



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 (A) 4 on appeal from [2020] QIC (F) 1 and (F) 3

**IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE
APPELLATE DIVISION**

28 September 2020

Case No 7 of 2020 (on appeal from CTFIC003/2020)

Between:

BADRI AND SALIM ELMEOUCHI LLP

Claimant/Respondent in the appeal

v

DATA MANAGERS INTERNATIONAL LIMITED

Defendant/Applicant in the appeal

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Bruce Robertson

Justice Ali Malek QC

ORDER ON PERMISSION TO APPEAL

1. Permission to appeal against the judgments of the First Instance Circuit is refused

JUDGMENT

1. By a written application made on 25 May 2020 the Applicant seeks permission to appeal from two judgments of the First Instance Circuit (Justices Frances Kirkham, Fritz Brand and Helen Mountfield QC).
 - a. In the first decision given on 6 February 2020 the Court held that it had jurisdiction under Article 8.3 (c) of the QFC Law No 7/2005 (the QFC Law) and Article 9.1.3 of the Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules (the Court Regulations) on the basis that there was a civil and commercial dispute between the Respondent as an entity established at the QFC and the applicant in relation to a contract made with the Respondent and there was no agreement to the contrary.
 - b. In the second decision of 24 March 2020 and handed down on 31 March 2020, the Court held, on the basis that the applicant did not dispute that it had engaged the respondent to undertake the services in a letter of engagement dated 20 January 2016, that the services had been performed and the applicant had not demonstrated any defence to the claim. The Court ordered the payment of fees amounting to \$9,823.35 and \$1,430 in interest, a total of \$11,253.35.

Both judgments of the First Instance Circuit were delivered after an exchange of written submissions; the parties did not wish for an oral hearing on either occasion.

2. After considering the initial submissions of the parties, we ruled on 24 June 2020 that the Court would consider the application for permission to appeal and, if granted, the substantive appeal together and made directions for the making of submissions. We directed the parties to state whether they wished an oral hearing by video link or for the matter to be determined on the papers.

3. The parties duly exchanged further submissions and notified the Court that they wished the matter to be determined on the papers.

The contentions of the parties

4. The contentions of the applicant were, in summary, that:
 - a. It made a contract for legal services in Beirut, Lebanon.
 - b. That contract was made with a Lebanese law firm in relation to business in Lebanon according to Lebanese law; it was never made aware that there was a Qatari connection. It was never made aware that the contract was made with a Qatari law firm.
 - c. The First Instance Circuit failed properly to investigate the way the contract was made, performed and implemented; if it had done so, it would have concluded that everything was done by the Beirut Head Office and not the Qatari subsidiary and that the strict legal code for Lebanese lawyers governed the performance of the services and set out a procedure for lawyers who wanted to sue their clients for fees.
 - d. The Lebanese firm and the office in Qatar were part of the same firm; they had not acted in good faith. They had failed to disclose the true position. They were acting in abuse of their procedural rights.
 - e. The fees were agreed on the basis that the work was done by senior lawyers; it was in fact done by trainees.
 - f. The application for permission to appeal the judgment of 6 February 2020 was in time as it was an interlocutory judgment.

5. The contentions of the respondent were:
 - a. The application was made out of time; the application in respect of the judgment of 6 February 2020 should have been made by 6 April 2020 and the application in respect of the judgment of March should have been made by 23 May 2020.
 - b. The respondent was the party who made the contract for the provision of legal services. It was a QFC entity and under the provisions of the QFC Contract Regulations the contract was made between the applicant and the respondent on acceptance by the applicant of the fee quotation. The applicant was fully aware of the fact that the contract was with the respondent, a QFC firm.
 - c. It duly performed all the work required of it and the fees were properly due; there was no merit in the complaints made by the applicant.

The facts in summary

6. The applicant is an Irish Company with its registered office in Dublin and operates as a technical consultancy. Two of its directors are resident in Ireland and two, including Mr Toufic Sioufi, are based in the Lebanon. It appears that the affairs of the Irish company were managed from the Lebanon. The respondent is a QFC entity. The respondent states that the respondent had a related firm “Etude Badri et Salim El Meouchi” (to which we will refer as the Lebanese firm) which was registered at the Beirut Bar Association under the name of Salim El Meouchi and was subject to the Beirut Bar Associations’ rules and regulations. It contended that the respondent and the Lebanese firm were separate entities. Two of the junior lawyers, Ms Maryline Kalaydjian and Mr Marc Dibb who did much of the work in relation to the applicant, were based in the Beirut office of the Lebanese firm. The respondent stated that the respondent and the Lebanese firm as related firms often worked closely together.

The contract for the provision of legal and fiduciary services

7. After an initial meeting at the Beirut office of the Lebanese firm to discuss the provision of legal and fiduciary services in relation to the applicant and an associated Isle of Man company, there was then an exchange of emails on 20 January 2016 and 8 February 2016 which resulted in the formation of the contract for the provision of legal and fiduciary services.
8. Legal and fiduciary work was carried out under that contract for the applicant.
9. In March 2017 the respondent invoiced its fees for the work done. The applicant did not pay the fees. The respondent stated that in September 2017 it ceased to work for the applicant. A dispute then arose about the payment of the fees, principally relating to contentions by the applicant as to the quality of the work carried out.

The commencement of the proceedings

10. Proceedings were commenced on 9 October 2019 by the respondent suing for its fees.
11. The applicant filed its defence on 12 November 2019 challenging the jurisdiction of the court on the basis that the respondent had its main office in Beirut and all the relations between the respondent and the applicant started and kept going through these offices.
12. The respondent in its response of 27 November 2019 made its contention about the position of the respondent and Lebanese firm as we have set out at paragraph 6 above and stated the relations between the applicant and the respondent had always been with the respondent law firm in Qatar.
13. In the exchanges that followed, there was argument about the interpretation of the jurisdictional rules of this Court.

14. The parties asked the First Instance Circuit to determine the issues on the papers.

The decision of the First Instance Circuit in relation to jurisdiction

15. The First Instance Circuit concluded that the respondent was correct to say that being licenced by the QFC and having a presence in the QFC was enough to make it an entity “established” in the QFC (even if it is also established elsewhere); that the applicant’s interpretation of the jurisdiction provision of the QFC law and the regulations was wrong. It held there was jurisdiction.

The appeal on the issue of jurisdiction as determined by the judgment of 6 February 2020

16. The first question for us to determine is whether the applicant sought permission to appeal in time. The QFC Law and the Regulations require that the notice of appeal must be filed within 60 days of the date of the judgment, decision or determination sought to be appealed.

17. The applicant accepts that the application for permission to appeal against the judgment of 6 February 2020 was made more than 60 days after the judgment of 6 February 2020 but contends that the judgment was an interlocutory judgment and therefore could be appealed within the time allowed for appeal against the second judgment.

18. We cannot see any basis for this contention. The provisions of the QFC Law and the Court Regulations are clear – all appeals must be brought within 60 days. Moreover it is particularly important that any application for permission to appeal on the issue of jurisdiction must be made within the 60-day period, so the parties know before they incur the costs of the determination of the merits whether the court has jurisdiction. At paragraph 2 of its judgment the First Instance Circuit made clear it had to determine the issue of jurisdiction before it could consider the merits of the dispute.

19. Furthermore if a party contests the jurisdiction unsuccessfully, it may wish to take the position that it will play no further part in the proceedings and seek to reargue the issue when an attempt is made to enforce in another state any judgment obtained on the merits. Continuing to contest the claim on the merits, as the applicant did in these proceedings, had the general consequence that the jurisdiction of the Court has been accepted.
20. Thus as the appeal was out of time, the application for permission to appeal against the judgment of 6 February 2020 must fail.

The proceedings on the merits before the First Instance Circuit

21. After the judgment of 6 February 2020 had been given, the First Instance Circuit then proceeded to consider the merits of the dispute, with the consent of the parties, on the papers and without an oral hearing. Written submissions were filed. The Court concluded that it could determine the merits without an oral hearing.
22. In its judgment of 24 March 2020 the Court recorded that:

“The [applicant] does not deny that it engaged the [applicant] to undertake the services nor does it deny that it agreed the fees which the [respondent] proposed”
23. It rejected the two defences advanced by the applicant – the work being done by trainees and criticism of a breach of professional standards. The Court recorded that no evidence had been advanced to suggest any shortfall in the quality of the work done nor of errors in the accounting for the work done.

The appeal against the judgment of 24 March 2020

The time point

24. Although the respondent has contended that the appeal against the judgment of 24 March 2020 is out of time, that is mistaken. Under paragraph 12 of Schedule 6 to the QFC Law, the time runs from the date the judgment was handed down, namely 31 March 2020 and not from 24 March 2020.

Refusal of permission

25. We have considered whether there are any substantial grounds for considering that the decision of the First Instance Circuit was erroneous and would result in substantial injustice, as set out in Article 35 (2) of the Court Regulations and paragraph 27 of the judgment in *Leonardo v Doha Bank Assurance Company* [2020] QIC (A) 1. There is, in our view, no basis for contending that the decision on the merits was erroneous or would result in substantial injustice.

26. The amount at stake is small. The case has been heard by consent on the merits with both parties asking the Court to determine the issues by reference to submissions and the documents without an oral hearing. The First Instance Circuit when determining the merits of the defences advanced by the applicant as to the quality of the work, the accounting and the alleged use of trainees roundly rejected them on the basis that no evidence had been adduced. It is clear that the work requested by the applicant was done and all the defences to payment were rejected.

27. In all the circumstances, this is a case where permission to appeal should be refused.

By the Court,



Lord Thomas of Cwmgiedd

President of the Court

