

**In the name of His Highness Sheikh Tamim bin Hamad Al-Thani,
Emir of the State of Qatar**

**IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE
FIRST INSTANCE CIRCUIT**

20 January 2015

CASE NO: 02/2013

CHEDID & ASSOCIATES QATAR LLC

Claimant

v

MR SAID BOU AYASH

Defendant

JUDGMENT

Members of the Court:

Justice Cullen

Justice Robertson

Justice Al Sayed

ORDER

Having accepted jurisdiction in these matters the **Court DETERMINES:**

1. The Defendant's application for costs in these proceedings is granted, but only to the extent of USD 104,825.25 in respect of legal fees and USD 3,300 in respect of disbursements.
2. Accordingly the Claimant shall pay to the Defendant the sum of USD 108,125.25, together with interest at 5% from the date of this judgment until payment.
3. The Claimant shall also pay to the Defendant the equivalent in USD of the sum of QR 200, together with interest at 5% from the date of this judgment until payment.
4. The Claimant's application for costs is dismissed.
5. Each party should bear its own costs of representations and submissions in regard to the matter of costs.

JUDGMENT

Introduction

1. This judgment is concerned with the matter of costs following our judgment dated 25 September 2014. The Defendant made an application for costs by letter to the Registrar dated 16 October 2014, to which the Claimant filed a Reply dated 4 December 2014, which included its own application for costs. The Defendant filed a Response dated 18 December 2014, to which the Claimant filed a Response dated 8 January 2015. We have taken into account all these submissions and documents attached to them.

The Claimant's initial objections

2. The Claimant presented two initial objections to the Court entertaining the Defendant's application for costs. Since both objections relate to the arrangement which the Defendant had made for his representation, we shall set it out before coming to them.
3. The Defendant filed his Defence on his own behalf on 14 December 2013. However, in February 2014 he engaged the services of Brown Rudnick LLP of London ("Brown Rudnick") as his lawyers. This arrangement was set out in a Letter of Engagement and a Conditional Fee Agreement, both written by Brown Rudnick and dated 20 February 2014, the latter signed by the Defendant.
4. At page 4, under the heading "Fees, Administrative Charges and Disbursements" the Letter of Engagement stated:

"Our fees in this matter are conditional and will be linked to the results achieved. As required by law, a separate conditional fee agreement (enclosed) must be executed by [the Defendant] and Brown Rudnick ("the Conditional Fee Agreement"). In the event that of any conflict arising between the conditional fee agreement and the terms of this letter, the terms of the conditional fee agreement shall prevail"

5. The Conditional Fee Agreement stated in its recital that it was a legally binding contract between the client and Brown Rudnick, and in Clause 9 that it was to be construed in accordance with the law of England and Wales.
6. Clause 5, headed "What Happens if the Client wins the Claim", stated:

“5.1 If the Client wins the claim or recovers damages, the Client will seek Brown Rudnick’s Conditional Fees, Success Fees, Disbursements and Travel Costs from the Opponent. If these cannot be agreed by the parties, the court will decide how much can be recovered.

5.2 The Client agrees to direct the Opponent to pay all damages and other sums due from the Opponent into Brown Rudnick's client account, and Brown Rudnick agrees in turn to remit such monies to the Client less the sum of: (i) Brown Rudnick's Conditional and Success Fees; (iii) any Disbursements and Travel Costs outstanding.

5.3 If the Opponent is ordered to pay some or all of the Client's costs, interest can be claimed on the costs amounts due from the Opponent from the date of the award. Brown Rudnick is entitled to keep this interest on costs

5.4 If the Opponent does not pay all or any of the damages, fees or disbursements owed to the Client, Brown Rudnick has the right to take recovery action in the matter in the name of the Client to enforce any judgement, order or agreement. The cost of doing this will be payable by the Client under the terms of the Letter of Engagement. The Client agrees to cooperate fully with Brown Rudnick in any such recovery action.”

7. Under the heading “What happens if the Client loses the Claim” Clause 6 stated:

“6.1 If the client loses the claim, the Client will not be required to pay either the Conditional or Success Fees.

6.2 However, the Client will be required to pay Brown Rudnick's Travel Costs

6.3 The Client may also be liable for the damages and interest awarded or agreed together with the costs and disbursements of the Opponent"

8. The Claimant's first objection with which we are concerned was that the Defendant could not claim Brown Rudnick's legal fees as he had not been liable to pay them (the Claimant distinguished them from Brown Rudnick's disbursements, for which he had made an advance payment). The Claimant submitted that, in accordance with the indemnity principle in the law of England and Wales, a party could not claim any costs which it had not been liable to pay. Article 33 of the QFC Civil and Commercial Court Regulations and Procedural Rules, which deals with costs where a party has been successful, was concerned solely with the costs incurred by that party.
9. The Claimant submitted that the onus was on the Defendant to prove that he had incurred the legal fees which he claimed from the Claimant. Clause 5.1 of the Conditional Fee Agreement did not say that the Client was liable to pay them but merely that he was to seek them from the Opponent. The Client's freedom from liability was confirmed by a passage in the summary of the Conditional Fee Agreement in the Letter of Engagement, as follows:

"While we will not invoice you for our fees, in the event that you win the Claim, our invoices will include (i) administrative charges which will be charged to you...and (ii) disbursements...which will be charged to you at the actual cost incurred by us"

10. The Claimant pointed out that the Defendant had not produced any invoices from Brown Rudnick for their legal fees. Clause 5.2 did not require the Defendant personally to pay Brown Rudnick anything in respect of their legal fees. Where the Opponent had failed to pay their legal fees, the only party against whom Brown Rudnick would be entitled in terms of clause 5.4 to take action to recover

them was the Opponent. Clause 5.4 was the only provision in the Agreement which imposed a liability on the Client, and it was only for the costs of such a recovery action. Accordingly the Claimant submitted that in the present case there was not a “no win, no fee” agreement, but rather a “no fee payable by client in any circumstances” agreement.

11. In paragraph 25 of its Response dated 8 January the Claimant added a submission that for the Defendant to recover Brown Rudnick’s legal fees was contrary to the principles of not only English law but also Qatari law. It referred to Article 37 of Qatari Law (23) of 2006 regarding the Enacting of the Code of Practice of Law, which did not permit a lawyer’s entitlement to fees to be conditional upon winning the action.

12. We consider that the Claimant’s submissions were ill-founded. If we assume for present purposes that the indemnity principle applies in QFC law, we do not consider that a “no win, no fee” agreement would be incompatible with it. The Defendant pointed out that in *Jones v Wrexham Borough Council* [2008] 1 WLR 1590 at paragraph 10, Waller LJ approved the following statement in a speech by Lord Phillips of Worth Matravers to the Law Society of England and Wales:

"A no win no fee agreement does not impinge on the indemnity principle. Once the client has won he becomes liable to the solicitor to pay the solicitor's costs and thus he can properly claim an indemnity in respect of that liability from the unsuccessful party."

13. The question then is whether, under the arrangement between the Defendant and Brown Rudnick, the Defendant was entitled to claim their legal fees against the Claimant. In our opinion the only basis on which a successful Client could seek Brown Rudnick’s legal fees from the Opponent in accordance with Clause 5.1 of the Conditional Fee Agreement was that the Client had become liable to pay those legal fees. In other words that is the clear implication. Further, as the Defendant

pointed out, there is a similar implication in Clause 5.2 and 5.4, and this is a corollary of Clause 6. The Defendant also founded on a statement in the Letter of Engagement, under the heading “Litigation”, that “You will be responsible for paying our bill in full regardless of any order for costs made against your opponent.”

14. As regards the terms of Article 37 of Qatari Law (23) of 2006, whatever may be its effect in regard to lawyers who are subject to that law, in the present case the agreement was for the services of lawyers practising in, and subject to the law of, England and Wales. Under that law it is permissible for lawyers to enter into conditional fee agreements with their clients. Since its inception the QFC Court has proceeded on the basis that qualified lawyers who are entitled to appear before the superior courts of any jurisdiction will be entitled to appear before it.

15. The Claimant’s second objection relied on the submission that it was a prerequisite of Clause 5.1 of the Conditional Fee Agreement that the Client had won the claim or recovered damages. The Claimant pointed out that the definition of “Wins the Claim” in Clause 1 made it clear that a claim was not won until it was finally decided in favour of the Client. This could not be said to be so in the present case as the Claimant had applied for permission to appeal. We see no good reason why we should not deal with the application for costs on the basis of our judgment of 25 September 2014.

16. In the circumstances we reject both of the Claimant’s initial objections.

The parties’ applications for costs

17. Article (33) of the QFC Civil and Commercial Court Regulations and Procedural Rules provides:

“33.1 The Court shall make such order as it thinks fit in relation to the parties’ costs of the proceedings.

33.2 The general rule shall be that the unsuccessful party pays the costs of the successful party. However, the Court can make a different order if it considers that the circumstances are appropriate.

.....

33.5 In the event that the Court makes an order for the payment by one party to another of costs to be assessed if not agreed, and the parties are unable to reach agreement, the necessary assessment will be made by the Registrar, subject to review if necessary by the Judge”

18. The Defendant sought an award of USD 349,417.50 in legal fees and USD 5,500.00 in disbursements. He submitted in his application that there is no reason why the Court should depart from the general rule in Article 33.2 that the unsuccessful party pays the costs of the successful party, adding “The Defendant was clearly the successful party in this case and defeated the claim on all grounds. The fact that the counterclaim did not succeed in its entirety does not affect this.” He submitted that he was entitled to recover Brown Rudnick’s fees and disbursements “to the extent that the Court considers reasonable. The Defendant leaves it to the Court to determine what a reasonable recovery would be in this case.”

19. The Claimant submitted in its Reply of 4 December that each party should bear its own costs, save that the Defendant should be ordered to pay part of the Claimant’s legal fees amounting to QR 13,434 and its disbursements of QR 4,276.08. The submission that each party should bear its own cost was based on the grounds that both parties had failed in their claims and that the Defendant’s conduct had generated some extra cost on both parties (Reply of 4 December, paragraph 49). The Claimant’s claim for legal fees amounting to QR 13,434 was also based on the latter ground. We consider it later in this judgment.

20. In our view the submissions of neither party as to the costs of the proceedings as a whole were well founded.
21. The Defendant was wholly successful in defending himself against the claim with which the Claimant started the proceedings, namely that he was in breach of his contract of employment. The Court held that he was successful in regard to the matters which were contested at the trial and the Claimant gave up all the other orders which it had set out in its Claim. Accordingly the Defendant has the basis for an award of costs in the form of legal fees and disbursements. We leave aside for the moment the question whether the legal fees which he has claimed are proportionate.
22. On the other hand the Claimant was successful in regard to the Defendant's Counterclaim, save to the extent of QR 200 out of QR 52,200. That sum was so small that it is questionable whether a reasonable party in the position of the Defendant would have thought it worthwhile to pursue a counterclaim for it. For practical purposes the Counterclaim achieved very little. How much of the proceedings were taken up with the Counterclaim? It was not filed until 4 April. We have noted that just under a fifth of the paragraphs of the witnesses' written statements, and almost half of their oral evidence, related to it. It is, however, an exaggeration for the Defendant to say that "the vast majority of the evidence, submissions and trial was (sic) directed towards the issues raised by [the Claimant]" (Response, paragraph 43).
23. There are two other matters for consideration. The first is the question of the applicable law, where the Defendant was unsuccessful. His contentions on this question took up about half of his submissions of 26 February (in response to our request for clarification of the Defence which the Defendant had filed), and all of his submissions of 9 April. It is clear that legal fees were incurred by both parties as a result of the Defendant adopting an incorrect approach, as the Court held in its judgment of 20 April.

24. The second matter relates to work on the issue of whether the Defendant had been constructively dismissed. It was no part of his pleadings. He raised it for the first time in his opening submissions dated 11 September (founded on part of his witness statement of 16 July), and listed many decisions in support of it. It is obvious that a good deal of work was put into this last minute move. We ruled that this issue should not form part of the trial as it came too late and without notice to the Claimant. We appreciate that it may be reasonable for a party to prepare a fall-back position, but in the present case there was no good reason why this issue could not have been raised at a proper time, in which case it could, if necessary, have been resolved at the trial. In effect the work on this issue, for what it was worth, was abortive, and the Claimant should not be expected to pay the Defendant's legal fees for it.

25. We have considered the significance of the factors to which we have referred in paragraphs 22, 23 and 24. Both parties invited us to take a broad approach to the matter of costs. We do not consider that these factors should be regarded as wholly counterbalancing the Defendant's claim for legal fees and disbursements. However, we regard it as just that his claim should be reduced by 40 per cent to reflect them.

26. We note that the Defendant's application for costs included legal fees for costs submissions. We prefer to deal later (in paragraph 33) with the costs of both parties' representations and submissions in regard to costs.

Proportionality

27. We next consider the amount of legal fees claimed by the Defendant, namely USD 349,417.50. In his application he set them out by reference to four periods from 17 February 2014 to 29 September 2014. The Claimant submitted that these legal fees are disproportionate. It also criticised the number of hours spent by "the Defendant's expansive team of counsel" in preparation, and the fact that the

Defendant engaged English counsel, which led to “inflated fees”. In response the Defendant emphasised the importance of the proceedings for the interpretation of QFC law and future cases (Response, paragraphs 55-56).

28. There is considerable force in the submission of the Claimant that the legal fees claimed by the Defendant are disproportionate. The present case did not involve questions of law, or mixed fact and law, of any real complexity, whatever issues remained live at the trial. We are unimpressed by the Defendant’s claim as to the importance of this work. The fees amount to more than ten times the monetary remedies which had been sought by the Claimant. We do not overlook the fact that the Claimant’s Claim also had set out an order for the termination of the Defendant’s employment by Aman Insurance Brokers. However, in February 2014, when the Defendant engaged his legal representation, the one year period from the end of his employment by the Claimant had less than two months to run, and at no point did the Claimant request an interim order for the termination of that employment. Even if the value of the Counterclaim is also taken into account, the legal fees would still amount to seven times the total at stake in the proceedings. We record, without relying on it, that the Claimant informed us that its legal fees amounted to QR 569,165.83, though it was charged only QR 210,240.40,
29. Part of the explanation for the large amount of legal fees may be that it represents the work of two counsel and five other members of staff in Brown Rudnick. We would observe that in a case such as the present it would not be appropriate for the fees of two counsel to be a charge against the other party (save, of course, where one had to replace the other). However, we do not subscribe to the Claimant’s complaint about the cost of the Defendant’s engaging English lawyers “with inflated fees” needing hours to familiarise themselves with QFC law (Reply, paragraphs 56-58).

30. In our view, for an award of costs as between parties, the legal fees claimed by the Defendant are clearly disproportionate to the matters in issue. It is just and fair that the Defendant should be limited to one half of them, USD 174,708.75. Reducing that figure by 40 per cent, as we stated above, gives a final figure of USD 104,825.25. To this we add 60 per cent of USD 5,500.00 for disbursements, which is USD 3,300. We accordingly award a total of USD 108,125.25.
31. The Claimant's application for an order that it should be reimbursed QR 13,434 in legal fees was based on the view that they represented "costs that could, were it not for the conduct of the Defendant, have been avoided." This appears to refer to a number of complaints about the Defendant's "overly expansive arguments" and his extravagant legal fees. We agree with the Defendant's criticism that it is unclear to what particular matters these complaints relate. In any event, whatever merit there was in these complaints, the Claimant's application is superseded by the overall assessment which we have made. Accordingly on that basis we refuse the Claimant's application in regard to its legal fees. In view of the lack of success of its claim that the Defendant was in breach of his contract of employment we see no justification for its claim of QR 4276.08 for disbursements.

The Defendant's counterclaim for QR 200

32. The Defendant's application dated 16 October 2014 included an application for an order for payment of the USD equivalent of the QR 200, which was the only part of the counterclaim which we allowed in our judgment dated 25 September 2014. We see no reason why we should not make that order. It is not a matter of executing the judgment, as the Claimant contended in its Reply dated 4 December 2014, but of fully expressing our judgment.

Costs as regards the applications for, and opposition to, awards of costs

33. We consider that, having regard to the division of success, each party should bear its own costs of its representations and submissions in regard to the matter of costs.

By the Court,



Mr Christopher Grout
Registrar of the Court



Representation:

For the Claimant: Mr. Walid Honein, Counsel (Badri and Salim Elmeouchi Law Firm)

For the Defendant: Mr. Roger Kennell, Counsel (Brown Rudnick LLP)