



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: [2024] QIC (F) 40**

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

**Date: 12 September 2024**

**CASE NO: CTFIC0071/2023**

**AMBERBERG LIMITED**

**Claimant/Applicant**

**v**

**PRIME FINANCIAL SOLUTIONS LLC**

**1<sup>st</sup> Defendant**

**AND**

**THOMAS FEWTRELL**

**2<sup>nd</sup> Defendant**

**AND**

~~NIGEL PERERA~~

3<sup>rd</sup> Defendant

AND

~~SOUAD NASSER GHAZI~~

4<sup>th</sup> Defendant

AND

~~REMY ABBOUD~~

5<sup>th</sup> Defendant

AND

~~MARC REAIDI~~

6<sup>th</sup> Defendant

AND

~~INTERNATIONAL BUSINESS DEVELOPMENT GROUP WLL~~

7<sup>th</sup> Defendant

AND

~~QATAR GENERAL INSURANCE & REINSURANCE COMPANY QPSC~~

8<sup>th</sup> Defendant

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## JUDGMENT

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### Before:

**Justice Fritz Brand**

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### **Order**

1. The application for permission to seek an Order joining Damaan Islamic Insurance Company QPSC as an Ancillary Party in *Amberberg Limited v Prime Financial Solutions LLC and others*, CTFIC0071/2023, is refused.

### **Judgment**

1. The Applicant, Amberberg Limited, is a company incorporated in the British Virgin Islands. It is also the Claimant against various Defendants (initially eight at the time of the case being filed and now three following various dismissals) in litigation under the above case number (the '**Main Case**'). The Respondent, also referred to in the application as the Ancillary Party, is Damaan Islamic Insurance Company QPSC ('**DIIC**' or the '**Respondent**'), an insurance company incorporated in the State of Qatar.
2. On 5 June 2024, the Applicant was made the subject of a Litigation Restraint Order (the '**LRO**'). Under the terms of the LRO, the Applicant is precluded from making any claims or applications – whether fresh cases or within extant cases – without permission from the President of the Court or a Nominated Judge.
3. On 8 September 2024, by way of an Application Notice (the '**Application**'), the Applicant sought permission to commence litigation against the Respondent. Although the relief that the Applicant intends to seek against the Respondent is not entirely clear, I infer from the fact that the Application is brought under the number of the main case as well as its reference to the Respondent as the "*Ancillary Party*", that the proposed relief sought will be to join the Respondent as yet another Defendant in the Main Case.

But even if the relief sought is an order for payment directly against the Respondent, it will appear from the reasons to follow that my answer will remain the same.

4. As appears from the Application, the basis for the relief sought will rely on a Professional Indemnity Insurance Policy ('**PII Policy**') issued by the Respondent for Prime Financial Solutions LLC, the First Defendant in the Main Case, as the insured for the period 26 January 2023 to 25 January 2024. In support of the proposed claim, it is alleged in the Application that the Applicant has a claim or claims against the First Defendant that fall within the ambit of "*continuous cover for claims [against the insured] arising from work carried out*" by the insured in the performance of its business as an insurance broker.
5. According to the Application, the Applicant's claims against the First Defendant will in turn rely on an indemnity clause in a Share Sale and Purchase Agreement ('**SPA**') in terms whereof the Applicant sold its shares in the First Defendant, to which the First Defendant was a party. In terms of the indemnity clause:

*Each party undertakes to indemnify and hold each other harmless against any costs, losses claims ... which the other parties may incur in the event that any Representation or Warranties by the Party contained in the Agreement which turns out inaccurate or if any Party is in breach of the covenants contained in this Agreement.*

6. With more specific reference to its proposed claims against the First Defendant, the Applicant relies on costs orders against it as Claimant in favour of other Defendants in the pending litigation (presently three: QAR 8,500 in favour of the 5<sup>th</sup> Defendant ([2024] QIC (C) 10; QAR 18,310 in favour of the 6<sup>th</sup> Defendant ([2024] QIC (C) 13; and QAR 421,000 in favour of the 8<sup>th</sup> Defendant ([2024] QIC (C) 11; there having been a successful application to strike out on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, there will also be a further costs order in their favour in due course).
7. I find the proposed action against the Respondent problematic at many levels. First, it is hard to understand how the costs orders in favour of other Defendants in the main case against the Claimant can be regarded as claims against the First Defendant. Secondly, even if they can be regarded as claims against the First Defendant, I cannot see how they can possibly fall within the ambit of the indemnity clause in the SPA. In any event, it is difficult to envisage a claim in favour of the First Defendant as the seller

arising from a breach of an indemnity or other obligation owed to it by the First Defendant under the SPA.

8. Fourth, it is difficult to contemplate how a claim against the First Defendant arising from the SPA can ever be said to fall within the ambit of the PII Policy, which covers the First Defendant against third party claims arising from its negligent conduct or that of its employees performed within the course and scope of its business as an insurance broker. Fifth, and perhaps most importantly, the PII Policy upon which the Applicant intends to rely is clearly a contract of insurance between the Respondent and the First Defendant. The insured is the First Defendant. It is not the Applicant. In consequence, the policy affords claims to the First Defendant only. It cannot be relied upon in support of a claim for payment directly against the insurer by a third party, such as the Applicant, who may have a claim for professional negligence against the insured. The third party must establish its claim against the insured who may then claim against the insured. All this was explained in the judgment of this Court in *Amberberg Limited v Prime Financial Solutions LLC and others* [2024] QIC (F) 16 at paragraph 13.
9. In an attempt to overcome this difficulty, the Applicant seeks to rely on legislation in the United Kingdom which provides for an action by a third party against the insurer directly before the liability of the insured had been established in circumstances where the insured is proved to be insolvent. But again, the answer raises hurdles which I believe the Applicant cannot possibly overcome. First, it has not been established that the First Defendant is insolvent. Second, and perhaps more importantly, it is not permissible simply to transpose a statutory regime from one jurisdiction to another. The fact that legislation was regarded necessary in the UK means that a direct claim by the third party against the insurer was not capable under English common law from which guidance can possibly be derived by this Court. The remedy is a creature of a statute in the UK which has not been reenacted in this jurisdiction.
10. These are the essential reasons for holding that the Application is refused.

**By the Court,**



[signed]

**Justice Fritz Brand**

A signed copy of this Judgment has been filed with the Registry.

Representation

The Claimant was self-represented.