



محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

**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**

10 April 2019

CASE No: 9 of 2018

BLOM BANK QATAR LLC

Claimant

v

**(1) QATAR ASPHALT COMPANY WLL
(2) EMIL MICHEL TURK**

Defendants

JUDGMENT

**Before:
Justice Arthur Hamilton
Justice William Blair
Justice Rashid Al Anezi**

ORDER

1. Judgment is given for the Bank against the Borrower and Guarantor jointly and severally in the sum of QAR 19,463,394.21; and
2. The Bank is awarded its reasonable legal costs to be agreed between the parties or, in the absence of agreement, assessed by the Registrar.

JUDGMENT

Introduction

1. The claimant, Blom Bank Qatar LLC, (the “Bank”), is a subsidiary of Blom Bank S.A.L. headquartered in Lebanon and is registered in the Qatar Financial Centre. The first defendant, Qatar Asphalt WLL, (the “Borrower”), is a company registered with the Qatar Ministry of Economy and Commerce, and the second defendant, Eng. Emil Michel Turk, (“the Guarantor”), is of Jordanian nationality.
2. The facts relevant to these proceedings are as follows. On 26 June 2012, the Borrower signed an application for opening an account or accounts with the Bank subject to the Bank’s General Terms and Conditions.
3. By a Credit Facilities Agreement (“the Agreement”), also entered into on 26 June 2012 among the claimant the (“Bank”), the first defendant (“the Borrower”) and the second defendant (“the Guarantor”), the Bank agreed, subject to certain conditions, to provide to the Borrower certain banking facilities in connection with its Contract No. 7 with Ashghal (the Public Works Authority). These facilities were further specified in a Facilities Offer Letter from the Bank to the Borrower also dated 26 June 2012, and included provision for commission, management fees, and interest, including default interest.

4. These facilities initially comprised a Reducing Term Loan up to the sum of QAR 10,200,000 to be drawn by the Borrower in the manner prescribed in the Agreement. The purpose of the Loan was to finance 65% of the value of the Borrower's purchased equipment.
5. By clause 14 the Guarantor irrevocably guaranteed that the Borrower would fulfil all of its current and future commitments and obligations to the Bank under the Agreement.
6. By clause 16 (headed "Governing Law and Jurisdiction") it was provided:

"16.1 This Agreement and all matters arising out of or in connection therewith shall be, without regard to principles of conflict of laws, subject to and governed by the applicable laws of the State of Qatar.

16.2 Any dispute which may arise out of or in connection with the validity, interpretation and/or enforcement of this Agreement shall be settled by the Qatar Financial Centre Civil and Commercial Court...."

7. Various Addenda to the Agreement were subsequently agreed among the parties, by which the amount available by way of Loan was increased and various other forms of credit and facilities were provided to the Borrower as follows:
 - (1) Addendum No. 1 and Facility Offer Letter signed on 6 September 2012 by which the Loan was increased to QAR 11,825,000.
 - (2) Addendum No. 2 and Facility Offer Letter signed on 14 October 2012 providing a QAR 10,000,000 limit by way of tender guarantees.
 - (3) Addendum No. 3 and Facility Offer Letter signed on 27/28 November 2012 providing a QAR 7,000,000 limit by way of tender guarantees and a QAR 3,000,000 limit by way of a discounting line.

- (4) Addendum No. 4 and Facility Offer Letter signed on 16/17 December 2012 providing in addition a QAR 5,000,000 limit by way of Advance Payment Guarantee, a QAR 2,030,555 limit by way of Retention Guarantee, a QAR 7,000,000 limit by way of Letters of Credit, a QAR 3,834,000 limit by way of Overdraft, and a QAR 5,000,000 limit by way of Discounting Line for Payment Certificates.
8. According to the claim form filed by the Bank in this court on 4 October 2018, substantial funds were drawn by the Borrower in furtherance of these various facilities, regular statements of account being thereafter sent by the Bank to the Borrower and to the Guarantor. Ultimately, on 21 May 2018 the Bank's lawyers sent to the Borrower and to the Guarantor a letter of default in terms of clauses 4.2 and 4.3 of the Agreement giving notice of account closure and final notice for payment. According to the claim form, certain payments were subsequently received but there remained outstanding as at 11 September 2018 the sum of QAR 19,463,321.21.
9. The claim form was served on the Borrower and the Guarantor at the address for notice (P.O. Box: 125 Doha, Qatar) provided for both of them in clause 13 of the Agreement. Proof of such service was filed. Neither defendant filed a defence timeously. Nor did either, within the 14-day period prescribed by Article 19 of the Procedural Rules of this court, file a notice contesting the jurisdiction of the court.
10. On 15 November 2018 the Bank filed an application for summary judgment, evidence of service at the above address being provided. On 22 November 2018 the court, on the *ex parte* application of the Bank and for the reasons given in its judgment of that date, authorised the use, in the security of the Bank's claim against the Borrower, of temporary distraint of debts owed by third parties to the Borrower. Later on the same day an email was received from Mr Turk stating that due notice of the claim had not been received and seeking an opportunity to challenge the jurisdiction of the court. Ultimately, on 23 December 2018 the Borrower ("represented by Eng. Emil Michel Turk, Director, Authorized Signatory") filed a "Memorandum of Defence and Reply",

in which it was maintained, among other things, that this court had no jurisdiction to entertain the present claim. Certain exhibits were filed.

11. On 24 January 2019 the Bank filed a response to the Borrower's Memorandum. On 27 January 2019 a further submission was filed by the Borrower, which was answered by the Bank the same day.

Time Limits

12. At a hearing on 7 March 2019 at which all parties were represented the Bank's first submission was that, regard being had to the failures to meet the time limits referred to in paragraph 8 above, neither the Borrower nor the Guarantor should be heard by the court. In addition to formal service the Borrower and the Guarantor had been advised informally of the proceedings by email communication from the Bank to the address regularly used by them.
13. In response it was submitted that the defendants had in fact learned of these proceedings only through communication with officials of the court in late November 2018. It was for the court, not the Bank as claimant, to serve the requisite claim form on the defendants. In these circumstances a defence had been filed timeously.
14. The court, having heard these submissions, reserved its decision on that aspect and proceeded to hear parties on the matters of jurisdiction and summary judgment.
15. Whatever the procedural arrangements in other courts, the defendants' submission that it is for the court, not the claimant party, to serve the claim form is inconsistent with Article 18.1 of the Procedural Rules of this court. That rule expressly provides that it is for the party concerned, and not the court, to effect service. The manner of service is prescribed in Article 14.3. Proof of due service in accordance with these provisions was

filed. As stated above, the claim was served at the address stipulated in clause 13 of the Agreement. Nonetheless, this court regards it as appropriate that, in the broad interests of justice, it should have regard to the contentions advanced in defence, albeit strictly these are out of time.

Jurisdiction

16. Article 8.3(c) of the QFC Law (No 7 of 2005 as amended) provides that this court has jurisdiction to hear, among other civil and commercial disputes, commercial disputes arising between entities established in the QFC and contractors therewith, unless the parties agree otherwise (Article 3.c. c/3). Article 9.1.3 of the Procedural Rules of this court is to the same effect. The dispute with which the present claim is concerned is a commercial dispute between a bank on the one hand and, on the other hand, a borrower from that bank and an individual who has guaranteed performance of the borrower's obligations in respect of that borrowing. The Bank is an entity established in the QFC. The Borrower is a contractor with it in respect of the Agreement founded on in the claim form, as is the Guarantor in respect of his contractual obligations under clause 14 of the Agreement. This court, accordingly, has jurisdiction to hear this dispute unless the parties have agreed otherwise.

17. Clause 16.2 of the Agreement provides expressly that any dispute which may arise out of or in connection with the validity, interpretation and/or enforcement of the Agreement shall be settled by this court. The Addenda to the Agreement referred to above expressly provide that clause 16.2 of the Agreement shall also apply to each of these Addenda respectively. Thus, unless clause 16.2 has been subsequently amended by deletion or by variation to a different effect, this court clearly has jurisdiction to hear this dispute. It is for any party seeking to maintain that there has been an amendment of that kind to demonstrate the same.

18. At the hearing the Borrower's representative sought to place reliance on a tripartite agreement entered into on 16 March 2014 among the Bank, the Borrower and Doha Bank. This agreement was entered into in writing in the Arabic language but a translation into English was made available to the court. In the Preamble to that agreement it is narrated that the Borrower had previously obtained banking facilities from the Bank in order to facilitate the contract with Ashghal (the Public Works Authority). That, it appears, is a reference to the facilities afforded under the Agreement and one or more of the Addenda to it. The primary purpose of the tripartite agreement was to provide consensually for the distribution, in certain percentages, between the Bank and Doha Bank, of the revenues to be transferred by the employer under the project in question (the Public Works Authority, Ashgal). It thus was to regulate, as between two creditors of the Borrower, the distribution of revenues flowing from the project in question.
19. The tripartite agreement made provision (by Article SIX of it) for jurisdiction and applicable law. That Article (in the English translation) reads:

“Any dispute or conflict arises among any of the parties hereto with regard to the interpretation or implementation of the agreement regarding any provision herein shall be subject to the jurisdiction of courts of Qatar and the Qatari law shall be applicable.”

It is clear that that provision is concerned only with jurisdiction in respect of the tripartite agreement. It does not purport to amend the jurisdiction provisions in the Agreement or in any of the Addenda thereto and does not have the legal effect of amending them in any way. It is of no significance as regards jurisdiction that the tripartite agreement was an agreement reached with a view to regulation among creditors of the destination of funds flowing from the project for which funding was initially provided under the Agreement.

20. No other material was relied on by either of the defendants in support of the contention that the jurisdiction provisions in the Agreement and its Addenda had been amended. They accordingly stand. In these circumstances it has not been demonstrated that the parties to the Agreement agreed that a dispute arising under or in respect of it should be adjudicated otherwise than by this court.
21. Rule 9.2 of the Procedural Rules of this court provides that, consistently and in accordance with fundamental principles and international best practice, the court is to take into account the expressed accord of the parties that this court should have jurisdiction. Clause 16.2 of the Agreement expresses accord to that effect.
22. Rule 9.4 provides, among other things, that if this court considers it desirable or appropriate it may decline jurisdiction. One circumstance in which it might exercise that discretion is where the same issue between the same parties is the subject of ongoing proceedings earlier raised in a competent court elsewhere in Qatar. In the Memorandum of Defence and Reply referred to in paragraph 10 above, a passing reference is made to proceedings filed by the Borrower against the Bank, elsewhere in the domestic Qatari courts, namely Lawsuit No: 3299 of 2018 (the Second Civil Plenary Department). At the hearing there was very little information before this court about these proceedings, the defendants saying that they brought the case in order to settle the account after correcting alleged errors in it. Despite the reference to these proceedings in the Memorandum of Defence and Reply, they were hardly mentioned by the defendant in its oral submissions. The court was informed that the proceedings had been dismissed on 26 February 2019 on the ground of lack of jurisdiction. Since the hearing, the full reasons for the decision in these proceedings have become available. The Borrower's claim was there dismissed because the court, having had regard to Article 16.2 of the Agreement, was satisfied that it should not entertain it. In these circumstances, no proper basis has been laid before this court upon which this court might decline jurisdiction on the ground that other proceedings, raising the same issue between the same parties, are in dependence before another court in Qatar.

23. In all these circumstances the challenge on jurisdictional grounds fails and the court proceeds to address the application for summary judgment made by the Bank.

Summary judgment: the parties' cases

24. The Bank's case as set out in its claim is that by the time of issue of proceedings, the liability of the defendants stood at QAR 19,463,394.21 as per liability certificates and statements of account. In that regard, the Bank relies on its General Terms and Conditions and, in particular, a conclusive evidence clause based on the certificate of an officer of the Bank, and a clause to the effect that accounts are deemed to be correct unless objections are notified to the Bank within 30 days. It also relies on a conclusive evidence clause in the Agreement.

25. As regards the Guarantor, the Bank relies on Article 808 of the Qatari Civil Code to the effect that a guarantee is a contract under which a person undertakes to the creditor to accept responsibility for the performance of an obligation by the debtor where the debtor fails to perform such obligation. On that basis, neither defendant having made payment, it submits that the Guarantor is equally liable.

26. The Borrower's defence as set out in its Memorandum of Defence and Reply is that it transferred many amounts to the Bank for payment of the loan instalments. It was surprised to find that the Bank was making serious calculation errors. When it asked the Bank to provide a detailed statement of account, the Bank refrained from providing it and responded with ungrounded arguments, claiming that the Borrower was responsible for paying more than the amount of the loan account.

27. The Borrower refers to judgments of the Court of Cassation to the effect that it is not possible to agree on the collection of compound interest. It contends that the Bank did not send statements of account every three months as required by the Central Bank Law. The Bank is in breach of the provisions of the loan contracts as it calculated

interest and other amounts illegally, and in violation of the provisions and laws of the Central Bank and the Qatari Commercial Code. The Borrower has suffered serious material and moral damages as a result.

28. There is a substantial body of evidentiary material before the court. The Bank's claim (verified as the court's Procedural Rules require by a Statement of Truth on behalf of the Bank) was supported by the exhibit of numerous documents. These included contractual documentation, a list of equipment pledged in support of the loan, a considerable volume of liability certificates and account information, and reports of decided cases.
29. The Borrower's defence was also supported by the exhibit of numerous documents, including contractual documentation, a settlement summary in the form of a table, and what appears to be a receipt for the court fees for Lawsuit No: 3299 of 2018.

Summary judgment: discussion and conclusions

30. By Article 22.6 of the Procedural Rules, "The Court may, if it considers that justice so requires, give summary judgment on a claim or defence or on any issue". As stated above, the Bank filed an application for summary judgment on 15 November 2018 against both defendants. This was based on the failure of the defendants to file a defence.
31. In fact, the Guarantor has still not filed a defence. However, that is of limited significance because it has not been argued by any party that there is a difference in terms of liability as between the Borrower and the Guarantor. As a matter of ordinary principle, the liability of a guarantor is secondary, subject to agreement to the contrary (and the Bank does not assert agreement to the contrary). If one is liable, the other is liable, and equally the contrary is true.

32. In its defence, the Borrower accepts that it entered into the Agreement (i.e. the Credit Facilities Agreement of 26 June 2012 which it exhibits to the defence). It also accepts that the loan (stated in the Agreement as QAR 10,200,000) was released to it on 26 June 2012. It also accepts that there were subsequent Addenda to the Agreement, though it only exhibits two of these (those of 27 November 2012 and 16 December 2012). However, the Bank has exhibited all four Addenda, and all appear to be signed in the same way by Mr Turk on behalf of the Borrower and as Guarantor. The Bank's Terms and Conditions and the Facility Offer Letters are signed by Mr Turk on behalf of the Borrower. The court concludes that the contractual structure is as pleaded by the Bank, and summarised above, and that the loan and the various further facilities referred to in the Addenda were extended or made available to the Borrower. Indeed, this does not appear to be in dispute.

33. In its defence, the Borrower refers to the tripartite agreement of 16 March 2014 referred to above. As already noted, this was an agreement reached with a view to regulating between creditors the destination of funds flowing from Ashghal in respect of the project for which funding was initially provided by the Bank under the Agreement – of these funds, it was agreed that 40% was to go to the Bank. The Borrower pleads that it made many payments by this route to the Bank and has produced a table showing 21 such payments over a four year period. The court will proceed on the basis that the table is correct. It shows that the final payment to the Bank was in the sum of QAR 1,814,903.28 with a transaction date of 8 July 2018.

34. The table shows that prior to the July 2018 payment, no payment under the tripartite agreement had been made to the Bank since 7 March 2016. As stated above, on 21 May 2018 the Bank's lawyers sent a notice of default to the Borrower and Guarantor stating that the indebtedness as that time was QAR 24,699,675.59. The letter of default was accompanied by liability certificates issued by the Bank dated 20 May 2018 certifying the amounts outstanding by way of an Advance Payment Guarantee in favour of Ashghal, the sums outstanding on overdraft, and the sums due under the Reducing Term Loan totalling QAR 24,699,675.59.

35. Following the July 2018 payment, the Bank issued updated liability certificates as of 24 July 2018. The supporting accounts exhibited by the Bank to its claim show the payment of QAR 1,814,903.28 credited to the overdraft account with a value date of 12 July 2018.
36. The Bank's case is that taking into account the July 2018 payment and the return by the Borrower of the Advance Payment Guarantee which was released by Ashghal in the amount of QAR 3,894,401.59, the indebtedness of the Borrower stood at QAR 19,463,394.21 on 11 September 2018, that being the amount claimed in these proceedings. It is not suggested by the Borrower that any other payments have been received by the Bank since 12 July 2018. Liability certificates signed by officers of the Bank vouching indebtedness in total in that amount as at that date have been exhibited and are relied on. It is clear, in the court's view, that by the time of the letter of default of 21 May 2018, the Borrower was seriously indebted to the Bank, which was also exposed on the guarantee issued to Ashghal under the terms of the Agreement, and that it remains seriously indebted subject to the part repayments made since then. The question is as to amount, and whether the court is in position to determine, or required by law to determine, such amount at this stage in the proceedings.
37. As noted above, the Borrower's defence is that the Bank did not send it statements of account, and made deliberate errors, and that the Bank should be required to submit documents showing how the debt is calculated taking into account commission etc. so that the account can be settled on proper accounting principles. It submits that the Bank's calculations before the court are wrong, and that the case should be referred to an accounting expert to calculate what is due.
38. The court's opinion on these matters is as follows. As to the alleged failure to provide accounts, the Bank has exhibited some statements of account which have been stamped by the Borrower company by way of acknowledgment of receipt. There are letters from the Bank similarly stamped by the Borrower to the effect that unless the accounts are

contested within 30 days, the Borrower will be taken to accept them. There are delivery notes similarly stamped by the Borrower showing that liability certificates were received by the Borrower. These documents come from the years 2013 to 2018 (i.e. most of the period during which the banking relationship subsisted) and demonstrate that such documents were in fact being received by the Borrower throughout.

39. The Bank states in its claim that the Borrower was provided regularly with account statements and liability certificates. Although the Borrower denies this, the court notes that no documents or other material have been produced showing any complaint about non-receipt of accounts. The clear inference from the evidentiary material is that the Borrower received account statements and liability certificates in the usual way from the Bank over the course of the parties' commercial relationship.

40. Further, no documents or other material have been produced by the Borrower showing that complaints were made to Bank at the time as to the accuracy of such accounts. The Borrower brought Lawsuit No 3299 of 2018 against the Bank to demand accounts, but it has not given any explanation in its defence in these proceedings before this court as to how it contends that the Bank's accounts are wrong. Essentially, the defendants contend that the Bank must prove what is due and owing, and asks the court to refer the case to an expert accountant to calculate the amount due taking into account interest, charges, etc.

41. In this regard, it is relevant to consider the conclusive evidence clauses on which the Bank relies to prove the amount of its claim. Clause 3.4 of the General Terms and Conditions provides that the "certificate of any officer of the Bank as to the amount of [the Borrower's] indebtedness and liabilities to the Bank shall be conclusive evidence and binding upon [the Borrower] in any legal proceedings ...".

42. Clause 6.2 of the General Terms and Conditions provides that "upon receipt by us from the Bank of statements ... we will immediately notify the Bank in writing of any errors

in or objections to the said statements ... and unless we have so notified the Bank ... at the expiry of thirty days from the issuing date of the said statements ... we agree that they will be deemed to be correct”.

43. By clause 12.2 of the Agreement (headed “Conclusive Evidence”), “The Borrower and the Guarantor acknowledge and agree that the Bank books, its registers and its data are considered as conclusive evidence that confirms the dealings and the amounts that are due or will be due by the Borrower and/or the Guarantor pursuant to these Facilities, with all the interests, commissions and expenses in relation thereto. In case of any conflict or proceeding related to this Agreement, the Bank’s books will be considered conclusive evidence.”

44. In a number of jurisdictions, conclusive evidence clauses of this kind have been upheld and applied in commercial banking transactions to determine the amount owing. The extensive case law includes (in Canada) *Arrow Transfer Co Ltd v Royal Bank of Canada* [1972] SCR 845; (in England and Wales) *Bache & Co (London) Ltd v Banque Vernes et Commerciale de Paris SA* [1973] 2 Lloyd's Rep 437 applying a decision of the High Court of Australia in *Dobbs v National Bank of Australasia Ltd* (1935) 53 CLR 643; (in Singapore) *Pertamina Energy Trading Ltd v Credit Suisse* [2006] SGCA 27; and (in Pakistan) *Allied Bank Ltd v Chenab Ltd* C.O.S No 24 of 2014, Lahore High Court. Such clauses must be clearly drafted, and are not applied where there is manifest error, or fraud. In the court’s view, these cases show a wide international acceptance of these principles.

45. Further, the same principles have been applied by the Qatari courts under Qatari law. In Case No 449/1993, the Court of Cassation decided that if a customer agrees with a bank in the contract opening the account as to the validity of statements sent by the bank so long as the client does not object to such statements within a specified period, the clause shall be valid and effective. In the court’s opinion, these principles are applicable in the present case.

46. As explained by the English Commercial Court in giving summary judgment in *ABN Amro Commercial Finance plc v McGinn* [2014] EWHC 1674 (Comm) at paragraph 42, the point of these clauses is to preclude disputes as to quantum and to avoid the necessity of a full trial. This court accepts the correctness of that approach.
47. In the present case, the banking relationship between the parties lasted for a considerable period of time, and the accounts are of some complexity. The defendants have not shown that there has been any manifest error, and indeed have not identified any specific error in the Bank's calculations. The clauses are clearly drafted, and there is no allegation of fraud. In these circumstances, and in reliance on the contractual clauses, the Bank is entitled to prove the indebtedness by reference to the accounts and liability certificates, which it has done. It is neither necessary nor appropriate to investigate further into the amount of that indebtedness, whether by a remit to an accountancy expert or otherwise. As to the compounding of interest, clause 6.2 of the Agreement expressly provides that interest should be calculated on a daily basis and debited monthly to the Borrower's current account. Such a contractual arrangement is also consistent with international practice.
48. In the court's view, none of the defences advanced by the Borrower has any validity. The interest, charges, and commission were not illegal, but were contractually agreed. The Court of Cassation has confirmed the validity and legality of implementing interest contractually agreed upon between the parties. In Case No 207/2010, the Court held that the legislature in connection with banking operations allows interest on loans extended by banks to their clients at the rate agreed by the parties in the case of loan contracts and credit facilities.
49. The defences advanced by the Borrower being manifestly without substance, the Bank is entitled to summary judgment. It follows that the Borrower's claims for compensation (advanced as an alternative in its Memorandum of Defence and Reply) are dismissed. Though the Guarantor did not (as noted above) himself put in a defence, he was represented at the hearing, and since his liability is coterminous with that of the

Borrower, he is equally bound by this judgment. It is, the court notes, a final judgment on the merits.

Conclusion

50. The effect of this decision is as follows:

- (1) Judgment is given for the Bank against the Borrower and Guarantor jointly and severally in the sum of QAR 19,463,394.21.
- (2) The Bank is awarded its reasonable legal costs to be agreed between the parties or, in the absence of agreement, assessed by the Registrar.

By the Court,



Justice Arthur Hamilton



Representation:

The Claimant was represented by Ms Claudia El Hage, Rashid Raja Al-Marri Law Office, Doha, Qatar.

The Defendants were represented by Mr Mohsen Haddad and Mr Wael Ismail, Mohsin Al-Haddad Legal Consultants and Arbitration, Doha, Qatar.