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

Neutral Citation: [2019] QIC (F) 8

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

17 September 2019

Case No: CTFIC1009/2018

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

Applicant

v

FIRST ABU DHABI BANK P.J.S.C

Respondent

JUDGMENT

Members of the Court:

Justice Bruce Robertson

Justice Arthur Hamilton

Justice George Arestis

ORDER

The Court finds and declares that First Abu Dhabi Bank P.J.S.C. was and remains in contempt of the following orders of this Court, namely (1) its order of 18 November 2018 that it comply forthwith with a Notice issued by the Qatar Financial Centre Regulatory Authority on 19 March 2018 that it produce certain documents, including in relation to materials held outside the Qatar Financial Centre, and (2) its order of 17 February 2019 that it file and serve, by no later than 4 March 2019, an affidavit on the procedures and processes it had put in place worldwide to preserve the documents ordered to be produced.

JUDGMENT

1. On 18 November 2018 this Court, the First Instance Circuit, made an order ("the First Order") on First Abu Dhabi Bank P.J.S.C. ("the Bank") that required it, among other things, to comply forthwith with a Notice which the Qatar Financial Centre Regulatory Authority ("QFCRA") had issued on 19 March 2018 in furtherance of Article 52(2)(B) of the Financial Services Regulations ("the FSR"). That Notice had required the Bank to produce various documents under identified heads. These documents, the QFCRA maintained, were reasonably required by it for the purposes of an investigation which it had initiated into certain financial transactions by the Bank.

2. The Bank sought permission to appeal against the First Order. In the context of an application by the Bank for a stay pending appeal against the First Order, which stay was granted, this Court on 17 February 2019 made a further Order ("the Second Order") requiring the Bank, by no later than 4 March 2019, to file and serve an affidavit on the procedures and processes it had put in place worldwide to preserve the documents earlier ordered to be produced.

3. The Bank also sought permission to appeal against the Second Order. On 13 May 2019 the Appellate Division of the Court gave permission to appeal but, in the event, dismissed both appeals.

4. It gave permission to the Bank to apply to the First Instance Court in respect of paragraphs 8-21 of the Notice on the basis that the classes of documents mentioned in these paragraphs might arguably go beyond what was reasonably required by the QFCRA for the purposes of the investigation. No such application has been made by the Bank.

5. The Bank did not comply with the First Order (for the production of documents), nor with the Second Order (for the filing and service of an affidavit in relation to the preservation of documents). In these circumstances the QFCRA on 27 May 2019 filed the present application. It sought from the Court orders in the following terms:

   (a) Expedited consideration of the application;
   (b) Pursuant to Rule 34.3 [of the Regulations and Procedural Rules of the Court], a financial penalty in the amount the Court considers an appropriate and effective penalty, and increasing by an appropriate and effective penalty amount per day in the event of continued non-compliance for failing to comply with the Court's orders in proceedings CTFIC 1009/2018;
   (c) Pursuant to Rule 33.1, that the Respondent pay the Applicant's costs of this application;
   (d) Pursuant to Rule 34.3.2, to order that the Respondent:
      (i) Supplies details of all its assets;
      (ii) Supplies details of all its assets and liabilities (including by counterparty) for its operations in the Qatar Financial Centre;
      (iii) Supplies details of all its clients in the QFC; and
   (e) Such further or other orders the Court considers appropriate.

   That application was duly served on the Bank. An official of the Bank at its QFC branch by his signature acknowledged receipt. No response to the application has been filed.

6. On 19 June the Bank issued a public statement that it was withdrawing from the Qatar Financial Centre and closing its QFC Branch. On the same date the Court received an email from Messrs Akin Gump Strauss Hauer and Feld, the legal firm which had until then acted for the Bank (or at least for its "QFC Branch") in these matters, that it no longer so acted. That firm did not seek nor was it granted leave by the Court to withdraw from acting; nor did it provide an alternative address for the service of orders or documents. By 20 June the Bank's only office in Qatar was closed, a notice having been posted on the outside of these premises directing enquiries to the Bank's premises in Abu Dhabi. The Bank, which had from November 2008 been authorised by the QFCRA to carry out certain Regulated Activities in the QFC, at no time applied to have its authorisation withdrawn.

7. The Court in these circumstances directed that any orders or directions issued by it in the course of the application, including intimation of this hearing, should be intimated to the Bank (1) at its (former) address in Qatar and (2) at its address in Abu Dhabi and also to Messrs Akin Gump Strauss Hauer and Feld. That direction has been implemented, although the Bank has expressly refused to accept communications directed to its Abu Dhabi address.

8. On 25 August the QFCRA publicly announced that it had, on 21 August, imposed a financial penalty of QAR 200,000,000 (USD 54,945,055) on the Bank for obstruction of its investigation and for other disciplinary reasons. The Bank has a right of appeal to the QFC Regulatory Tribunal against the exercise of disciplinary powers by the QFCRA. As at the date of this judgment, the period within which such an appeal may be taken has not yet expired.

9. This application came on for hearing on 16 September. Despite the measures (referred to above) taken to intimate the date of the hearing to the Bank, there was no appearance by it on that date. The Court is, however, wholly satisfied that it has had a full opportunity to be represented before the Court to resist the application. It has chosen not to do so.

10. At the hearing, Mr Jaffey for the QFCRA orally confirmed an intimation given a few days earlier that, as the QFCRA had imposed a financial penalty under its own powers, the application, in so far as it invited the Court to impose a financial penalty for contempt of court, was withdrawn. There was a concern that, if it was not, there was a risk of double jeopardy, as it was applying to the Court under Article 59(4) of the FSR for an order for payment as a debt of the penalty imposed by it. Mr Jaffey invited the Court instead to make a formal finding that the Bank had been and remained in contempt by its deliberate non-compliance with both the First and the Second Orders.

11. The application, as served, does not expressly seek a formal finding of contempt, although it seeks (paragraph 1.1(e)) "such further or other orders the Court considers appropriate". However, a finding, express or otherwise, that there has been contempt would be a pre-requisite to any penalty imposed, including any financial penalty. The Court is accordingly satisfied that, the application having been duly served on it, the Bank was on notice that it was at risk, if it did not oppose it, of a formal finding of contempt being made against it. The Bank has suffered no prejudice by this minor shift in the remedy sought by the QFCRA. Accordingly, if contempt is made out, there is no good reason why the Court, if it thinks fit, should not make a formal finding of contempt.

12. There can be no doubt that the Bank is in contempt of this Court. It has not obeyed either the First Order or the Second Order (both confirmed on appeal); a suggestion made in a letter dated 19 June 2019 by an official of the Bank that "FAB QFC Branch is not in contempt of the QFC Court" is plainly specious. The only proper inference in the circumstances is that, in full knowledge of the Orders, the Bank has deliberately refused to obey each of them. What measures, if any, the Court should take in response to such contempt is a matter for it. It is remarkable that an institution such as the Bank, with its wide-spread international business, should have chosen deliberately to disobey orders of a duly constituted court. It is appropriate in the circumstances that the Court makes, as it now does, a formal finding that the Bank is in contempt of court. That may have some significance for the reputation of the Bank internationally.

13. The application also seeks costs against the Bank. As indicated above, the QFCRA has departed from the initial substantive remedy sought (the imposition by the Court of a financial penalty for contempt) and restricted its invitation to one of a formal finding of contempt. In the circumstances, the Court considers that no order as to costs should be made with respect to this application.

14. The application also sought (paragraph 1.1(d)) certain orders for disclosure. But these are matters relevant to enforcement of any order for payment and, as Mr Jaffey acknowledged, are accordingly, if they arise at all, for the Enforcement Judge, not for this Court. Mr Jaffey did no press this aspect of the application.

By the Court,

Justice Arthur Hamilton

Representation:

The Applicant was represented by Mr Ben Jaffey QC, Blackstone Chambers, London.
The Respondent did not attend and was not represented.