



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 Number: [2021] QIC (F) 27

**IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT**

23 December 2021

Case No. CTFIC0018/2021

BETWEEN:

**(1) DARUNA FOR REAL ESTATE BROKERAGE CO. LLC
(2) SHEIKH NASSER bin ABDULRAHMAN bin NASSER AL THANI**

Claimants

v

QATAR FIRST BANK LLC

Defendant

JUDGMENT

(concerning jurisdiction)

Before:

Justice Arthur Hamilton

Justice Fritz Brand

Justice Muna Al Marzouqi

ORDER

1. The Defendant's Application contesting the jurisdiction of the Court is dismissed.
2. The costs occasioned by this Application are reserved for later determination.
3. The Defendant shall, within 28 days of the issue of this judgment, serve and file its defence to the claim form.
4. The Claimants may, within 28 days of the service and filing of such defence, serve and file a statement of reply to that defence.

JUDGMENT

1. The Claimants in these proceedings are, first, a company established in Qatar but outside the Qatar Financial Centre ("the QFC") and, second, an individual (Chairman of the Board of Directors of that company) who is a resident of the State of Qatar. The Defendant is an entity established within the QFC where it carries on banking business.
2. The context of the claim is a project for the construction of residential accommodation for labourers at Umm Slal in Qatar. In the event the project was not realised, the relevant governmental authority having ultimately cancelled the relative award.
3. The Claimants seek payment from the Defendant of (1) QAR 15, 318,949 "as the value of the direct damage to 04/02/2019" (apparently expenditure fruitlessly incurred), (2) QAR 142,086,937 "as the value of the damage, lost profits and incurred losses due to the loss of the project" and (3) QAR 700,000,000 "as compensation for the loss of reputation of [the First Claimant] and its loss of the market credit and of the projects". The claim form was submitted in Arabic. The passages in quotations are translations into English of the relevant passages in the explanatory document filed with the claim form.

4. The Defendant responded to the claim form by filing an Application Notice (in English) in which it sought a ruling that this Court has no jurisdiction to entertain the claim or, in the alternative, that the proceedings be referred to the local Qatari Courts. It was not, at that stage, obliged to state a defence to the claim form and did not do so. The Claimants filed a Reply to that Application. The Court gave a direction that this challenge to its jurisdiction be addressed at a hearing to be held remotely. That hearing took place on 9 December 2021, when both Claimants were represented by Mr Mohammed Kamel and by the Second Claimant and the Defendant was represented by Ms Sarrah ElJaili.

5. Article 8.3 (c) of the QFC Law provides that the First Instance Circuit of the Court shall have jurisdiction to hear certain disputes. Four classes are there specified, the first two of which are irrelevant for present purposes. The remaining two so specified are:

“c/3-Civil and commercial disputes arising between entities established in the QFC and contractors therewith....”; and

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

6. The substance of the Claimants’ claim for compensation is that the Defendant undertook to provide significant finance for the project and that, while initially it did so to some extent (by indirect means), it ultimately failed to fulfil its undertaking, with the result that the Claimants sustained the losses claimed. The Claimants rely on, among other things, a letter dated 14 August 2016 sent by the Defendant (and signed by its Chief Executive Officer) to the Second Claimant in his capacity as Chairman of the Board of Directors of the First Claimant in which it is stated that the Executive Committee of the Board of Directors of the Defendant had “approved our equity investment of seventy percent (70%) stake in the Umm Slal Plot 4 Project with Daruna”. The letter goes on to state that that approval “allows us to assure you that pending the satisfaction of conditions precedent and

documentation, the funds are approved, segregated and ready for distribution” and concludes with the statement “...we reiterate our commitment to this partnership..”. That letter, according to the Claimants’ pleadings, was followed by various steps taken by the Defendant in furtherance of its undertaking, some of which were unsuccessful, but which ultimately led to the establishment of a company named “Kuthban LLC”, in which the Defendant was a shareholder. According to the Claimants the Defendant continued to participate, through its own employees, in the financial and other arrangements for the project. In its published annual reports, it recorded its investment in the project.

7. The claim, as amplified in the Claimants’ explanatory document, is based on “contractual error” and on “tort”. It is maintained, as regards the former, that “the bank’s failure to meet the contractual liability and fulfil the established undertaking to finance the project for 4 years was a fundamental reason for cancellation of the award by the relevant governmental body and withdrawal of the project land”; and, as regards the latter, that the Defendant “violated the rules and liabilities of Qatar Financial Centre set forth on the shoulders of banks and financial institutions...”.
8. The Defendant in its Application Notice states that “it participated in the dealing through the agreed share in Kuthban LLC”. It also refers to the establishment of a company named Umm Slal for Accommodation LLC (based on an agreement between Kuthban LLC and the First Claimant) and to an agreement between Umm Slal for Accommodation LLC and Gulf Systems for Contracting and Services LLC (“Gulf Systems”), the latter being the main contractor appointed by the relevant governmental body for the construction project. The Defendant’s central contention in law (as set forth in its Application Notice) is that, as it was only a shareholder in one of the companies connected to the projected construction works, there are no legal or factual grounds connecting it to the current dispute. In these circumstances, it is said, there is no basis for this Court to assume jurisdiction over that dispute.
9. It was accepted by the Defendant at the hearing that, at this stage, it was sufficient that the Claimants set out a prima facie basis for a ground of jurisdiction on which they rely; and that the Court could sustain the Defendant’s Application Notice only

if it was clear that it did not have jurisdiction on either of the grounds relied on. It was contended that it was obvious from the Claimants' pleadings that the only parties to any relevant dispute were the four companies, namely, Gulf Systems, the First Claimant, Kuthban LLC and Umm Slal for Accommodation LLC. The Defendant had no connection with the dispute, other than as a shareholder of Kuthban LLC. As such shareholder, the Defendant could have no liability. It was also argued at the hearing that the letter of 14 August 2016 was issued at a "pre-contractual stage". The Application Notice should accordingly be sustained, and the claim dismissed forthwith.

10. Jurisdiction under Article 8.3(c)c/3 of the QFC Law depends in this case on there being a relevant contractual relationship between the Defendant and the Claimants (who for present purposes may be treated as a single body). While it is not possible at this stage of the litigation to decide conclusively that there was in fact such a relationship, there is in the Court's judgment a sufficient prima facie basis for the Claimants' contention that such existed. The letter of 14 August 2016 spoke of the Defendant's "commitment to this partnership". The argument that this letter was sent at a "pre-contractual stage" (and that it gave rise to no contractual obligation) cannot be ruled on without investigation of the factual context of the letter, including potentially subsequent conduct of the parties. Further, the circumstance that steps were taken to advance matters by the vehicle of using other companies, rather than by the Defendant's direct involvement, does not necessarily have the effect that the Defendant was thereby discharged of any contractual obligation which it had undertaken; and there is nothing to suggest that the parties otherwise departed from any rights or obligations which they might respectively have had. The scope of any contractual obligation to the Claimants and its relationship, if any, to the withdrawal of the project may also, in due course, require to be examined; but these are matters going to liability, not to jurisdiction, and accordingly are for a later stage of the litigation.

11. As to Article 8.3(c)c/4, one of its elements relates to the character of the parties. That element is met here in that the Defendant is established within the QFC and the First and Second Claimants are respectively a resident of the State and an entity established in the State but outside the QFC. It was accepted that the dispute in

question is a “commercial dispute”. The remaining element is that the dispute is one “arising from transactions, contracts or arrangements taking place between [the parties]”. So far as we are aware, this phrase has not previously been commented upon in the jurisprudence of the Court. It is, however, widely expressed. It is clearly not restricted to a contract or contracts, although it may embrace such relationships, including a “partnership” (formal or informal). At least an arrangement took place between the parties under which the Defendant had a role as a provider of funding for the project. Moreover, the arrangement or arrangements between the parties, whether contractually based or not, might give rise to non-contractual rights and duties, such as any arising from “tort”. In such a situation, as the other elements are met, this Court would have jurisdiction to adjudicate on any alleged breach of such duties as well as on any breach of contractual duties. There is some obscurity about the basis of the Claimants’ case in “tort”. It was suggested that it related to its responsibilities as a financial institution in Qatar, though no detail was given. But, whether there was any obligation of that kind and, if so, whether it was breached is again an issue of liability, not of jurisdiction.

12. The arguments presented at the hearing tended to stray into issues of liability and compensation; but these cannot properly be addressed at this stage and we say nothing further about them.
13. In the foregoing circumstances the Court is not persuaded that it can sustain the Defendant’s challenge to jurisdiction as formulated in its Application Notice. Nor does it see any justification for referring the case to the local Qatari Courts. The Application is accordingly dismissed. It may be that issues of jurisdiction will require to be revisited once the full facts relevant to them are established. These facts are likely in this case to be closely related to the facts relevant to issues of liability.
14. It is appropriate that the Defendant now file its defence to the claim form, with the Claimants having the right to reply to the same.

15. As aspects of jurisdiction may require to be revisited, we find it prudent to direct at this stage that the costs associated with the Application be reserved for later determination.

By the Court,

[signed]

Justice Arthur Hamilton

A signed copy of this judgment has been filed with the Registry

Representation:

For the Claimants: Mr Mohammed Kamel, instructed by Mana N. Jashan Law Firm, Doha, Qatar, and the Second Claimant

For the Defendant: Ms Sarrah ElJaili, instructed by Hamad AlYafei Law Firm, Doha, Qatar.

