



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: [2023] QIC (F) 8**

IN THE QATAR INTERNATIONAL COURT  
FIRST INSTANCE CIRCUIT

Date: 2 April 2023

**CASE NO: CTFIC0035/2022**

**RUDOLFS VEISS**

**Claimant**

v

**PRIME FINANCIAL SOLUTIONS LLC**

**Defendant**

AND

**AMBERBERG LIMITED**

**Third Party**

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**JUDGMENT**

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**Before:**

**Justice Lord Arthur Hamilton**

**Justice Fritz Brand**

**Justice Helen Mountfield KC**

**ORDER**

1. The Claimant's claim for an indemnity pertaining to the costs incurred by him in the criminal proceedings before the Supreme Judiciary Council is upheld.
2. In consequence, the Defendant is to pay to the Claimant the sum QAR 152,616.80 within 14 days of the date of this judgment.
3. The Claimant's claims for the recovery of the costs incurred by him in the proceedings before the Qatar Financial Centre Regulatory Authority and in preparation for the appeal against that decision to the Regulatory Tribunal are stayed pending the outcome of that appeal.
4. Once the Regulatory Tribunal has given its decision in the appeal, the parties are hereby authorised to approach this Court for directions regarding the further conduct of the proceedings pertaining to these claims.
5. Amberberg Limited is entitled to recover from the Defendant such reasonable costs, if any, incurred by it in opposing the Intervention Application by the Defendant until 5 March 2023, to be determined by the Registrar on submission of proof by Amberberg Limited, if not agreed.
6. The Claimant is entitled to recover from the Defendant such reasonable costs, if any, which he has incurred in pursuing his claim for recovery of the costs in the criminal proceedings, to be determined by the Registrar on submission of proof by the Claimant, if not agreed.

## Judgment

**This is a judgment of the Court.**

### INTRODUCTION

1. The Claimant, Mr Rudolfs Veiss, is a former employee and former Director of the Defendant, which is a limited liability company (“LLC”) which offers financial services, and which at all material times operated in the Qatar Financial Centre (“QFC”) and was regulated by the Qatar Financial Centre Regulatory Authority (“QFCRA”). It is common ground that the Claimant was an employee of the Defendant, operating as its head of business, between 26 January 2020 and 3 August 2022, and that he was a director of the Defendant from 14 July 2020 until 23 December 2020. His appointment on 14 July 2020 was as “*Executive Board Director*”.
2. The Claimant has been subject to regulatory and criminal proceedings arising from allegations concerning his conduct during that time. On 19 September 2022, the QFCRA issued a lengthy Regulatory Decision finding extensive breaches of various QFC rules by the Claimant. On 18 November 2022 the Claimant issued an appeal against that decision, which we were told takes the form of a *de novo* (i.e. completely fresh) hearing of the regulatory allegations against him.
3. On 21 September 2020, the QFCRA notified the prosecutorial authorities of the State of Qatar of an allegation that the Claimant had falsified certain documents relating to the date when certain new customers had become clients of the Defendant (in order, it was suggested, to disguise the fact that these new customers had been taken on at a time when the Defendant was debarred by the regulator from accepting new business). However, on 14 February 2022, the Supreme Judiciary Council Misdemeanour Court acquitted the Claimant of those charges.
4. The sole issue before us was whether the Claimant was entitled, by virtue of the Defendant’s articles of association or otherwise, to be indemnified by the Defendant

from the costs of defending the regulatory and criminal proceedings, including by bringing an appeal against the QFCRA ruling.

5. At the start of the hearing, the Claimant confirmed that he was not relying upon any contractual right to be indemnified, and on that basis, the Defendant withdrew its application to rely upon witness statements which it had sought to introduce after the date given in the directions for lodging such material. The only witness we heard, therefore, was Mr Veiss, and we received written and oral submissions from Mr Veiss (representing himself) and Mr Smit of Counsel for the Defendant.
6. The Defendant had originally sought to pursue a counterclaim by way of an Intervention Application against Amberberg Limited, which is a company under the control of the Claimant which was formerly the 100% shareholder of the Defendant, but the day before the hearing, the Defendant wrote to the Court withdrawing this counterclaim. Mr Smit fairly accepted that the Defendant would be liable for any reasonable costs which Amberberg Limited may have incurred up to and including 5 March 2023, to be assessed if not agreed.

### THE LEGAL FRAMEWORK

7. As we have already observed, the only issue in these proceedings is whether, and if so, to what extent, the Claimant is entitled to be indemnified by the Defendant for costs incurred in relation to defending the three sets of legal proceedings to which he made reference in his Claim Form. His claim was said to rest on the Defendant's articles of association and various other provisions contained in the law of the QFC.
8. We have come to the judgment that the Claimant is entitled to an indemnity from the Defendant to the extent allowed by article 91 of the Defendant's articles of association, and under no other provision. Before turning to the facts, we need to set out the basis for this judgment, and our findings as to the proper interpretation of that provision, and its extent. We have reached this conclusion on the basis of the following legal analysis.

9. By virtue of article 49 of the QFC Companies Regulations 2005, the QFC Companies Registration Office may from time to time prescribe a set of model articles of association, which an LLC operating in the QFC may adopt or amend. It is common ground that the Defendant in this case did choose to adopt these standard articles of association.

10. Article 91 of the standard articles of association say this about indemnity:

*The LLC shall indemnify every director or other officer or auditor of the LLC in respect of any liability incurred in defending any proceedings to the extent allowed by the Regulations.*

11. Article 1(1)(A) of these articles of association defines “the Regulations” for these purposes as meaning the QFC Companies Regulations 2005.

12. Article 61 of the QFC Companies Regulations 2005 provides:

*Exemption, Indemnification and Liability of Officers*

*(1) Subject to Article 61(2), an LLC may, in its articles of association or in any contract or arrangement between the LLC and any Officer, [who is defined in the definition section as a director or secretary of the company] or any person employed by the LLC as auditor, exempt such Officer or person from, or indemnify him in respect of any negligence, default, breach of duty or breach of trust of which the Officer or person may be guilty in relation to the LLC or any Subsidiary thereof.*

*(2) Any provision whether contained in the articles of association of the LLC or in any contract or arrangement between the LLC and any Officer, or any person employed by the LLC as auditor, exempting such Officer or person from, or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any fraud or dishonesty of which he may be guilty in relation to the LLC shall be void provided that, notwithstanding anything in this Article 61 an LLC may, in pursuance of any such provision as aforesaid, indemnify any such Officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgement is given in his favour or in which he is acquitted.*

13. The Claimant, who represented himself, made a number of references in his oral submissions to various QFC regulatory provisions other than the QFC Company Regulations 2005, which require financial services or insurance providers to have

professional indemnity insurance. These provisions were not set out in his pleadings, and we have concluded that they are irrelevant to the issue before the Court. Firstly, the only substantive provision to which he could point which imposed a positive obligation on the Defendant to indemnify him was in article 91 of the articles of association, and this was expressly stated to be subject to Regulations which were defined (exclusively) as the QFC Companies Regulations 2005. Secondly, these provisions related only to the duty of such regulated providers to be insured for indemnity and other professional liabilities which they may incur. They did not set out the extent of any such underlying obligations which may found such liabilities in the first place. Thirdly, these provisions related only to the duty of QFC regulated bodies engaged in financial services or insurance business to be indemnified against liabilities which may be incurred to customers in the course of their business. They do not relate to any indemnity to which a person may be entitled as a director or employee of such a firm.

14. During the course of his submissions, the Claimant also referred to article 61 of the Defendant's articles of association which provide that "*the directors shall receive such remuneration as the LLC determines by resolution and shall receive payment of all expenses incurred in association with the carrying out of their duties as directors*". However, in the course of his oral submissions, the Claimant conceded that payment of expenses incurred in association with carrying out duties as a director was a different matter from indemnity in defending oneself. We agree. We do not consider that the legal expenses of defending civil, criminal or regulatory proceedings brought against the Director in his own name can amount to "*expenses*". These are specifically dealt with in article 91
  
15. The Defendant conceded that article 91 of the articles of association created an indemnity obligation towards the Claimant, but submitted that it was limited in three important respects:
  - i. it applied only in respect of acts said to have occurred during the time when the Claimant was a director of the Defendant;

- ii. it applied only to activities incurred in relation to acts which were alleged to have occurred and which could properly be regarded as having occurred in the context of the Claimant's duties as a director of the Defendant, and not in relation to duties undertaken in relation to his obligations as an employee; and
- iii. it was disappplied if and to the extent that such activities were fraudulent or dishonest, by virtue of the language of article 61(2) of the QFC Companies Regulations 2005.

16. Dealing with the first of these submissions, we accept that the indemnity applied only to activities in relation to the Claimant's actual or alleged activities associated with the Defendant company, or events which occurred during his period of service as a director (though – and this was not disputed – the indemnity could cover proceedings which took place after that time which related to such activities or events).

17. As to the second, during the time when the Claimant was a director of the Defendant, he was also its head of business. One of the allegations which was made against him was that he falsified (or caused to be falsified) various dates on documents concerning the dates when new customers joined the business. The Defendant submitted that filling in regulatory forms in relation to new customers was the function of a head of business (i.e. an employee) and not a director (who was responsible for the governance and compliance of the Defendant). However, for reasons which we develop in our analysis of the facts, we do not consider we can properly distinguish between whether allegations of falsification of documents (whether personally or by instructing a third party) related to the Claimant's functions as an employee, head of business, or as a director, responsible for the proper conduct of employees' functions.

18. Accordingly, we find that article 91 of the articles of association in principle covered the costs of the Claimant defending himself against actions undertaken by him in the context of his work for the Defendant, subject to the third limitation on the ambit of the indemnity.

19. In this regard article 91 is expressly limited so that it applies only to the extent permitted by the QFC Companies Regulations 2005. Article 61 permits an LLC to provide an indemnity to an Officer of the company "*in respect of any negligence, default, breach of duty or breach of trust*". However, that permission to an LLC is expressed to be

“*subject to Article 61(2)*”. Article 61(2) provides that any such indemnity provision is void to the extent that it attaches to an exemption from liability in respect of any fraud or dishonesty of which he may be guilty; provided that an LLC may, in pursuance of such an indemnity, indemnify the director against any liability incurred by him in defending any civil or criminal proceedings in which judgment is given in his favour or in which he is acquitted.

20. In our view, therefore, article 91 of the articles of association entitles the Claimant to an indemnity in relation to any liability which he may have incurred in defending any proceedings which relate to his activities in connection with the Defendant company which activities occurred or were alleged to have occurred during his period of office as a director of the company, except in liabilities which attach to him in respect of fraud or dishonesty.

21. There may be some issues which arise where an indemnity is sought in relation to proceedings which are brought partly in relation to allegations of negligence, default, breach of duty or breach of trust without fraud or dishonesty and partly in relation to allegations of fraud or dishonesty. That is not an issue which is currently a live one before us. However, in any event, in our judgment, the indemnity under article 91 does cover the Claimant in the following situations:

- i. In relation to defending civil or criminal proceedings brought against him in relation to matters arising in relation to facts alleged to have occurred during his period as a director of the Defendant which do not relate to fraud or dishonesty; and
- ii. In relation to defending proceedings brought against him in relation to such matters which do relate to fraud or dishonesty, but which have resulted in judgment in his favour or acquittal.

## THE BACKGROUND FACTS



22. This brings us to a more detailed consideration of the facts. In this regard, we propose to deal first with the facts pertaining to the criminal charges. As indicated by way of introduction, it is common ground that during the period between 14 July 2020 and 23 December 2020, the Claimant was both a director of the Defendant and employed by it as its head of business. Before and after that period he was an employee only. For its argument that the criminal charges were brought against Mr Veiss in his capacity as employee and not as a director, the Defendant relies in the main on the following passages in the Judgement of the Supreme Judiciary Council and we quote (from the internal page numbering of the English translation of the judgment):

- i. *The Public Prosecution charged Rudolfs Veiss and brought him to Criminal Trial on the grounds that on 23/09/2020 at the Department of Economic and Electronic Crimes he forged and used an unofficial document by changing the dates in the document to obtain exemptions from QFC Regulatory Authority as described in the papers. [page 1]*
- ii. *The report of the Forensic Laboratory dated 30/05/2021 was attached to the papers, the result of which was that the four documents, subject of examination, were altered concerning the fixed date in them by obliterating the previous date 30/01/2020 using a white blurring material fixing the current date on 04/07/2020 on top of it and that the Defendant is the one who wrote the current date 04/07/2020 in his handwriting on the documents under examination. [page 4]*
- iii. *The court indicates in its judgment that the present case is limited according to the referral order in the forgery case related to the four documents specifically in the dates altered therein, without any other administrative offenses against the Defendant or the International Financial Services Company (Qatar) LLC towards Qatar Financial Centre Regulatory Authority. [page 5]*

23. From the language alone, the quotation (i), above, from page one of the judgment could be understood to indicate that the alleged crimes were committed on 23 September 2020, which would militate against the Defendant's argument that they were committed before the Claimant became a director on 14 July 2020. But that understanding cannot in fact be correct, since it appears elsewhere in the judgment (page 3) that the QFCRA had already referred the matter to the Public Prosecutor on 21 September 2020, so the alleged events, if they took place, must have occurred before that. The Defendant's argument that the charges pertained to conduct preceding the Claimant's appointment as a director rested on the passage in (ii) from page 4 of

the judgment to the effect that the forgery involved insertion of the “*current date on 4 July 2020*”. The inference the Defendant seeks to draw from this is that the forgery was committed on 4 July 2020. But we think the inference rests on a misinterpretation of the judgment. As we see it “current date” does not refer to the date of the forgery, but to the date currently appearing on the forged document (that is, the date appearing following the change). In the event there is no clear indication in the judgment of the Criminal Court as to when the forgeries were alleged to have been committed. Other documents on the papers seem to indicate, albeit inconclusively, that the forgeries were committed during a period which straddled at least part of the Claimant’s term of office as a director. But more significantly, the Claimant was charged (as appears from the criminal court’s judgment at page 2) with the allegation that he committed the crimes both during a period when he was both a director and an employee of the Defendant, without any distinction being drawn between the two capacities in these charges.

24. The Defendant’s further contention was that even if it is accepted that the crimes were committed during a period when the Claimant was both a director and an employee of the Defendant, his alleged criminal conduct fell within the scope of his functions as head business and outside the ambit of his functions as a director. It sought to find support for this contention in quotation (iii) above, to the effect that the criminal charges pertained to the alleged forgery of the four documents only “*without any other administrative offenses against the Defendant or the International Financial Services Company (Qatar) LLC towards Qatar Financial Centre Regulatory Authority.*”
25. In further support of this argument the Defendant sought to rely on the concession by the Claimant under cross-examination that the forgeries concerned pertained to the “*onboarding*” or the entering of new clients into the records of the Defendant which was a function of the head of business and not of a director. But we do not believe the distinction is a legitimate one. Firstly, in the context of the alleged forgeries they did not pertain to “*onboarding*” or recording of new clients. The clients were already on board when the forgeries were committed. The alleged forgeries involved the changing of dates on pre-existing documentation concerning the date of that onboarding. While it may be true to say that the commission of the crime would further

the functions of the head of business, it also amounted to a covering up exercise which could be seen as part of a control function within the ambit of a director's duties. In this regard we find it significant that the Claimant was not only a director but an executive director of the Defendant company. As a matter of course, the blurring of the functions of an executive director and an employee would often be unavoidable. In these circumstances we do not think it can be suggested that for purposes of article 91 the Claimant must be considered as having removed his hat as a director to wear his alternative cap as an employee only when he allegedly committed the forgeries. The fact is that the criminal proceedings were brought against the Claimant both in his capacity as director and in his capacity as an employee. In this light, the exercise of trying to decide what the Claimant did as an employee and what he did as a Director, suggested by the Defendant seems to be inappropriate in the application article 91.

26. The Defendant relied on *Tomlinson v Liquidators of Scottish Amalgamated Silks Limited* (1935) SC (HL) 1, a decision of the House of Lords on appeal from the Court of Session in Scotland. There a claim for indemnity, made by a director for the expenses incurred by him in, successfully, defending criminal proceedings brought against him, was dismissed. As Mr Smit recognised, the terms of the indemnity provision in the Articles there under consideration were different from those in the present case: it was against "*costs, losses and expenses which any such Director ...may incur...by reason of any...deed done by him in the discharge of his duties, including travelling expenses*"; those articles of association did not include any provision equivalent to the proviso to the present article 61(2). The judgment of the House of Lords turned essentially on the interpretation and application of the articles of association applicable in the case before it. Whatever reservations, if any, which this Court might have about the reasoning in that decision, that case does not assist in the resolution of the present.
27. Although these charges clearly involved allegations of dishonesty which, if established, would have brought him within the exclusion from the indemnity set out in article 61(2), the fact that the Claimant was acquitted on those charges brings him within the exception to the exclusion in terms of the proviso in article 61(2). Hence, he has an entitlement to recover the reasonable costs which he incurred to defend himself against these charges, which falls within the ambit of article 91 of the

Defendant's articles of association. It follows that in principle the Claimant is entitled to recover these costs from the Defendant.

28. The amount claimed by the Claimant under this rubric is QAR 152,616.80 His evidence is that this represents the amount actually charged by his legal representatives in these proceedings, part of which has been paid and part of which is still owing by him. In argument, the Defendant contended that the Claimant adduced no evidence to establish the reasonableness of these charges. That is so. But the reasonableness of the charges was never disputed by the Defendant in its pleadings. Had it done so, the Claimant would clearly have had the opportunity to deal with the dispute thus arising. Absent such denial, we find no reason to find that the fees levied by the Claimant's lawyers were not reasonable. It follows that in our view, the Claimant is entitled to payment of the full amount claimed.
29. This brings us to the claim for payment of the costs incurred by the Claimant in the proceedings before the QFCRA and the costs incurred in preparation of the appeal against that decision. While his claim for legal assistance before the QFCRA is for an amount of QAR 95,650.00, by far the largest part of his total claim is represented by the costs incurred for preparation of the appeal to the Regulatory Tribunal in an amount of QAR 595,000.00. There may yet be further claims.
30. The proceedings before the QFCRA were brought against the Claimant as "*an Approved Person undertaking the Executive Governance Function for [the Defendant]*" (Decision Notice, paragraph 3.1). The findings by the QFCRA were not in his favour. The Defendant's answer to the claim for the recovery of the costs incurred by the Claimant in these proceedings is that they resulted from charges of fraud or dishonesty as contemplated by article 61(2) of the QFC Companies Regulations 2005 and are thus excluded from indemnity. In support of this answer the Defendant sought to rely on findings by the QFCRA, for instance, that the Claimant "*failed to act with integrity*"; that he "*obstructed the investigations by the QFCRA*"; and that he had "*failed to deal with the QFCRA in an open and co-operative manner.*"
31. But the findings of the QFCRA relied upon by the Defendant for its defence are subject to a pending appeal. In fact, the largest part of the Claimant's claim is

represented by the costs of the pending appeal. Self-evidently, the outcome of this part of the claim is inextricably bound with the outcome of the appeal itself. But the same goes, we believe, for the costs of the proceedings before the QFCRA itself. If the Regulatory Tribunal were to set aside these findings of the QFCRA on appeal, it will remove the whole factual basis of the Defendant's argument. If, on the other hand, the appeal is unsuccessful, the question will arise whether the findings by the Tribunal amounts to fraudulent or dishonest conduct. In consequence we believe that this part of the claim should be stayed pending the outcome of the appeal to the Regulatory Tribunal. Once the appeal has been decided, it will be open to the parties to approach this Court for directions pertaining to the further conduct of this case.

32. What remains are issues of costs. As to the costs incurred by Amberberg Limited as a result of the Defendant's Intervention Application, we have noted the concession on behalf of the Defendant that it is liable for the reasonable costs incurred by Amberberg Limited in defending the Counterclaim until the date when it was dropped (the day before the hearing). Accordingly, we propose to make an order in these terms. As to the costs incurred by the Claimant, we believe that although only part of the proceedings has thus far been concluded, the Claimant has been substantially successful with regard to that part. Accordingly, we find that although he is appearing in person, he is entitled to such reasonable costs he may have incurred in pursuing this claim, in an amount agreed or as determined by the Registrar.

**By the Court,**



**[signed]**

## **The Qatar International Court**

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

### Representation

The Claimant was self-represented.

The Defendant was represented by Al-Tamimi & Company (Doha) and Mr Johan Smith of Counsel (Cape Town, South Africa).