



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: [2021] QIC A (1)
(On appeal from [2020] QIC (F) 14)

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

27 January 2021

CASE No. CTAD0001/2020

BETWEEN:

PROTECH SOLUTIONS LLC

Respondent

v

QATAR ISLAMIC BANK QPSC

Applicant

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Chelva Rajah SC

Justice Hassan Al Sayed

Order and decision in respect of Application for Permission to Appeal

1. By a written application made on 30 November 2020 the applicant seeks permission to appeal from the judgment of the First Instance Circuit (Justice Arthur Hamilton, Justice Fritz Brand, Justice Ali Malek QC) given on 15 October 2020 which (1) ordered the applicant to pay to the respondent \$768,040 under a contract between the parties signed on 24 November 2019, together with interest in the amount of \$31,469.35 (for the period from 23 December 2019 to date of judgment), further interest on \$768,040 at the rate of 5% per annum from the date of judgment until the date of payment and costs; and (2) dismissed the applicant's counterclaim.
2. The dispute between the parties related to a contract for the supply of and associated services (including a 7-year maintenance period) for 44 Diebold-Nixdorf (DN) Automatic Teller Machines (ATMs). The First Instance Circuit determined, in accepting the applicant's submission, that the contract was contained in a Professional Services Agreement signed on 21/24 November 2019 (PSA); it rejected the respondent's case that the contract was contained in a different agreement. The PSA was governed by the law of Qatar.
3. The ATMs were delivered to Doha in May 2019. The respondent started to implement work under schedule 1 to the PSA which provided for the installation of the machines and their integration into the applicant's system which used ATMs manufactured by NCR.
4. Issues arose between the parties on the integration of the DN ATMs into the applicant's system. The applicant contended that the DN ATMs failed the various tests and installation phases set out in Schedule 1 to the PSA. On 23 December 2019, the applicant sent a "Service Agreement Termination" which stated its subject as "Notice of Termination of service agreement for the implementation of DNATMs and Vynamic Solution".
5. The respondent commenced proceedings seeking payment of the purchase price and damages.
6. The applicant seeks permission to appeal on 4 main grounds and one other matter:

- a. The interpretation of the term deliverables was wrong and contradicted Article 172 of the Qatar Civil Code, as the term deliverables had to be read in the context of the entire contract. Deliverables should not have been read in isolation from the services.
 - b. The notice of 23 December 2019 was not a termination notice under clause 2.4 and 2.5; the applicant had given 30 days' notice by letter on 20 October and at a meeting on 20 November. The First Instance Circuit failed to have regard to Article 191 of the Qatar Civil Code and wrongly applied Article 707.
 - c. The First Instance Circuit wrongly treated the PSA as a sale contract and not as a mixed contract.
 - d. Damages should have been awarded to the applicant for the respondent's breach of the PSA.
 - e. The First Instance Circuit wrongly awarded interest.
7. We have considered whether there is 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 Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules and paragraph 27 of *Leonardo v Doha Bank Assurance Company* [2020] QIC (A) 1.
8. We consider that the application for permission to appeal should be adjourned to an oral hearing at a date to be fixed, with the hearing to follow immediately, if permission is granted, on the issue:
- a. As to whether the respondent was in breach of the obligations under schedule 1 to the PSA and, if so, despite the wrongful termination of the PSA by the applicant and its failure to provide an opportunity to the respondent to cure any breach, the applicant was entitled to damages for any breach.
 - b. In relation to interest.

9. We consider that there is no reasonable prospect of the applicant showing that the First Instance Circuit was wrong in relation to the other grounds of appeal. In those respects there is no basis for contending that the decision was erroneous or would result in substantial injustice.

10. There is no basis on which it can be shown that the First Instance Circuit's approach and decision in relation to the construction of the PSA were in error:
 - a. It did not treat the PSA as a sale contract; it considered the contract on the basis it provided obligations in respect of the supply of ATMs in Annex 1 and obligations, principally set out in Schedule 1, for services, including the integration of the ATMs into the system of the applicant.
 - b. The obligations in respect of the supply of ATMs were principally set out in Annex 1. By reading Schedule 1 and Annex 1 together the PSA defined "deliverables" as the ATMs set out in Annex 1.
 - c. The obligations of the respondent in respect of the services in relation to the ATMs was not "a deliverable".
 - d. The First Instance Circuit was correct in determining that the language of the PSA was clear on these points; the relevant provision of Article 172 of the Qatar Civil Code was followed by the First Instance Circuit.

11. There is no reasonable prospect of showing that the decision of the First Instance Circuit in respect of termination was wrong.
 - a. The notice of 23 December 2019 was a notice of termination with immediate effect.
 - i. The right to terminate was invoked on the basis that "the deliverable did not meet the requirements which were committed by [the respondent]"

- ii. The letter was expressly not within clause 11.1 as it did not give 30 days' notice; the applicant made clear that it would not make any payment in lieu of 30 days' notice as the respondent was in breach of its obligations.
- b. The respondent claimed it was entitled to rely on the provisions of clauses 2.4 and 2.5. These clauses related only to the obligations in respect of deliverables, not services. No defect was proved in relation to the ATMs. The provisions of those clauses did not apply as no notice under clause 2.5 had been given.
- c. The letter was not a termination within clause 11.2 as it did not give the respondent 30 days' notice to cure a material breach. Although there is some evidence that some sort of notice was given in the letter of 20 October 2019 and the meeting of 20 November 2019, the First Instance Circuit found that the applicant could not rely on this because of its email of 3 December 2019. In that email the applicant acknowledged that the respondent had offered to rectify the problems with installation, but the applicant had put the contract on hold and suspended all activities under the contract; it would give its decision after an internal meeting. As the applicant then proceeded to cancel the contract without affording any opportunity to cure, it could not rely on clause 11.2.
- d. As the First Instance Circuit was right on these matters, the termination was wrongful as there was no right under the contract to terminate. Termination brought into operation Article 707 of the Qatar Civil Code and entitled the respondent to demand immediate payment of the purchase price, on the basis that this was a proper measure of the expenses and profits relating to the sale.

By the Court,



Lord Thomas of Cwmgiedd
President

