathouse?
- iv) Are the Claimants estopped from denying the Defendant's ownership of "that much of the Boathouse that can be removed from the land". In this respect:
 - a) did the Claimants' predecessors induce, encourage or allow the Defendant to believe that it would retain ownership of "that much of the Boathouse that can be removed from the land" after its installation so as to amount to the requisite encouragement on the part of the Claimants (or their predecessors) contrary to their (the Claimants') strict legal rights?
 - b) what detrimental reliance did the Defendant place on the same?
 - c) whether or not any established reliance was reasonable?

- d) in the event the foregoing matters are established, whether it would be unconscionable for the Claimants to take advantage of the Defendant by preventing it from removing the Boathouse?

The Contract

34. Before turning to the issues, it is helpful to examine the commercial context in which the Boathouse was constructed and used during the period of the boating concession.
35. The Specification of Requirements document, forming part of the Contract, included the following provisions:

“1.2.3 The Concession Holder will be required to operate a Boating Service on the Serpentine in the summer season. The Boathouse and jetties are located on the North side of the Serpentine, their maintenance being the responsibility of the concession holder.

1.2.4 The Concession Holder will be required, at his expense, to replace the boathouse and replace the jetties.

...

1.2.6 The design of the new boathouse will require specialist advice and will be dependent on planning approval being given. The Royal Parks will work with the successful concession holder in developing a proposal that will satisfy the planners.

...

1.4.1 All of the existing boats are owned by the current Concession Holder, as is the equipment required for the provision of the Service. Ownership of the fixtures and fittings transfers to the Authority on termination of the existing contract.

4.1.1 The Contract requires the Concession Holder to:

- i. Provide and maintain a fleet of boats in Greenwich Park Children's Boating Lake and Hyde Park Serpentine Lake. The design of the boats will be subject to agreement and must be in a style sympathetic to the surroundings of the Royal Parks.
- ii. Invest in the Premises in Hyde Park and Greenwich Park and maintain them to a satisfactory standard during the life of the Contract.

...

- iv. Operate the public boating concession on behalf of the Authority and pay the Authority the tendered percentage of the gross receipts and / or a flat rate concession.

5.1.1 The Contract length shall be for a minimum of 10 summer seasons but will [depend] on the investment proposals received. For a period of 10 summer seasons the Concession Holder will be required to replace the Boathouse in Hyde Park, as well as replacing the jetties.

5.1.2 The new building will be expected to have a dedicated area for a catering service to replace the mobile kiosk adjacent to the existing boathouse. The catering service may not, however, be operated by the Concession Holder as part of this Contract and will be subject to negotiation.

5.1.3 The Royal Parks would also like to see a retail outlet incorporated into the new boathouse and invites suggestions on how this can be achieved.

5.1.4 The Royal Parks would also like a ferry service, as mentioned above, introduced.

...

6.1.1 The tenders will be assessed on the basis of all the information requested and subsequently supplied, but particular emphasis shall be placed upon the following:

- i. the number and type of boats, design of the boats, internal and external fittings and overall size;
- ii. the capital investment offer made and terms of the offer;
- iii. overall concept for the Boating Service to include proposals on the service range, service style, tariffs and perceived value for money;
- iv. proposals for encouraging wider use of the facilities in the wider community;
- v. calibre and level of Staffing and management of the Services;
- vi. company management structure as it affects the concession at Hyde Park and Greenwich Park;
- vii. the tendered percentage of gross receipts offered for the Boating Service;

viii. Health and Safety and environmental awareness.

...

8.4.1 As the level of capital investment required will influence the percentage of gross turnover offered to the Royal Parks and the contract term required, detailed and accurate estimates of expenditure are requested in the tender return. The Royal Parks will, upon completion of the works, arrange for an independent inspection and audit of the receipts to verify expenditure on the project for depreciations purposes and to ensure correct Commission levels are applied.

...

8.4.3 The Concession Holder is required to depreciate the capital investment in the facilities over the contract period using a straight-line depreciation. Should the contract be terminated early, through no fault of the Concession Holder, the Royal Parks shall be responsible for the undepreciated sum outstanding (see also General Condition 51.4)."...

36. The Contract Conditions included the following provisions:

"Contract" was defined as:

"the agreement to the Conditions between the Authority and the Concession Holder consisting of the following Schedules which, in event of ambiguity or contradiction between Schedules, shall be given precedence in the order listed:

Schedule 2: Conditions of Contract;

Schedule 1: Briefing and Specification of Requirements;

Schedule 3: Tender Submissions and Price Schedule;

Schedule 4: Form of Tender."

"Authority's Premises" and "Premises" were defined as:

"land, buildings and other structures, conducting media and underground services owned or occupied by the Authority and from which Services are performed."

"Authority" was defined as:

"The Royal Parks Agency on behalf of the Secretary of State for Culture, Media and Sport and includes the Authority's Representative."

37. Condition 3 was an entire agreement provision.
38. Condition 5 set out the boating services to be provided by the Defendant.
39. Condition 6.1 stated:
- “At all times the structure and envelope of the Premises shall remain the property of the Authority and at no time shall it vest in the Concession Holder.”
40. Condition 10.1 stated:
- “During the currency of this Contract, the Concession Holder shall be granted a non-exclusive licence (subject to all necessary rights and access whether arising expressly or by implication pursuant to the terms of this Contract) to occupy the Premises.”
41. Condition 10.6 stated:
- “Upon completion or earlier termination of this Contract, the Concession Holder shall remove all equipment not transferred by this Contract and shall clear from the Premises all waste arising from the provision of the Services and shall leave the Premises in a clean and tidy condition.”
42. Condition 20 set out the provisions for handover of the Premises, including the following:
- Condition 20.3:
- “Upon completion of the dilapidations survey required by Condition 20.2 the firm of Chartered Surveyors will prepare a schedule of works which they consider the Concession Holder needs to undertake in respect of the Premises to return it to a reasonable condition.”
- Condition 20.5:
- “The Concession Holder shall remove from the Premises, prior to the expiry of this Contract within seven days of termination, all of the property that the Authority agrees is in the Concession Holder’s ownership.”
- Condition 20.8:
- “The Concession Holder is not to remove from site any finishes, signage, fixtures, fittings, furniture or equipment which belongs to the Authority in accordance with the terms of this Contract.”
43. Condition 25 imposed on the Defendant obligations to maintain the Premises and Boats.

44. Condition 50.1 gave the Authority the right to terminate the Contract, or to terminate the provision of any part of the Services, by giving one month's written notice to the Defendant.
45. The consequences of termination were set out in Condition 51, including the following:
- “51.2 If the Authority terminates the Contract, or terminates the provision of any part of the Services, under Condition 50, the Authority shall reimburse the Concession Holder in respect of any loss, not including loss of profit, actually and reasonably incurred by the Concession Holder as a result of the termination, provided that the Concession Holder takes immediate and reasonable steps, consistent with the obligation to provide the Services during the period of notice, to terminate all contracts with subcontractors on the best available terms, to cancel all capital and recurring cost commitments, and to reduce Equipment and Labour costs as appropriate
- ...
- 51.4 The Concession Holder is required to depreciate the capital investment in the facilities over the contract period using a straight-line depreciation. Should the contract be terminated under Condition 50, the Authority shall be responsible for the undepreciated sum outstanding.”
46. The contractual documents indicate that the basis of the commercial arrangements between the parties was the grant by the Claimants to the Defendant of a commercial concession for the provision of boating services on the Serpentine for a period of 15 years. The Defendant agreed to pay the Claimants ten percent of gross turnover for the boating concession, subject to a guaranteed minimum payment of £85,000 per annum, as set out in the Financial Offer in the July 2004 tender, updated financial schedules attached to the letter dated 4 November 2004 and the letter dated 17 December 2004.
47. The Defendant was obliged to invest in Hyde Park by replacing the existing boathouse and jetties at its own expense. The capital investment “in the facilities” would be depreciated over the term of the Contract, as set out in the Specification paragraph 1.2.4, and letters dated 4 November 2004 (with updated financial schedules) and 17 December 2004. The “facilities” were not defined in the contract documents but the only facilities in respect of which a capital investment was made were the Boathouse and new boats. The depreciation figures used by the Defendant in its financial forecasts are consistent with the indicative capital costs of the Boathouse, identified in the bid expenditure models, being written down over the period of the Contract.
48. The Defendant was required to maintain the Boathouse throughout the term of the Contract (Specification paragraphs 1.2.3 and 4.1.1 (ii) and Condition 25). At the end of the concession term, a dilapidations survey would be undertaken to identify the

schedule of works that the Defendant was required to carry out to restore the property to a reasonable condition (Condition 20.3).

49. The Defendant was required to fund and bear the risk of its initial capital investment in the Boathouse. Further, the Defendant carried the risk of attracting sufficient business to satisfy the guaranteed minimum payments to the Claimants and produce a return on its investment. However, it was protected against the consequences of early termination on the part of the Claimants. In such event, the Claimants would be responsible for losses resulting from the termination (excluding loss of profit), including the undepreciated capital investment sum outstanding (paragraph 8.4.3 of the Specification; Conditions 51.2 and 51.4).
50. In its Amended Defence the Defendant pleaded that the 2008 Construction Licence provided that the Defendant was owner of the Boathouse. That position was diluted by Mr Leigh, counsel for the Defendant, in his written opening and abandoned in oral submissions. The Defendant's final position is that none of the Contract, the 2007 Demolition Licence, the 2008 Construction Licence or the 2009 Variation Agreement deals with ownership of the Boathouse or transfer of ownership following construction of the same.
51. The Contract did not in terms address the parties' understanding or agreement as to ownership of the Boathouse. Condition 6.1 provided that the structure and envelope of the Premises would remain the property of the Authority. Condition 1 defined the "Authority's Premises" and "Premises" as: *land, buildings and other structures ... owned or occupied by the Authority and from which Services are performed*". The Contract did not expressly state whether the Boathouse fell within those definitions. However, the services provided by the Defendant were in fact performed from the Boating House, suggesting that the parties intended the Boathouse to fall within the definition of Premises. Further, the express grant of a non-exclusive licence to the Defendant to occupy the Premises during the Contract (in Condition 10) must have been a reference to the Boating House because there were no other premises occupied by the Defendant.
52. The Construction Licence included the following provisions at clause 5:

"Following the Practical Completion of the Works and until the earlier of the termination of the Concession Contract or any other earlier date for the termination of this Licence the following provisions shall apply insofar as they may relate to the Boathouse:-

 - 5.1 The Licensee will use the Boathouse only in accordance with the Concession Contract for the provision of the Services and without prejudice to the existing terms contained therein will:-
 - 5.1.1 keep the Boathouse as a whole in good repair order and condition to the satisfaction of the Secretary of State and shall prior to the Practical Completion of the Works agree a Planned Reactive Maintenance Regime for the upkeep of

the new Boathouse in accordance with and on terms that shall be consistent with the Licensee's obligations for repair under the terms of the Concession Contract ...

...

5.2 The Licensee will not undertake the following activities without the prior written consent from the Park Manager ...

5.2.1 make any alteration or addition externally to the Boathouse or to the conducting media or any part thereof ...”

53. The Construction Licence did not include any express provision as to ownership of the Boathouse. However, the limitation imposed on the Defendant regarding use of the Boathouse, the express obligation to repair, and the requirement for the First Claimant's permission for any alterations, are inconsistent with the Defendant's case that it has a proprietary interest in the Boathouse.

Issue 1 - Composition of the Boathouse

54. The Claimants' case is that the Boathouse comprises both the superstructure and the concrete slab on which the superstructure sits. The Defendant's case is that the Boathouse is limited to the superstructure, that is, the part attached to but sitting on the concrete slab.

55. The components comprising the Boathouse construction have been agreed by the experts in their joint statement as follows:

- “1. The Boathouse comprises a purpose-built single-storey building constructed on an area of hardstanding projecting from the pavement on the northern side of the Serpentine. There is also a series of fixed and floating jetties. The fixed jetties are secured to the bed of the Serpentine using existing steel piling.
2. The concrete ground-bearing reinforced concrete floor slab is supported on piles, behind a sheet piled wall and the structural steel framework is supported on the concrete slab.
3. The main walls and roof comprise a structural steel frame of columns and trusses. The steel lattice girders weigh between 400 kg and 600 kg. The steelwork, due to the size & weight of the elements, would possibly have been erected using a one man operated crane or similar from inside the building. The steel sections have been bolted together on site and the columns bolted into

the floor slab using anchor bolts and threaded rods, giving the required rigidity to the installation.

4. The columns are spaced in the clerestory at 4m centres, spanning 8m across the building, supported on timber / steel columns / mullions, which in turn support the roof above.
 5. The roof comprises insulated deck panels on 18mm thick WBP plywood on timber joists, which span between the roof trusses.
 6. The wall panels are factory made, insulated timber panels, which are fixed to vertical posts.
 7. The roof is covered with a single ply membrane and was originally designed to be a 'Blue roof' (i.e. to hold water like a bunded tank), although the roof is not holding water at this time.
 8. Heating to the building is provided via a wet underfloor system. The building has a dedicated mains cold water supply from the Hyde Park utility main. Above ground the drainage is provided by three sub stack positions. Electrical supply enters the building via a dedicated duct terminating into a UKPN cut-out."
56. The experts agree that the reinforced concrete ground-bearing floor slab of the Boathouse is supported by screw piled foundations that are driven into the ground of the site. As such, they agree that the piled foundations and ground bearing floor slab have a high degree of permanence. The experts disagree on whether the piled foundations and reinforced concrete ground bearing floor slab form part of the Boathouse. Mr Ellingworth's view is that those elements were essential to the construction of the Boathouse and form an integral part of the structure. Mr Ford's view is that those elements do not form part of the structure because, although they are permanent, together with the jetties and walkways, the other parts of the building above slab level could be removed and re-used elsewhere.
57. Mr Ellingworth's opinion is that the Boathouse comprises a number of key elements, including the jetties, the foundations and the concrete slab, all of which form part of the substructure, together with the superstructure. The Boathouse required adequate foundations to transfer its structural load into the ground supporting it. A specialist piling contractor designed the foundations, comprising forty-four piles, some of which are installed in the bed of the Serpentine lake in water depths of up to two metres. The concrete ground floor slab is cut into the sloping bed of the lake. The structural steel frame of the building is fixed into the concrete slab by a series of sunken threaded bolts and rods. Therefore, the piled foundations support the structural frame as well as the reinforced concrete slab. The fixed jetties are secured to the bed of the lake by using existing steel piling. The building is substantial and, together with the jetties forms an integral part of the land in which it sits.

58. In cross-examination Mr Ellingworth agreed that the superstructure was a modular construction, which could be temporary or permanent. He accepted that, if the superstructure elements were removed, the remaining substructure could be re-used for another building, although the layout of the new building might necessitate extension or alteration to the slab.
59. Mr Ford's opinion is that the Boathouse was designed and constructed using a "kit of parts" because it was always intended that it should be temporary and capable of removal. The wall panels are factory made insulated timber panels fixed to vertical steel posts that are bolted down through a plate into the slab.
60. In his report Mr Ford stated that he conceived and designed the Boathouse on the basis of the Defendant's instructions, as a temporary building that could be removed in the future. However, in cross-examination he accepted that the concept for the Boathouse was designed by the original architect, Michael Hopkins. In the Design and Access Statement prepared for planning permission purposes, Mr Hopkins did not describe the building as temporary or removable.
61. In his evidence Mr Ford stated that he interpreted the Hopkins design but on the GFA website he described his design work as designing the layouts for the interior, revising the planning drawings and completing the working drawings for the facility, consistent with the terms of his letter dated 12 May 2007 to the Defendant. He agreed that his description of the client brief on the GFA website was a new facility on the Serpentine Lake, with a fixed deck and two floating jetties. He accepted that although the website referred to Mr Ford's introduction of sustainable elements into the design, there was no reference to the structure as temporary or demountable.
62. In my judgment the Boathouse comprises both the superstructure and substructure of the building. The concrete slab and piled foundation provide necessary support for the superstructure. The steel frame of the superstructure is bolted into the concrete floor slab, creating a permanent connection between the two elements, capable of being broken only by severing the fixings. The drawings and design statements by Mr Hopkins, the original architect, indicate that it was designed as an integral, permanent structure for Hyde Park. There is no suggestion in any of the contemporaneous documents that the design of the slab was intended to accommodate a number of different superstructure buildings. The method of construction adopted, materials used and the extent to which it has been anchored to the land, partially cut into the sloping bank of the Serpentine, indicate that the substructure and superstructure elements of the Boathouse were built to be permanent and immobile.

Issue 2 – whether the Boathouse has become part of the land

63. Ms Chorfi, counsel for the Claimants, submits that the Boathouse has become part of the land. The Boathouse is affixed to a solid concrete slab by a series of structural beams or steels. The bolts fixing the vertical steels into the concrete slab have to be severed to release the building from the concrete slab. The Boathouse has been constructed in such a way that it cannot be removed without breaking it up into its constituent elements, with a substantial amount of destruction. Contrary to the assertion of the Defendant in its pleaded case and in the witness statement of Mr Scott, the experts agree that dismantling the superstructure would take some three to four weeks, and result in a substantial part of the fabric of the Boathouse being destroyed.

64. Ms Chorfi submits that the Boathouse was designed specifically for Hyde Park and is not a temporary structure. It is clear from the context of the tender process and the Contract that significant investment for the purposes of improving the land was a fundamental ambition of the concession competition.
65. Mr Leigh, counsel for the Defendant, submits that the Boathouse was designed and installed so that it was capable of disassembly, to be removed and used elsewhere. This is consistent with the contractual terms which did not define the Boathouse, as a replacement, to become part of the premises and of land owned by the Claimants. Just because something is fixed to the ground and even attached to services does not make it part of the land. An example would be mobile homes that are brought to a caravan park or other site in two parts, bolted together and attached to services. Often a brick plinth surrounds the base for visual effect and to keep out people and animals from going underneath. At the end of the mobile home's life or when it needs to be relocated, the plinth is removed, the services disconnected, the unit unbolted into two and then the whole thing is transported elsewhere for re-use.
66. Mr Leigh submits that the main function of the Boathouse was to serve the Defendant's business, rather than the creation of something to enhance Hyde Park and The Serpentine.

Legal principles

67. *Woodfall on Landlord and Tenant* (Vol.1) categorises objects on the land as follows at para.13.131:
- “An object that is brought onto land may be classified under one of the broad heads. It may be (a) a chattel; (b) a fixture; or (c) part and parcel of the land itself. Objects in categories (b) and (c) are treated as being part of the land.”
68. It is a question of fact whether a particular object falls within one of these categories. The main factors are the degree of annexation to the land, and the object of the annexation. Where an item has been attached or connected in some way to the land, there is a rebuttable presumption that it has become a fixture, as summarised by Blackburn J in *Holland v Hodgson* (1872) L.R. 7 C.P. 328:
- “Perhaps the true rule is, that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to show that they were intended to be part of the land, the onus of showing that they were so intended lying on those who assert that they have ceased to be chattels, and that, on the contrary, an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue a chattel, the onus lying on those who contend it is a chattel.”
69. In *Elitestone Ltd v Morris* [1997] 1 WLR 687 (HL), the issue for the House of Lords was whether a bungalow that rested on concrete block foundations was part of the land.

In giving the judgment with which their Lordships agreed, Lord Lloyd of Berwick observed at p.690:

“The nature of the structure is such that it could not be taken down and re-erected elsewhere. It could only be removed by a process of demolition. This, as will appear later, is a factor of great importance in the present case. If a structure can only be enjoyed in situ, and is such that it cannot be removed in whole or in sections to another site, there is at least a strong inference that the purpose of placing the structure on the original site was that it should form part of the realty at that site, and therefore cease to be a chattel.”

70. Although the *mode* of annexation of the object to the land is a relevant factor, the significance of the *purpose* of annexation was emphasised by Lord Lloyd at p.693:

“A house which is constructed in such a way so as to be removable, whether as a unit, or in sections, may well remain a chattel, even though is connected temporarily to mains services such as water and electricity. But a house which is constructed in such a way that it cannot be removed at all, save by destruction, cannot have been intended to remain as a chattel. It must have been intended to form part of the realty.”

71. Also per Lord Clyde at p.699:

“That the bungalow was constructed where it is for the purpose of a residence and that it cannot be removed and re-erected elsewhere point in my view to the conclusion that it is intended to serve a permanent purpose. If it was designed and constructed in a way that would enable it to be taken down and rebuilt elsewhere, that might well point to the possibility that it still retained its character of a chattel. That the integrity of this chalet depends upon it remaining where it is provides that element of permanence which points to its having acceded to the ground.”

72. The test is an objective one. The terms of any contract, or other agreements between the parties, do not affect the determination as to whether, in law, the object in question has become part of the land: *Melluish (Inspector of Taxes) v BMI (No.3) Ltd* [1996] AC 454 (HL), per Lord Browne-Wilkinson at 473:

“...the intention of the parties as to the ownership of the chattel fixed to the land is only material so far as such intention can be presumed from the degree and object of the annexation. The terms expressly or implicitly agreed between the fixer of the chattel and the owner of the land cannot affect the determination of the question whether, in law, the chattel has become a fixture and therefore in law belongs to the owner of the soil ... The terms of such agreement will regulate the contractual rights to sever the chattel from the land as between the parties to that contract and, where an equitable right is conferred by the contract, as

against certain third parties. But such agreement cannot prevent the chattel, once fixed, becoming in law part of the land and as such owned by the owner of the land so long as it remains fixed.”

73. In *Elitestone* (above), Lord Clyde stated at p.698:

“It is important to observe that intention in this context is to be assessed objectively and not subjectively. Indeed it may be that the use of the word intention is misleading. It is the purpose which the object is serving which has to be regarded, not the purpose of the person who put it there. The question is whether the object is designed for the use or enjoyment of the land or for the more complete or convenient use or enjoyment of the thing itself.”

74. In *Webb v Frank Bevis Ltd* [1940] 1 All ER 247, the Court of Appeal considered whether the appellant had any right to remove as a trade fixture a shed it had erected, from ground that the respondent held as lessee. Under the terms of the lease, the respondent was permitted to erect or construct buildings or erections of a temporary character only and, at the end of the term of the lease, he covenanted to remove all buildings and erections and restore the site to its original state. The respondent permitted the appellant to occupy part of the land and the appellant erected the shed for the purposes of housing manufacturing machinery and providing warehouse accommodation for plant and materials. The roof and sides of the shed were of corrugated iron and easily removable. The timber posts supporting the shed were strapped to the concrete base but could be easily removed by undoing the bolts and cutting the upstanding straps.

75. The Court of Appeal determined that the superstructure and the concrete base did not form a single unit and the superstructure was removable – per Scott LJ, delivering the judgment of the Court at pp.250-251:

“That the concrete floor was so affixed to the ground as to become part of the soil is obvious. It was completely and permanently attached to the ground, and, secondly, it could not be detached except by being broken up and ceasing to exist either as a concrete floor or as the cement and rubble out of which it had been made. Does that fact of itself prevent the superstructure from being a tenant's fixture? I do not think so...

The judge held, and I think rightly held, that the superstructure was “to a very large extent” a “temporary” building, by which I understand him to mean that the object and purpose for which the company erected it were its use for such time as they might need it. That view goes a long way, if not all the way, towards the conclusion that, regarded apart from the floor, the shed was in law removable. The very uncertainty of the company's tenure of the site ultimately of necessity determined “the purpose and object” of the erection...”

76. A similar issue arose in *Wessex Reserve Forces and Cadets Association v White* [2006] 1 P. & C.R. 22 (QBD), the findings of which were not challenged in the ensuing appeal. The court found that huts, a portacabin and garden shed were chattels and could be removed from the land. However, an assembly hall, comprising a sectional pre-cast building resting on a concrete slab, had become part of the land. A significant factor was that, although the unit could be dismantled and re-assembled elsewhere, such exercise would be relatively labour intensive and a not inconsiderable number of components would require replacement.
77. The applicable principles derived from the above authorities for the purpose of this case are:
- i) The structure will be treated as being part of the land if: (a) the degree of annexation is such that the structure is permanently fixed to the land and can only be removed by a process of demolition; and (b) the purpose of such annexation must be that it should form part of the land.
 - ii) The structure will be treated as a chattel if it sits on the land but is otherwise unattached, unless there is objective evidence that it was intended to form part of the land.
 - iii) Where the structure is annexed to the land but potentially removable, it will be treated as being part of the land if the purpose for which it was annexed was the permanent and substantial improvement of the land; but it will be treated as a chattel if the purpose for which it was annexed was temporary or for the more complete enjoyment and use of it as a chattel.
 - iv) The test as to the degree and purpose of such annexation is an objective one; it is not determined by the subjective intention of the parties or any contractual arrangements between them.

Evidence and finding on annexation

78. Mr Ford's opinion is that the superstructure of the Boathouse was designed and constructed so as to be brought to the site and then erected on top of the slab to which it was secured. The primary elements of the Boathouse are the structural frame, factory made timber cladding panels and timber windows and doors. These components could be disassembled easily and would be suitable for re-use elsewhere. Mr Ellingworth's opinion is that removal of the superstructure would not comprise the whole of the Boathouse and additional elements or materials would be required if the building were to be erected elsewhere, including foundations, the floor, the roof, internal layout and services.
79. Mr Ford produced a document dated June 2020, setting out his proposed methodology for disassembly and removal of the building. This would involve the removal of the steel structure, boiler and plant, timber windows and timber panels of the existing building, and internal fixtures and fittings, including bathrooms and kitchen. The existing jetty and concrete foundation slab would remain. All services, including electricity, water, telecommunications, drainage and under floor heating would be capped off. Mechanical and electrical services would be stripped out. The steel lattice girders would be dismantled using a spider crane.

80. The experts agree that the disassembly works could be carried out within a period of about four weeks, the works would be of medium complexity and would require experienced contractors to undertake the work, using appropriate lifting gear.
81. In terms of the elements of the structure that could be removed, the experts agree that the piled foundations, concrete floor slab and underfloor heating system could not be removed. Ninety percent of the main structural steel frame could be removed and re-used in another location but the threaded rods and bolts fixing the steel columns to the concrete floor slab would not be capable of removal and would have to be cut off at the base. Likewise, ninety percent of the clerestory windows and external doors could be removed and used elsewhere. The main steelwork and timber roof structure could be capable of relocation, but the membrane roof covering would be destroyed. Internal timber framework could be reused but not the associated plasterboard walls and ceilings. If carefully removed, the sanitary ware and kitchen cabinets could be reused. The mechanical and electrical fittings and pipework would be destroyed but various component parts could be salvaged. The experts agree that parts of the timber cladding could be re-used but Mr Ford considers that ninety percent would be capable of reuse, whereas Mr Ellingworth's view is that it is likely to be more modest, at seventy-five percent.
82. In my judgment, the Boathouse is part of the land for the following reasons.
83. Firstly, having determined that the Boathouse comprises both the superstructure and the substructure, it follows that the degree of annexation is such that the structure is permanently fixed to the land. It is not disputed that the concrete slab and foundations can only be removed by a process of demolition.
84. Secondly, even if the superstructure could be regarded as separate from the substructure, I accept Mr Ellingworth's evidence that removal of the superstructure would result in substantial destruction of its components, such that any re-use elsewhere would be the salvage of parts and not the reinstatement of the whole. Although the removal operation could be carried out so as to preserve significant materials from the building, this would not be limited to simple dismantling and re-assembly of those parts. Very significant additional works and components would be required to provide foundations, a floor, a roof, internal layout and services for the same. This would amount to a new construction using reclaimed materials.
85. Thirdly, the purpose for which the Boathouse was constructed by the Serpentine was the permanent and substantial improvement of the land. It was inextricably linked to the boating concession operated by the Defendant on behalf of the Claimants, a service that could only be operated from the lakeside. As stated by Michael Hopkins in the application for planning permission, the purpose of the new Boathouse was:

“... to replace the existing Boathouse with a very high quality, elegant addition to both Hyde Park and the Serpentine. The new building will respect and enhance its setting whilst providing improved functions and services for BlueBird Boats, its customers and all users of the Park.

Apart from the current facilities, which include a private office, workshop, staff changing/resting area, storage spaces and a

ticket sales office, the new Boathouse would also provide an Information Centre, shop and first aid point. This additional facility will enable the new Boathouse to function as a public asset to assist the users of the Hyde Park...

Since the building, including its roof, will be highly visible from many areas of the Park, the selection of building materials and treatment of the roof finishes will play a very significant part in blending the design with the setting of the Park."

86. Fourthly, any subjective intention on the part of the Defendant, to procure the design and construction of a building that could be easily dismantled and removed, would not be determinative of this issue. In any event, I reject Mr Scott's evidence that he instructed Mr Hopkins, or Mr Ford, to design the Boathouse so that it could be easily dismantled. Although it is likely that were discussions surrounding the use of a modular design to accelerate the construction phase, given the delays to the project (from 2004, the date of the Contract, to completion of the Boathouse), there is nothing in the contemporaneous documents evidencing any concerted intention to design the building as a temporary structure that could be easily dismantled and removed.
87. Finally, the Court's finding that the Boathouse was intended to be a permanent enhancement to the land is supported by the contractual documents referred to above, which were clear that the Defendant was required to provide capital investment in Hyde Park, by way of improvement to the land.

Issue 3 – whether the Contract precludes the Defendant from removing the Boathouse

88. The Contract does not contain any express provision giving the Defendant any right to remove the Boathouse.
89. The Contract defines the "Premises" as:
- "land, buildings and other structures, conducting media and underground services owned or occupied by the Authority and from which Services are performed."
90. As set out above, the Boathouse is part of the land that is Hyde Park. Hyde Park is owned by the Crown. It is occupied and managed by the Claimants. The boating services are performed from the Boathouse. Therefore, the Boathouse falls within the definition of the Premises for the purpose of the Contract.
91. Condition 6.1 provides that the structure and envelope of the Premises remain the property of the Claimants and at no time vest in the Defendant. This would preclude the Defendant from asserting ownership in, or a right to remove the Boathouse.
92. Condition 10.1 granted a non-exclusive licence to the Defendant to occupy the Boathouse during the currency of the Contract. The Contract has expired through effluxion of time. Therefore, the Defendant no longer has any licence to occupy the Boathouse.

93. Condition 20 set out the provisions for handover of the Boathouse on the expiry of the Contract term, including requirements for the Defendant to carry out works to restore the Boathouse to a reasonable state of repair (Condition 20.3), and prohibition on the removal of any fixtures belonging to the Claimants (Condition 20.8). Paragraph 8.4.3 of the Specification and Condition 51.4 required the Defendant to depreciate the capital investment in the Boathouse over the contract period using a straight-line depreciation. As Ms Chorfi submitted, these provisions of the Contract are inconsistent with any contention by the Defendant that it has ownership of, or is entitled to remove, the Boathouse.
94. For the above reasons, the Defendant has no proprietary or contractual right to remove any part of the Boathouse, including the building superstructure.

Issue 4 - estoppel

95. Mr Leigh submits that the Defendant has an alternative case that estoppel arises. Encouraged by the Claimants (or their predecessors), the Defendant spent considerable sums of money designing and installing the Boathouse, thereby acting to its detriment. It did this in the firm and clear belief that it owned the Boathouse. The Defendant deliberately procured the design and construction of a building that was capable of being dismantled so that, in the event that the concession ended without renewal, it would be able either to remove, sell or rent it to a new concession operator and thereby salvage some of its capital investment.
96. Mr McErlean, former employee of the Royal Parks Agency, was not involved at tender stage or in the negotiations for the Contract. He was brought in to assist with delivery of the design and construction project for the new Boathouse in 2005. He was certain that the Defendant would not have been encouraged to believe that it would retain ownership of the Boathouse when constructed because the land belongs to the Crown:

“As far as I am aware, no one within either the Agency or the First Claimant or Second Claimant would have had authority to grant the Defendant an interest in the Boathouse or its removal from Hyde Park at the end of the Contract. If they had, which I do not believe they did, they would have been acting ultra vires.”

97. Mr McErlean confirmed that during discussions with Mr Scott of the Defendant, Mr Scott explained that a modular design would be used for the new boathouse to allow for the construction of the building off site and facilitate quicker assembly on site but stated in his witness statement:

“I understand ... that the Defendant now alleges the reason for the modular design of the boathouse was because it had been designed to be taken down and built elsewhere. This was never provided as a reason behind the modular design of the boathouse at the time. Further, if it had been given as a basis for the modular design, it would have been made very clear to the Defendant that the boathouse would be remaining in Hyde Park on the expiry of the Contract as it was always intended that the new boathouse was a permanent replacement for the then existing one.”

98. When giving oral evidence to the Court, Mr McErlean went further and stated:

“I'm pretty sure I did tell Scott that when built, the Boathouse would belong to the Crown. I would have said: ‘it is not your building’. I can't recollect a specific incident when I said that to him; I would have said it if it came up in conversation.”

99. When pressed by Mr Leigh, Mr McErlean conceded:

“I have no specific recollection that I discussed it with the Defendant.”

100. Mr Edwards, Park Manager for Hyde Park, stated in his witness statement:

“I was part of the team that interviewed those tendering for the concession contract. At those interviews I remember us raising questions with regard to the level of investment and how it was expected that they would get a return on this investment. I remember being particularly concerned as to the level of investment proposed by the Defendant and therefore this was a feature of our interview with him. My recollection of this interview is that when we discussed the proposal for replacing the boathouse it was clear that we were discussing replacing the existing boathouse with a permanent building and there was never any indication that the boathouse would remain the property of the concession holder or that they would in some way be entitled to remove the boathouse on the expiry of the concession contract. It would have made no sense for the Agency to agree to this, as it would leave the Park without a boathouse. Given there has been a boathouse in Hyde Park for well over 100 years, this would never have been something that we would or could have agreed to.”

101. In respect of property rights, he stated:

“It was always understood that the concession contracts under which concessionaires operated have a finite end and it was clear to every concessionaire at the time of entering into a concession contract that despite their investment, they would not own any rights in the premises in which they were being asked to invest. I cannot think of any single exception to this. It was always understood by the Agency and the First Claimant and indeed (as far as I could see) by the concession holders that concession holders would occupy any property by way of licence only and would therefore not acquire any rights in the property.

Whilst I cannot recall having any one specific conversation with the Defendant explaining this, I have no doubt that this point would have been made clear to the Defendant at the time of granting of the Contract, not least because of the substantial sums that the Defendant was expected to invest. Alternatively, it

would have been obvious that the Defendant appreciated that it would not acquire any rights of ownership over the boathouse. I do recall advising Peter Scott of the Defendant at time of construction of the boathouse not to invest more than necessary in something that would remain because I was concerned that he would not be able to recoup his investment.

... I have no doubt that the Defendant always knew and has always known that it does not have any right of ownership over the boathouse ... Further I reject the assertion that I or anyone else on behalf of the Agency led or would ever have led the Defendant to believe that the boathouse would, once built, belong to the Defendant ...”

102. When cross-examined, Mr Edwards was uncertain about the discussions held with Mr Scott regarding property rights. Although he insisted that there had been small conversations about such issues, he could not recall the substance of any specific meeting. He accepted that there was no direct conversation with Mr Scott in which he was told that the Boathouse would belong to the Royal Parks.

103. Mr Scott, the director of the Defendant, stated in his witness statement:

“It was clear to me, and it seemed at the time to both parties, that BBL would own the new boathouse as it assumed the entire risk of the build, provided all funding, would maintain and insure the investment and be responsible for the design, planning application and the build. Nothing was said by the RPA within correspondence or in discussions that suggested otherwise.”

104. In cross-examination, Mr Scott stated that he did not have any discussion with Mr Edwards regarding the prudent level of investment and Mr Edwards did not warn him against any overspend on the project. He stated that:

“The issue of ownership didn’t come up ... It was always clear to me that at the end of the Contract I would take everything I owned, including the buildings. I didn’t discuss dismantling the Boathouse.”

105. Mr Scott accepted that his profit forecast showed depreciation of the capital investment over the contract period to £NIL but stated that it was for accounting purposes and did not represent the value of the assets.

106. When it was put to him that he did not clarify with the Claimants that he would have ownership of the Boathouse at the end of the Contract, he replied:

“No, I thought it was very clear. It was mine.”

107. Having read the witness statements and listened to the oral evidence of Mr McErlean, Mr Edwards and Mr Scott, it is clear that none of the witnesses gives direct evidence that the Claimants (or the Agency) informed the Defendant that it would, or that it would not, retain ownership of, or the right to remove, the Boathouse at the expiry of

the Contract. Further, it is clear that none of the witnesses gives direct evidence that the Defendant told the Claimants (or the Agency) that it considered that it would own the Boathouse, when constructed, or that the Defendant understood that it had the right to dismantle and remove the Boathouse at the end of the Contract. On that basis, the Court finds that nothing was said by any of the parties, during negotiation of the Contract or at any time up to construction of the Boathouse, as to ownership of the Boathouse or any right to remove the Boathouse on expiry of the Contract.

108. The principle of estoppel is set out in *Habib Bank Ltd v Habib Bank AG* [1981] 1 WLR 1265 per Oliver LJ at p.1285, (quoting himself in *Taylor's Fashions Ltd v Liverpool Victoria Trustees Co Ltd* [1981] 2 WLR 576 at p.593):

"Furthermore the more recent cases indicate, in my judgment, that the application of the Ramsden v. Dyson, L.R. 1 H.L. 129 principle - whether you call it proprietary estoppel, estoppel by acquiescence or estoppel by encouragement is really immaterial - requires a very much broader approach which is directed rather at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly, or unknowingly, he has allowed or encouraged another to assume to his detriment than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour."

109. Both counsel referred to Snell's Equity (34th Edition) at paragraph 12-24 as setting out the basis on which promissory estoppel may arise.

- i) Although promissory estoppel may arise in the absence of an express statement by A, a court will require clear evidence before finding that A impliedly encouraged B.
- ii) The general position is that mere silence and inaction by A cannot found a promissory estoppel, as A's failure to act, if capable of communicating anything, will generally be open to differing reasonable interpretations, at least one of which will be inconsistent with A's right not being enforced.
- iii) There are two exceptions to that general rule. First, if A is under a duty to disclose the existence of a particular matter giving rise to a right in A's favour, A's failure to do so may possibly support a promissory estoppel by leading B reasonably to believe that A does not have, or does not intend to enforce, that right. Secondly, if A stands by, knowing that B has a mistaken belief as to B's current legal rights and fails to take a reasonably available opportunity to assert A's inconsistent right, the doctrine of acquiescence may then apply to prevent A's later asserting that right.

110. Mr Leigh submits that the First Claimant encouraged the Defendant to expend substantial sums believing, as part of its ongoing commercial relationship with the First Claimant, that the Defendant retained ownership of the Boathouse. That encouragement was an integral part of the bargain between the parties. It would now be unconscionable

for the Claimants to take advantage of the Defendant's belief as to its ownership and to rely on legal rights which they failed to deal with in express terms in the Contract.

111. The Court rejects the Defendant's case that any estoppel arises in this case. Firstly, there is no evidence of any express or implied encouragement by the First Claimant (or the Agency) to the Defendant to believe that it would retain ownership, or rights in, the Boathouse once constructed. As set out above, the Court's finding, based on the evidence of the witnesses, is that there were no discussions to that effect.
112. Secondly, the Claimant's silence does not give rise to estoppel. It has not been suggested that the Claimants were under any duty to disclose the Crown's ownership of the land; it is a matter of public record. Therefore, the first exception to the rule does not arise. There is no evidence that, if the Defendant were under a mistaken belief as to ownership in the Boathouse, such belief was communicated to the Claimants. Therefore, the second exception to the rule does not arise.
113. Thirdly, there was no detrimental reliance by the Defendant on any belief as to ownership of the Boathouse; further, any such reliance was unreasonable. As Ms Chorfi submits, the Contract imposed an express obligation on the Defendant to make the requisite capital investment and provided a mechanism for depreciation of the investment over the term of the Contract. In the absence of any express statement from the Claimants indicating that property in the Boathouse would be transferred to the Defendant, it was not reasonable for the Defendant to assume, or believe that it would own the Boathouse.
114. Fourthly, in the absence of any contemporaneous intimation from the Defendant that its expenditure on the Boathouse was made pursuant to a belief that it would retain ownership of the same, rather than pursuant to its express contractual obligation to fund the Boathouse, it is not unconscionable for the Claimants to rely on their rights of ownership and occupation.

Conclusion

115. For the reasons set out above:
 - i) The Boathouse comprises both the superstructure and the substructure, including the concrete slab.
 - ii) By reason of the extent of annexation of the building to the land, and the purpose of its design and construction as a permanent enhancement to the land, the Boathouse has become part of the land and is owned by the Crown.
 - iii) The terms of the Contract preclude the Defendant from dismantling and removing the Boathouse from its location in Hyde Park.
 - iv) The Claimants are not estopped from denying the Defendant's ownership of any part of the Boathouse that can be removed from the land.
116. Following hand down of this judgment, the hearing will be adjourned to a date to be fixed for the purpose of any consequential matters, including any applications for

permission to appeal, and any time limits are extended until such hearing or further order.