



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

Neutral Citation: [2020] QIC (F) 13

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

8 October 2020

CASE No. CTFIC0011/2020

BETWEEN:

AYCAN RICHARDS

Claimant

v

(1) NIGEL THOMAS HOWARD PERERA
(2) INTERNATIONAL FINANCIAL SERVICES QATAR LLC

Defendants

JUDGMENT

(Concerning jurisdiction)

Before:

Justice Arthur Hamilton

Justice Fritz Brand

Justice Helen Mountfield QC

JUDGMENT

1. In her Claim Form in this action the Claimant maintains that in May 2019 she “joined” the Second Defendant, of which the First Defendant was the Chief Executive Officer; that, with a view to purchasing the company, she “lent some money to the owner of IFSQ and the company”; that the purchase did not in the event proceed; and that she left the Second Defendant in October 2019. (There is some confusion in the pleadings as to the order of the Defendants. In this judgment, consistently with their order in the Claim Form, Mr Perera is referred to as the “First Defendant” and International Financial Services Qatar LLC as the “Second Defendant”).
2. An agreement in writing (“the Agreement”) was entered into, dated 26 December 2019 but signed by all the parties on 2 January 2020, in which the Second Defendant was styled the “Client”, the First Defendant the “Guarantor” and the Claimant the “Consultant”. The Agreement provided on its face for the Claimant to render certain consultancy services to the Second Defendant over a period of six months commencing in January 2020, for which she was to be paid by the Second Defendant retainer fees of QAR 78,500 each month, such payments being guaranteed by the First Defendant. The Claimant maintains that the Agreement was the vehicle through which she was to be repaid the money previously lent by her.
3. According to the Claimant the first fee was paid to her in January 2020, but the remaining fees remain outstanding. By this action she seeks to recover that balance.
4. The Second Defendant is a corporate entity established in the Qatar Financial Centre (“the QFC”). In the Agreement the First Defendant is described as an Australian citizen with an address in Qatar. The Claimant is there described as a British citizen with an address in Qatar.
5. The Defendants, who are jointly represented in the proceedings, resist the Claim on two bases: (1) that this Court has no jurisdiction to entertain it and (2) that the Agreement is a “simulated” agreement which, being fictitious, is not enforceable under the law governing it. They further maintain that the Claimant has, on any view, received from

the Second Defendant more money than she was due; a remedy by way of repayment is sought.

6. The Agreement by clause 8.5 provides:

“This Agreement shall be governed by and construed in accordance with the laws of the State of Qatar and the Qatari courts will have exclusive jurisdiction with regards to all matters related to this Agreement.”

7. The Court, having resolved to consider and decide the jurisdictional issue first and, no party objecting, to do so on the written contentions only without the need for an oral hearing, has taken due note of the arguments advanced by the Defendants in their “Defense Memo” and by the Claimant in her “Reply to Defence”. Although invited to expand in writing on these arguments, no party chose to do so.

8. The Qatar Financial Centre Law, Law No. (7) of 2005, (“the Law”) provides by Article 8.3c. that this Court shall have jurisdiction to hear certain defined disputes. These include:

“c/3-Civil and Commercial disputes arising between entities established in The QFC and contractors therewith and employees thereof, unless the parties agree otherwise.

c/4-Civil and commercial disputes arising from transactions, contracts or arrangements taking place between entities established in The QFC and residents of The State, or entities established in the State but outside The QFC, unless the parties agree otherwise.”

Articles 9.1.3 and 9.1.4 of the Regulations and Rules of this Court are to the same effect.

9. In response to the Defendants’ jurisdictional challenge the Claimant relies on Article 8.3c/3 of the Law and Article 9.1.3 of the Regulations and Rules, her contention in substance being that the Second Defendant is an entity established within the QFC and that, by virtue of the Agreement, she is a contractor with it. (It may be that jurisdiction

might have been founded on Article 8.3c/c4 of the Law, and the equivalent Article of the Regulations and Rules, on the basis that the Second Defendant is an entity established in the QFC and that the Claimant is, or at the relevant time was, a resident of the State; but, in the event, the central issue in dispute in relation to jurisdiction arises whichever of these bases is invoked.)

10. That issue concerns the interpretation and application in the circumstances of the qualifying phrase “unless the parties agree otherwise”. The Defendants’ contention is that, by the exclusive jurisdiction provision in clause 8.5 of the Agreement, the parties did “agree otherwise”. This Court, they maintain, is not a “Qatari court” within the meaning of that clause. The Claimant maintains that this Court is within that description. She also refers to certain case law of this Court (*Daman Health Insurance Qatar LLC v Al Bakawir Company Ltd* [2017] QIC (F) 2 and *Badri & Salim Elmeouchi LLP v Data Managers International Ltd* [2020] QIC (F) 1) in support of her contention.

11. As a matter of general language, this Court is clearly a Qatari court. It was established by the Law, a valid legislative enactment of the State of Qatar. Article 3.2 of the Regulations and Rules of this Court, duly promulgated under the Law, states: “It is recognised that the Court is a court of Qatar.” Clause 8.5 of the Agreement, in providing for exclusive jurisdiction, does not confine that jurisdiction to any particular court or courts of the State of Qatar. It speaks simply of “the Qatari courts”. The same clause provides that the Agreement “shall be governed and construed in accordance with the laws of the State of Qatar”. Even on the assumption that that is a reference to the national law of the State of Qatar (which it is not necessary for present purposes to decide), it does not follow that the reference to “the Qatari courts” means only the national courts of the State. Nor is there anything elsewhere in the terms of the Agreement (a document written in English and concerning the financial affairs of an entity established in the QFC) which points to an agreement of the parties to it that this Court should not have jurisdiction to adjudicate on a dispute arising out of it. The cases cited by the Claimant, while of general relevance, do not address the qualification at the end of each of the legislative provisions.

12. For these reasons we reject the jurisdictional challenge made and direct that the case proceed to a determination of the merits of the dispute. Parties should, within 14 days of the issue of this judgment, file and serve any procedural proposals they have with respect to the arrangements for such determination.

By the Court,

A handwritten signature in black ink, appearing to read 'A Hamilton', with a horizontal line underneath.

Justice Arthur Hamilton



Representation

For the Claimant: Dentons & Co (QFC Branch), Doha, Qatar.

For the Defendants: Law Offices of Gebran Majdalany, Doha, Qatar,