

**In the name of His Highness Sheikh Hamad bin Khalifa Al-Thani,
Emir of the State of Qatar**

IN THE CIVIL AND COMMERCIAL COURT

OF THE QATAR FINANCIAL CENTRE

1 December 2010

CASE NO: 04/2010

**IN THE MATTER OF THE
WINDING UP OF AL MAL BANK LLC**

TAHA BABIKER

v.

AL MAL BANK LLC

Members of the Court:

Justice Dohmann

Justice Lord Cullen

Justice Sackville

ORDERS

Pursuant to Article 95(1) of the *QFC Insolvency Regulations*, the Court **DETERMINES** the questions submitted by the Liquidators as follows:

Question 1: Was the undated Employment Contract Agreement between Mr Babiker and the Al Mal Bank LLC ("*Bank*") ("*Babiker Contract*") executed before Mr. Babiker's employment with the Bank was terminated on 17 November 2009?

Answer: Yes.

Question 2: If the Babiker Contract was executed before 17 November 2009, was it nonetheless invalid because it was executed by Mr. Nazim Omara, the Chief Executive Officer of the Bank, without authority to do so?

Answer: Yes.

JUDGMENT

THE COURT:

INTRODUCTION

- 1 This judgment contains the determination of the Court on certain questions referred to it by the liquidators ("*Liquidators*") of Al Mal Bank LLC ("*Bank*"). The Court ordered on 6 June 2010 that the Bank be wound up pursuant to art 77 of the *QFC Insolvency Regulations* (Regulation No 5 of 2005) ("*Insolvency Regulations*") and that Ms J K Rolls and Mr S J Parker of RMS Tenon be appointed as Liquidators. They have asked the Court to determine questions that arise by reason of claims that had been brought against the Bank, but not resolved, when the winding up order was made.

- 2 The questions have been referred to the Court pursuant to art 95(1) of the *Insolvency Regulations*, which permits the Liquidators (among others) to apply to the Court to determine any question arising in the winding up of a company. As initially framed, the questions related to wrongful dismissal claims against the Bank by Mr Nazim Omara, the former Chief Executive Officer ("*CEO*"), and Mr Taha Babiker, the former Head of Human Resources and Administration, both of whom were summarily dismissed by the Bank on 17 November 2009.

- 3 The Liquidators' case against Mr Omara was that he had fraudulently created the contract of employment on which he relied (to which we refer as "*Omara Contract*") **after** his dismissal and that he fabricated the signature of Dr Ali Al Marri, the chairman of the board of directors of the Bank, on what purported to be a copy of the Omara Contract. On the last day of the ten day hearing, during which Mr Omara was extensively cross-examined and a good deal of lay and expert evidence was tendered on the issue of the genuineness of the Omara Contract, Mr Omara withdrew his claim and consented to orders dismissing his claims against the Bank. Accordingly, this judgment deals only with the questions relating to Mr

Babiker's claim. Nonetheless, as both claims were heard together, it will be necessary to say something about Mr Omara's claim and the evidence given by Mr Omara and Mr Babiker in support of that claim.

- 4 Mr Babiker's wrongful dismissal claim is founded upon an undated Employment Contract Agreement ("*Babiker Contract*"), which was expressed to be "*made and entered on 1st January 2009*". The Babiker Contract, which was signed by Mr Omara on behalf of the Bank, was to remain in effect for a minimum term of three years and was renewable. Mr Babiker claims compensation for the benefits to which he would have been entitled had the Contract run its course.

- 5 In summary, the issues which arise on Mr Babiker's claim are the following:
 1. Whether the Babiker Contract was executed before his employment was terminated on 17 November 2009 (as Mr Babiker contends) or after that date (as the Liquidators contend). If the Babiker Contract was executed after 17 November 2009, there is no dispute that Mr Omara, who purported to sign the Contract on behalf of the Bank, lacked authority to do so.

 2. If the Babiker Contract was executed before 17 November 2009, whether it was nonetheless invalid because (as the Liquidators allege) Mr Omara had, to Mr Babiker's knowledge, acted grossly improperly as the Bank's CEO, in particular by operating undisclosed accounts from which he authorised payment of moneys belonging to the Bank to persons not authorised to receive them. The Liquidators claim that because of Mr Babiker's knowledge of and participation in Mr Omara's misconduct, Mr Babiker must have known that the execution of the Babiker Contract was not in the interests of the Bank. Accordingly, so the Liquidators argue, Mr Omara lacked actual authority to execute the Babiker Contract on behalf of the Bank and Mr Babiker was not entitled to rely on Mr

Omara's ostensible authority as the CEO of the Bank to enter into contracts of employment on behalf of the Bank.

- 6 A further issue that potentially arises on Mr Babiker's wrongful dismissal claim is whether, assuming the Babiker Contract is valid and enforceable, the Bank was entitled to dismiss him for gross misconduct. This issue was not included in the matters to be resolved during the hearing, but was to be addressed later, in the light of the Court's findings as to the validity of the Babiker Contract. While we are conscious of the limited issues to be determined at this stage of the litigation, as the case has developed it is inevitable that our findings of fact bear directly on the Liquidators' contention that, by reasons of Mr Babiker's misconduct, the Bank was entitled to dismiss him summarily. However, the conclusions we have reached make it unnecessary to address that contention.

BACKGROUND

- 7 It is convenient to set out here some background to the present proceedings. We shall refer in more detail to the evidence later in this judgment.
- 8 On 3 December 2008, the Bank was authorised by the Qatar Financial Centre Regulatory Authority ("QFCRA") as an Islamic Financial Institution to conduct Islamic Financial Business.
- 9 In November 2009, the QFCRA commenced an investigation into the affairs of the Bank. On 17 November 2009, as we have noted, the Bank summarily terminated the employment of Mr Babiker and of Mr Omara.
- 10 On 13 December 2009, KPMG submitted to the QFCRA a report of their investigation into the affairs of the Bank. The report set out a number of serious irregularities in those affairs, including the opening of accounts for the Bank at a branch of the Doha Islamic Bank ("*DIB*") which were not included in the Bank's records ("*the Undisclosed Accounts*"), and from

which payments had been made, among others, to Mr Babiker and to an entity associated with Mr Omara. On the same day, 13 December 2009, the QFCRA submitted a number of findings to the Bank and asked for its response.

- 11 On 10 January 2010, the QFCRA wrote to the Bank stating that it had concluded that the Bank had contravened a number of “*Relevant Requirements*” under the *QFC Financial Services Regulations* (Regulation No 1 of 2005) (“*Financial Services Regulations*”). It also concluded that the Bank was failing to satisfy the criteria for authorisation under the *Financial Services Regulations*. The QFCRA gave notice that it proposed to withdraw the Bank’s authorisation, impose a financial penalty on the Bank and order it to pay the costs of the investigation. However, the QFCRA gave the Bank the opportunity to make representations before it made its final determination.
- 12 On 3 March 2010, the Bank’s authorisation was withdrawn and a large fine was imposed on it by the QFCRA. The Bank did not appeal from the QFCRA’s decision. The winding up order was made on the petition of a creditor of the Bank some three months later.
- 13 In the meantime, on 11 May 2010, Mr Babiker filed Particulars of Claim against the Bank seeking, among other relief, damages for wrongful dismissal. On 17 May 2010, Mr Omara filed his Particulars of Claim on which he also sought damages against the Bank for wrongful dismissal.
- 14 Under art 82(1) of the *Insolvency Regulations*, the effect of the winding up order was that the claims filed by Mr Babiker and Mr Omara could proceed no further, except with the leave of the Court. No leave has ever been granted, but the issues that arise on those claims have come before the Court by way of the questions referred by the Liquidators pursuant to art 95(1) of the *Insolvency Regulations*.

PROCEDURAL HISTORY

15 The hearing of the questions referred to the Court took place over ten hearing days. The first stage of the hearing lasting five days took place from 8-12 August 2010 and the second from 10-14 October 2010. In order to understand the issues now requiring resolution, and the course the hearing took, it is necessary to trace the procedural history in some detail.

Particulars of Claim

16 In his Particulars of Claim, Mr Babiker, who is an American citizen of Sudanese origin, alleged that he had been employed by the Bank pursuant to the Babiker Contract. The Babiker Contract provided that, if Mr Babiker's employment was terminated after the "*Probationary Period*" (which expired on 1 July 2009), he was to be paid all "*Remuneration*" for the remainder of the term of the Contract. The only exceptions to this entitlement were if Mr Babiker's employment was "*terminated for gross misconduct*", or if he ceased to be entitled to work in the State of Qatar.

17 The Particulars of Claim further alleged that on 17 November 2009, Dr Ali Al Marri entered the Bank's premises with a number of other people and handed Mr Babiker a letter dated 16 November 2009, terminating his employment with immediate effect. The letter, which was in Arabic, stated that the reason for Mr Babiker's termination was "*absenteeism*" and "*administrative misconduct*".

18 The relief claimed by Mr Babiker included:

- a declaration that his dismissal was unlawful;
- damages based on his entitlements under the Babiker Contract, amounting to QR 2,815,975; and

- compensation for “*injury to feelings*” attributable to the Bank’s malicious, vindictive and unlawful acts.

19 Mr Omara alleged in his Particulars of Claim that he had accepted a “*Preliminary Offer of Employment*” as CEO, signed on 25 May 2008 on behalf of the Bank by Dr Al Marri (“*Omara Short Form Contract*”), but that this offer had been overtaken by the Omara Contract, which took effect from 1 June 2008. Mr Omara’s Particulars of Claim did not identify the date of execution of the Omara Contract. A copy of the Contract relied on by Mr Omara was appended to his Particulars of Claim and bore what purported to be the signatures of Mr Omara and Dr Al Marri, but was undated. No signed original or counterpart of the Omara Contract was ever tendered or produced to the Court.

20 It is not necessary to refer in any detail to the terms of the Omara Contract. It is enough for present purposes to note that it was for a term of four years from 1 June 2008 and entitled Mr Omara to benefits on termination of his employment as CEO that are best characterised as remarkable. In particular, the effect of the Omara Contract was that if Mr Omara was dismissed without notice, he became entitled to a payment equivalent to all his entitlements, including bonuses, for the balance of the term of his employment. This would be so even if he had been guilty of gross misconduct. Mr Omara’s claim against the Bank, based on the terms of the Omara Contract, included an “*agreed severance salary payment*” of QR 7,200,000 and a “*severance bonus payment*” of QR 6,120,000.

Pre Trial Directions

21 On 23 June 2010, Mr Babiker applied to the Court to lift the automatic stay of his case and for leave to proceed with his claim against the Bank. In a written response dated 1 July 2010, the Liquidators suggested that the Court should determine whether Mr Babiker had been unlawfully dismissed and proposed that the hearing should proceed as a reference of

questions to the Court for its determination pursuant to art 95(1) of the *Insolvency Regulations*. The Liquidators further proposed that the result, so far as necessary, should be binding on the parties for the purposes of Mr Babiker's action against the Bank.

- 22 On 6 June 2010, Mr Omara applied to the Court to lift the automatic stay of his proceedings. In written submissions dated 4 July 2010, the Liquidators formally applied to this Court for a determination under art 95(1) of the *Insolvency Regulations* as to whether Mr Omara had been unlawfully dismissed, under what contract of employment he had been employed, and, if he had been unlawfully dismissed, to what damages he was entitled.
- 23 The Court declined to lift the stay in whole or in part in either case. However, following a directions hearing by telephone on 14 July 2010, in which Mr Omara, Mr Babiker and the Liquidators were represented, the Court gave directions for the conduct of the proceedings. The Court directed that it would determine under art 95(1) what was in each case the applicable contract; whether in each case the termination of employment was lawful; and whether, in the case of Mr Babiker, there was dismissal for gross misconduct. The Court also stated that, if it decided that the dismissals were unlawful, it would determine, so far as practicable, the heads of damages recoverable by each claimant. In view of the overlap of issues between the two cases, the Court directed that the evidence in one should be evidence in the other.
- 24 In written submissions of 14 July 2010, the Liquidators indicated that they were not in a position to provide any further evidence or information as to whether Mr Omara or Mr Babiker had been unlawfully dismissed. Despite this indication, the Liquidators filed witness statements on 28 July 2010 which referred to pending criminal charges against Mr Omara and Mr Babiker. The charges were said to be relevant to their claims and to their credibility. The Liquidators also foreshadowed that they were likely to institute proceedings against Mr Omara to claim compensation on behalf

of the Bank for losses caused by Mr Omara's alleged improper conduct. In these circumstances, the Court directed the Liquidators on 30 July 2010 to clarify their position by filing particulars of their case.

- 25 In response, the Liquidators filed "*Draft Particulars*" on 4 August 2010. These set out, in general terms, a large number of alleged irregularities in the conduct of the Bank's affairs, including forgery of Board minutes; a failure to keep proper accounting records; the creation and operation of undisclosed accounts; and irregular transactions in favour of Mr Omara and Mr Babiker. The Draft Particulars alleged, again in general terms, that both had been:

"involved in irregular activity amounting to gross misconduct or material breach of any employment contract they have...".

- 26 Paragraph 4(2) of the Draft Particulars read as follows:

"In light of the matters developed below, the Liquidators are also concerned that there does not appear to be cogent evidence to support actual or ostensible authority of Mr Nazim Omara to conclude a contract with Mr Taha Babiker in the terms alleged by Mr Babiker if Mr Nazim Omara purported to do so in September or October 2009. The reason is that by then both Mr Nazim Omara and Mr Taha Babiker were apparently involved in misconduct such that Mr Taha Babiker must have known that he could not rely on any actual or ostensible authority of Mr Nazim Omara to sustain such a contract. Such a contract was not in the Bank's interest. The Liquidators note that the Undisclosed Accounts referred to below included an account set up on 16 September 2009 and that payments to Mr Babiker from an Undisclosed Account were made from 30 September 2009."

Representation of the Parties at the Hearing

- 27 The hearing commenced on 8 August 2010. Mr Michael Swainston QC and Mr Harrison announced their appearance for the Liquidators. Mr Omara was represented by Mr Richard de Lacy QC and Ms Prudence van der Craats. All four counsel were from the English Bar.

- 28 Mr Jeffrey Wofford sought leave to represent Mr Babiker, in place of Mr Sultan Al-Abdulla, who had previously represented him. Mr Wofford is a lawyer qualified to practise in New York and had been the head of the Bank's Legal Department until 10 January 2010. Mr Wofford was a witness in the proceedings and was an interested party in the liquidation as a creditor of the Bank. In these circumstances, the Court did not consider it appropriate to accord Mr Wofford the general right to act as Mr Babiker's advocate. However, we gave him leave to assist Mr Babiker and, where appropriate, the opportunity to make submissions and to cross-examine on Mr Babiker's behalf.
- 29 At the outset of the hearing, Clyde & Co, the solicitors on the record for the Liquidators, addressed the Court in a written application they had made on 6 August 2010. In that application, Clyde & Co requested permission to come off the record as the solicitors for the Liquidators in relation to the claims of Mr Omara. For this purpose they sought an order, by analogy with Rule 42.3 of the *Civil Procedure Rules* for England and Wales, declaring them to have ceased to be such solicitors. Mr Alec Emmerson appeared on their behalf.
- 30 Clyde & Co informed the Court that in December 2009, Mr Omara had engaged them to advise him in regard to issues arising from the terms of his employment with the Bank. On 19 May 2010 (two days after Mr Omara filed his Particulars of Claim), Clyde & Co had terminated his retainer and accepted instructions from the Bank. Initially, Mr Omara had taken no objection to the firm acting for the Liquidators, while expressly reserving his rights against the firm in the event that it appeared that there was a risk in the litigation that privileged information would be disclosed without his consent. However, in view of witness statements prepared on behalf of Mr Omara, which referred to the firm having advised him on employment matters, on 30 July 2010 Clyde & Co sought his consent for the firm to continue to act for the Liquidators. On 1 August 2010, Mr Omara's representatives refused consent on his behalf.

- 31 Having considered written and oral submissions made on behalf of Clyde & Co and Mr Omara, the Court granted permission for the firm to come off the record and made the order sought.
- 32 On the fifth day of the hearing (12 August 2010), after much evidence had been taken and Mr Omara had been cross-examined, Mr de Lacy and Ms van der Craats informed the Court that they could no longer represent Mr Omara. This announcement came shortly after the Court ruled that Mr Omara had waived legal professional privilege in documents contained in Clyde & Co's file, created at a time when the firm acted for him. Mr de Lacy, very properly, gave no indication as to why he and Ms van der Craats considered it necessary to withdraw from the proceedings.
- 33 The Court accepted that it was a matter for counsel as to whether or not they could continue to represent Mr Omara. The Court was, however, concerned to ascertain whether Mr Omara, who was not in court, wished to pursue his claim. Mr de Lacy assured the Court that this was the case and Mr Wofford later confirmed that Mr Omara did indeed wish to proceed.

Adjournment and Other Applications

- 34 On the first day of the hearing, Mr Swainston QC applied on behalf of the Liquidators for the proceedings to be adjourned. An adjournment application had been foreshadowed in written submissions filed on the Liquidators' behalf on 2 and 7 August 2010. The application was opposed by Mr de Lacy on behalf of Mr Omara.
- 35 At the conclusion of argument, the presiding Judge, Justice Dohmann, made the following statement:

"Now, the Court has before it an application by the Liquidators to adjourn the hearing of both questions referred by them for the Court's determination: namely, one, the question which is the valid contract of employment of (a) Nazim Omara and (b) Taha Babiker. Two, the question whether (a) Nazim Omara and (b) Taha Babiker were unlawfully dismissed. The Court has assessed all written

and oral submissions addressed to it on behalf of those three parties and the Court rules as follows: The Court will not adjourn question 1 set out above.

The Court will adjourn question 2. With regard to the latter, directions will be dealt with in due course. With regard to 1 above, in relation to Mr Taha Babiker, the Court will deal with the date of execution of the long form contract upon which he relies and with the issue of Nazim Omara's authority to sign Mr Taha Babiker's contract by reference to the Liquidators' pleading set out in paragraph 4(2) of the particulars filed on 4th August 2010: namely, that Taha Babiker must have known that such contract was not in the interest of the bank and that Taha Babiker participated in Nazim Omara's misconduct by receiving payments from an undisclosed account from 30th September 2009 onwards."

- 36 On 12 August 2010, the Court delivered a judgment giving reasons for its decision on the adjournment application: *In the Matter of Al Mal Bank LLC: Babiker v Al Mal Bank LLC* (Case No 06/2010, Judgment No 1).
- 37 On the second day of the hearing, 9 August 2010, Mr Wofford applied in writing for the lifting of the stay on Mr Babiker's case for the purpose of enabling the Court to hear a motion by Mr Babiker seeking summary judgment. On 11 August 2010, the Court refused the application. In giving reasons, the Court observed that it was evident that the critical factual questions, having regard to the Liquidators' contentions, were likely to be Mr Babiker's knowledge and intent at the time the Babiker Contract was executed (a matter on which no findings had as yet been made). Without in any way pre-judging the factual issues or the legal issues that would then arise, the Court noted that evidence had been adduced or foreshadowed on these questions. Since the Court would have to resolve the factual questions by making findings, it was inappropriate to entertain a motion for summary judgment.
- 38 On the same day, 11 August 2010, Mr Wofford made an oral application for the hearing to be adjourned insofar as it related to Mr Babiker, on the ground that legal representation for him was desirable, but was not then available. The Court indicated that, on the material relied on by Mr Wofford, it was not satisfied that an adjournment was justified. However,

the application was itself adjourned to the following day in order to give Mr Babiker an opportunity to provide evidence that he would be able to secure legal representation if an adjournment were granted. The Court also indicated that Mr Babiker's evidence relating to Mr Omara's case should in any event be stood over until the second stage of the hearing. On 12 August 2010, Mr Wofford informed the Court that Mr Babiker no longer sought an adjournment.

Evidence in the First Part of Hearing

- 39 After dealing with various interlocutory applications, the Court proceeded to hear evidence from a number of witnesses. Much of the evidence, in particular the cross-examination of Mr Omara, related specifically to his claim for wrongful dismissal. Nonetheless, some of the evidence was relevant to Mr Babiker's claim.
- 40 The procedure adopted by the Court was to admit into evidence, subject to any proper objections, the written statement or statements of each witness and then to allow cross-examination by counsel for the party with an interest in testing the evidence. As has been noted, Mr Wofford was also permitted to ask questions on behalf of Mr Babiker.
- 41 The following witnesses gave evidence during the first five hearing days on behalf of Mr Omara:
- Mr Omara himself. Mr Omara gave evidence over two hearing days and was extensively cross-examined by Mr Swainston on behalf of the Liquidators.
 - Mr Avish Sharma, who described himself as a partner in a firm known as Prodigy Legal, with offices in New York and Puna, India. Mr Sharma gave evidence by video link from Puna, India about drafting or compiling Mr Omara's Long Form Contract.

Unfortunately, the video link was terminated before Mr Sharma's cross-examination could be completed, but Mr Swainston had the opportunity to put important matters to Mr Sharma.

- Dr Alzain Abbas Omara, Mr Omara's father. Dr Omara gave evidence by video link from Dubai. Among other things, Dr Omara gave evidence that he had invested funds with the Bank.

42 The following witnesses were called on behalf of the Liquidators during the first stage of the hearing:

- Dr Ali Marri, the chairman of the Bank's board of directors. Dr Al Marri gave evidence in Arabic and his evidence was translated into English. Dr Al Marri disputed Mr Omara's claim that he (Dr Al Marri) had signed the Omara Contract prior to Mr Omara's dismissal or indeed at any time.
- Mr Roberto Diniz, the Senior Manager of IT Security at the Bank from 1 October 2008 until 31 July 2010. Mr Diniz gave evidence as to the removal of certain material from the laptop computer provided to Mr Babiker by the Bank, following Mr Babiker's dismissal.
- Miss Mary Claire Bulus, the Human Resources Associate Manager at the Bank. Ms Bulus gave evidence as to the Bank's practices in keeping counterparts of contracts of employment. She also gave evidence of instructions given to her by Mr Babiker, shortly before his dismissal, requesting her to prepare a new draft contract for him and to keep his instructions confidential.
- Mrs Farihn Hussein, the Finance Manager of the Bank. Mrs Hussein gave evidence similar to that given by Miss Bulus and supported her account.

All four of the Liquidators' witnesses were cross-examined by Mr de Lacy. Mr Wofford also asked questions of some witnesses on behalf of Mr Babiker.

Further Applications and Directions

- 43 Following adjournment of the matter part-heard on 12 August 2010, Clyde & Co applied on 16 September 2010 to the Court for permission to be restored to the record as solicitors for the Liquidators in the matter involving Mr Omara. According to Clyde & Co, it was apparent from the disclosure of the firm's file, following the Court's ruling that Mr Omara had waived legal professional privilege over its contents, that the firm had never been in possession of confidential information relating to the issues in Mr Omara's case. Pending determination of the application, the Court permitted personnel of Clyde & Co who had not previously acted for Mr Omara, to provide administrative support and instructions to counsel.
- 44 On 27 September 2010, having considered objections by Mishcon de Reya, the solicitors now representing Mr Omara, the Court refused Clyde & Co's application. However, we continued the permission granted on an interim basis on 16 September 2010, for the purposes of allowing the Liquidators to prepare for and participate in the adjourned hearing which was to resume on 10 October 2010.
- 45 In anticipation of the resumption of the hearing, the Court held a telephone directions hearing on 4 October 2010. The Court directed that it would continue to hear the issue of the applicable contract in each of the cases and would also deal with any directly related issues. The Court also directed the Liquidators to provide to Mr Babiker a concise pleading providing more detailed particulars of the defence to his claim. The pleading was to specify the matters said to be known to Mr Babiker upon which the Liquidators relied to affect Mr Omara's authority to sign the Babiker Contract.

46 In compliance with the Court's directions, the Liquidators filed a document entitled "*Particulars of the Liquidators' Case Against Mr Babiker*". This document set out the particulars under various headings and included the following under the heading "*No Ostensible Authority of Mr N Omara*":

"1. Mr Babiker had no basis for relying on ostensible authority of Mr N Omara for the following reasons.

(1) He had no basis for believing that it was in the Bank's interest to give him a fixed term contract.

...

8. Mr Babiker was also a direct beneficiary of irregular dealings which he knew to be irregular or as to which he was reckless whether they were irregular. In particular:

(1) He was paid QAR 350,000 on or about 14 October 2009 without any papers or supporting documents. He had no basis for supposing that he could be entitled, legitimately, to a loan of that size. The money was paid without any supporting documents. It was only processed as a loan subsequently and supporting documents were put in place after the event.

(2) He was paid QAR 300,000 (QAR 250,000 on 30 September 2009, and QAR 50,000 on 4 October 2009) out of monies of the Bank unlawfully deposited with Doha Islamic Bank.

(3) It is to be inferred that Mr Babiker was aware of the unlawful nature of the account set up at Doha Islamic Bank and of the payments out of it. Without limitation:

(a) Mr Babiker knew that the payments of QAR 250,000 and QAR 50,000 were unlawful because:

1) They came from DIB and not the Bank;

2) They were not supported by even the pretence of supporting loan documentation, because Mr N

Omara and Mr Babiker knew that the Undisclosed Accounts did not feature in the books and records of the Bank.

- (b) Mr Babiker was a ready assistant and confidante of Mr N Omara in the irregular dealings referred to above.

- 9. Mr Babiker's knowledge of irregular activity by Mr N Omara and his involvement in irregular activity with Mr N Omara is also to be inferred from the determined efforts made by both of them to eliminate any electronic documentary record of their dealings in respect of the Bank. Without limitation:

...

- (2) Mr Babiker returned his laptop to the Bank with a different hard disk from its original disk, obviously to conceal material which had been on the original hard disk. The substituted hard disk would not function because it did not even contain a software operating system compatible with the computer and/or the Bank's systems."

The Resumed Hearing

47 On the resumption of the hearing on 10 October 2010, Mr Paul Epstein QC of the English Bar and Mr David Cole of Mishcon de Reya appeared for Mr Omara. Mr Babiker was represented by Mr Feisal Naqvi of Bhandari, Naqvi & Riaz of Lahore, Pakistan. The Liquidators continued to be represented by Mr Swainston QC and Mr Harrison.

48 On the morning of 10 October 2010, Mr Omara became ill and was admitted to hospital. He did not appear in court for the remainder of the hearing. However, Mr Epstein and Mr Cole continued to represent him. Mr Epstein cross-examined some of the witnesses who were called to give evidence on behalf of the Liquidators during this stage of the hearing.

- 49 On 10 October 2010, the Court ruled that only paras 4(1), 8 and 9(2) of the Particulars filed by the Liquidators (set out at [46] above) could be relied on by them to support their contention that Mr Babiker could not claim that Mr Omara had ostensible authority to execute the Babiker Long Form Contract. This ruling was based on the matters that had already been put to Mr Omara in his cross-examination.
- 50 The Court also ruled that Mr Babiker's cross-examination could extend to the witness statements he had provided in his own case and in support of Mr Omara's case.

Evidence in the Resumed Hearing

- 51 The only lay witness to give evidence during the second part of the hearing was Mr Babiker. His oral evidence occupied approximately a day and a half of hearing time. He was cross-examined at some length (but not excessively so) by Mr Swainston.
- 52 The Liquidators called Mr Geoffrey Fanshawe, the Manager of the Forensic Technology function at RMS Tenon (the firm to which the Liquidators belong) and Mr Alan Irving, an investigator also employed by RMS Tenon. Mr Fanshawe gave evidence by video link from Manchester, while Mr Irving gave evidence in person. Mr Irving's evidence dealt, among other things, with the undisclosed accounts operated by Mr Omara in the name of the Bank.
- 53 Oral evidence was also given by two handwriting experts who had provided reports on whether it was possible to assess the authenticity of what purported to be Dr Al Marri's signature on a copy (not a counterpart) of the Omara Contract. Mr Marcel Matley, who was called on behalf of Mr Omara, gave evidence by video link from San Francisco. Dr Audrey Giles, whose reports were prepared for the Liquidators, gave her evidence by video link from London.

54 In addition, statements and affidavits were admitted into evidence from witnesses who were not required for cross-examination. They included two affidavits of Mr Roger Phillips, Acting Chief Legal Officer of the QFCA. Mr Phillips' evidence is of importance to Mr Babiker's case that the Babiker Contract was executed before he was dismissed.

Dismissal of Mr Omara's Case

55 On 14 October 2010, immediately before the Court was due to hear closing submissions, Mr Epstein informed us that, on instructions, he was withdrawing Mr Omara's claims arising out of the Omara Contract. Following submissions by Mr Epstein and Mr Swainston, the Court ordered that:

- (1) Mr Omara's Particulars of Claim of 17 May 2010 be dismissed, without prejudice to any counterclaim by the Liquidators in the same proceedings;
- (2) the evidence adduced by the parties on the Liquidators' application under art 95 of the *Insolvency Regulations* stand as evidence in any such counterclaim proceedings and in any related application by the Liquidators in the insolvency;
- (3) any such counterclaim or application be conducted on the basis that the only contract of employment in force between Mr Omara and the Bank was the Omara Short Form Contract dated 25 May 2008, commencing 1 June 2008;
- (4) in any such counterclaim or application, the Liquidators should proceed on the basis that
 - (a) the only contract of employment in force between Mr Omara and the Bank was the Omara Short Form Contract, and

- (b) Mr Omara had no basis for a claim against the Bank arising out of his employment with the Bank under the Omara Short Form Contract, the Omara Contract, the *Employment Regulations 2006*, or otherwise.

56 On 10 October 2010, the Court had indicated that it was prepared to grant an application that had been made by the Liquidators for a freezing order in regard to the assets of Mr Omara. This step was taken in anticipation of the Liquidators instituting proceedings against Mr Omara for losses caused to the Bank by reason of his alleged misconduct. The freezing order was subsequently made.

FACTS NOT IN DISPUTE OR INDISPUTABLE

57 This is a case in which the credibility of both claimants, Mr Omara and Mr Babiker, was vigorously challenged. The answers to the questions posed presently before the Court in relation to Mr Babiker's claim depend heavily on the extent to which the challenges to Mr Babiker's credibility were successful. Nonetheless it is convenient to record some facts which were not in dispute, in addition to those matters that have already been provided by way of background (see above [7]-[14]).

58 On 22 May 2008, Mr Omara, through his company Axis Partners Consultants SPC, entered into a Memorandum of Understanding ("MOU") with interests associated with Dr Al Marri and his brother, Dr Braike Al Marri. The MOU provided that authorisation would be sought from the QFCRA for what was described as a Category 5 Islamic Financial Institution. The MOU also contemplated that Mr Omara would be appointed as CEO of the Bank for a term of not less than three years. At the time the MOU was signed, Mr Omara was the CEO of Al Sadd Holdings BSC, a company incorporated in Bahrain, that was intended to be the parent company of the Bank.

- 59 On 25 May 2008, Mr Omara accepted a "*Preliminary Offer of Employment*" as CEO of the Bank. The offer was said to be made on behalf of the Bank and was subject to approval of his appointment by the "*Qatar Financial Centre*". There is no dispute that Dr Al Marri signed this document on behalf of the Bank. The offer was for a term of "*four years renewable*". Mr Omara's acceptance of the offer created what we have described as the "*Omara Short Form Contract*".
- 60 On the same day, 25 May 2008, an offer of employment was made to and accepted by Mr Babiker. The letter of offer was for a position as Senior Vice President of the Human Resources Department, reporting to the Chief Operations Officer. The offer was signed by Mr Omara on behalf of the Bank and by Mr Babiker. Upon acceptance, this offer became what we describe as the "*Babiker Short Form Contract*". Later, Mr Babiker was also appointed Head of Administration.
- 61 The Babiker Short Form Contract provided for Mr Babiker to receive a salary of QR 65,000 per month, divided into a "*Basic Salary*" of QR 42,250 per month and a "*Housing & General allowance*" of QR 22,750 per month. The Babiker Short Form Contract also set out his leave entitlements, "*air passage entitlement*" and education and furniture allowances. There was no minimum term of employment specified and the Babiker Short Form Contract made no express provision for termination of Mr Babiker's employment. It was not in dispute that Mr Babiker's monthly salary was increased to QR 68,000 as a result of an oral agreement between him and Mr Omara.
- 62 On 16 September 2009, an account (No 0147807-001-0017-000) was opened in the name of the Bank with the DIB. This account was denominated in Qatari Riyals ("*QR Undisclosed Account*"). At about the same time, a second account, denominated in UAE Dirhams, was opened in the name of the Bank with the DIB (No 0417807-023-0017-000). We describe these two accounts as the "*Undisclosed Accounts*". They did not appear in the accounting books and records prepared for the Bank.

- 63 The account opening form for the QR Undisclosed Account bears what appears to be Mr Omara's signature, although he maintained in his evidence, somewhat implausibly, that his signature must have been forged. Mr Omara admitted, however, that he operated the account and had drawn cheques on it in favour of Mr Babiker and others.
- 64 The account opening form records Mr Babiker's mobile telephone number, presumably to identify the DIB's point of contact within the Bank. Mr Babiker in his evidence said that he did not know that his mobile telephone number had been recorded in that way. He also said he could give no explanation as to why his telephone number should have been given to the DIB and suggested that the question be put to the person who filled out the form.
- 65 There is no dispute that the Undisclosed Accounts were opened without the authority of the Bank's board of directors. While Mr Omara at various times in his evidence suggested that the QFCRA must have known of the Undisclosed Accounts, it is also clear that the QFCRA had no such knowledge. By a letter to the Bank dated 18 October 2009, the QFCRA had merely indicated that it had no objection to the Bank "*having exposures*" to DIB and to another bank.

66 The payments into the Undisclosed Accounts included the following:

27 September 2009	"Wakala Investment" deposit from Mr Willi Diener (on whose petition the winding up order was made)	AED 3,000,000
6 October 2009	Payment by Dr Omara (Mr Omara's father)	QR 390,725.73
15 November 2009	Deposit by "Alsyru for Trading & Services"	QR 7,300,000

67 Payments out of the Undisclosed Accounts included the following:

30 September 2009	Mr Babiker	QR 250,000
1 October 2009	London Islamic Investment Bank (in which Mr Omara and others had an interest)	£450,000
4 October 2009	Mr Babiker	QR 50,000
14 October 2009	Withdrawal by Mr Omara	QR 45,000
18 October 2009	Transfer to Mr Omara	QR 20,000
21 October 2009	Payment to Mr Omara	QR 10,000
22 October 2009	Payment to Mr Omara	QR 10,000
11 November 2009	Payment to Mr Omara	QR 301,000
15 November 2009	Buzwair Real Estate	QR 7,300,000

68 The transfers on 30 September 2009 and 4 October 2009 of QR 250,000 and QR 50,000 from the Undisclosed Accounts to Mr Babiker's personal account were shown in his bank statement, with an "Explanation Text" reading as follows:

"TRANSFERRED FROM AN ACCOUNT TO AN ACCOUNT TRF
FROM 403-147807-1-17-0 FROM DOHA ISLAMIC SALWA ROAD
BRANCH".

Mr Babiker therefore clearly had the means of determining the source of the funds transferred to him, although in his evidence he denied knowing of the Undisclosed Accounts.

69 On 18 September 2009, Mr Babiker left Qatar and travelled to the United States, the United Kingdom and Sudan. He did not return to Qatar until 10 October 2009.

70 On 4 October 2009, Mr Omara sent an email to Mr Ali Harun, the Chief Operating Officer of the Bank, as follows:

“pl[ea]se process two cheque payments of QR 350k each as personal loans to Taha and Majid Al Quradaghi. Pl[ea]se prepare the cheques today and Majid will come to sign them around 1 pm today.”.

Mr Quradaghi was Vice Chairman of the Bank.

71 On that day, two cheques were processed in favour of Mr Babiker, one for QR 300,000 and the other for QR 50,000. These cheques were drawn on known accounts held in the name of the Bank and paid to Mr Babiker.

72 On 14 October 2009, Mr Harun sent an email to Mr Omara requesting instructions:

“... We have paid these two personal loans without documentation or any details of repayment. Can we please have instructions as to how the repayment will be carried out”.

Mr Omara responded that Mr Harun should “*process as loans*”.

73 The records of the Bank include a “*Murabaha Agreement*” bearing a date of 25 September 2009. The schedule to the Murabaha Agreement identified Mr Babiker as the “*Purchaser*” of assorted items of paint and the like, the “*cost price*” of which was said to be QR 350,000. The Murabaha Agreement provided for a “*Deferred Payment Price*” of QR 410,137.96, comprising 48 monthly instalments, each of QR 8,544.52, and incorporating a “*Murabaha Profit*” of “*8% Per Annum as Reducing Balance*”. It was common ground that the Murabaha Agreement was created after Mr Harun sent his email of 14 October 2009.

74 The records of the Bank also include four undated cheques signed by Mr Babiker and drawn on his own account with the DIB. Each was for QR 102,524.57 and was made payable to the Bank. Mr Babiker in his

evidence said that he signed the cheques in blank and gave them to someone at the Bank, but that the amounts were not filled in when he signed the cheques. The cheques are for amounts totalling QR 410,137.08, almost precisely the “*Deferred Payment Price*” under the Murabaha Agreement. The cheques were presented for payment after Mr Babiker’s dismissal, but were dishonoured.

- 75 During the hearing, the Liquidators had access to only a small number of Mr Babiker’s own bank statements, largely because they had not taken steps to ask the banks concerned for production of the relevant records. Additional bank records were produced, with Mr Babiker’s co-operation, after the close of the hearing. As had been foreshadowed prior to the hearing concluding, these records were admitted into evidence.
- 76 The records show cash deposits to Mr Babiker’s account between 22 March 2009 and 8 June 2009, totalling QR 126,000. The records also show two deposits into Mr Babiker’s account, in March 2009 and July 2009 respectively, from Mr Omara’s personal account, in amounts totalling QR 95,000. In addition, a payment was made from Mr Babiker’s account to Mr Omara’s account in August 2009 of QR 68,000. This amount corresponds to the amount paid at the time as Mr Babiker’s monthly salary (even though, as we have noted, the Babiker Short Form Contract provided for a salary of QR 65,000 per month). The curious feature, however, is that in August 2009, Mr Babiker received three payments from the Bank, each of QR 68,000. Two of these seem to be referable to his salary (the July 2009 payment apparently being made late), but the third was explained by Mr Babiker as representing a loan against his salary which, in some way that remained unclear, Mr Omara covered.
- 77 Two large cash withdrawals were made from Mr Babiker’s account on 1 October 2009 (QR 251,850) and on 11 October 2009 (QR 365,000). Each of these was made shortly after Mr Babiker had received payments from the Undisclosed Accounts. The second withdrawal was transacted at the “*Doha Islamic Salwa Road Branch*”, as were a number of other smaller

cash withdrawals from the account. The two large cash withdrawals were made while Mr Babiker was overseas.

- 78 Mr Omara was arrested on the day he was dismissed (17 November 2008) and was kept in solitary confinement until 21 November 2009. Thereafter he was kept in regular incarceration until about 17 December 2009. Mr Babiker was taken into custody on 21 November 2009 and was imprisoned until 28 November 2009. After a short period on bail, he was again taken into custody and was finally released on 17 December 2009.

THE EVIDENCE OF MR OMARA AND MR BABIKER

- 79 The defence mounted by the Liquidators to Mr Babiker's claim for wrongful dismissal requires the Court to assess whether his disclaimer of any knowledge of the Undisclosed Accounts or of Mr Omara's admitted operation of that account is to be accepted. Adverse findings against Mr Babiker on these matters will not necessarily lead to the conclusion that the Babiker Contract was executed after 17 November 2009, nor that Mr Babiker could not rely on Mr Omara's ostensible authority to execute the Babiker Contract on behalf of the Bank. These are separate issues that will have to be addressed after the findings of fact have been made.

Mr Omara's Credibility

- 80 The dismissal of Mr Omara's claim against the Bank relieves the Court of the need to make findings specifically relating to his case. However, Mr Omara gave evidence that supported Mr Babiker's case and Mr Babiker gave evidence supporting Mr Omara's claim that the Omara Contract was in existence and had been executed by Dr Al Marri prior to Mr Omara's dismissal. In these circumstances, it is necessary to make some observations about Mr Omara's evidence and his reliance on the Omara Contract. We emphasise that a finding that Mr Omara's evidence was unreliable does not of itself establish that Mr Babiker's evidence is also

unreliable, and that Mr Babiker's evidence has to be assessed independently.

- 81 The Court formed the very clear view that Mr Omara's evidence was unreliable and often deliberately untruthful. We would not be prepared to accept anything said by Mr Omara unless it was corroborated by reliable independent evidence or was against his own interests. There are many grounds for this conclusion and it is necessary to refer only to some of the major reasons.
- 82 First, on Mr Omara's own evidence, he operated the Undisclosed Accounts in clear breach of his obligation as CEO of the Bank. He also admitted to signing cheques in favour of Mr Babiker. Mr Omara's explanations in evidence for his conduct in operating the Undisclosed Accounts were implausible, often incoherent and sometimes demonstrably wrong. He asserted, for example, that the operation of the Undisclosed Accounts was of little consequence because, in the end, all moneys were "*pooled*". He could not explain how that proposition, wrong in itself, justified operating accounts that were not recorded in the Bank's own financial records.
- 83 Mr Omara's implausible claims included his contention that someone had forged his signature on the opening form for the Undisclosed Accounts. His evidence did not explain why anyone else would take such a step and, more particularly, why he had been content to operate accounts that had been fraudulently opened by an unidentified other person.
- 84 Secondly, Mr Omara reversed himself on evidence that he must have known was false when he first gave it. An example was his initial claim that the QFCRA knew of the Undisclosed Accounts, a claim from which he retreated when confronted with the documentary evidence relied on (the 18 October 2009 letter) showing, contrary to his evidence, that the QFCRA had not been so informed.

- 85 Thirdly, Mr Omara's explanation as to why he had requested professional advice over the internet in early 2010 for the drafting of a contract of employment verged on the bizarre. He claimed that, despite the circumstances of his dismissal from the Bank and his subsequent imprisonment, negotiations were held with representatives of the Bank for him to be re-employed to assist the Bank in reclaiming its licence from the QFCRA. In addition, a key element of his evidence was shown by the documentary evidence to be false. Mr Omara claimed that Clyde & Co was retained, in part, in order to assist him with his proposed re-engagement with the Bank. When the Court ruled that Mr Omara had waived legal professional privilege in communications contained within the Clyde & Co file, the file was tendered by the Liquidators and admitted into evidence. The file contained no mention of the instructions Mr Omara asserted that he had given to the firm.
- 86 Fourthly, email exchanges in 2010 between Mr Omara and his advisors strongly suggested, if not conclusively demonstrated, that the terms of the Omara Contract propounded by him came into existence, so far as he was concerned, in consequence of a drafting exercise that took place **after** he had been dismissed from the Bank. This material of itself, in the absence of a plausible explanation, was enough to undermine Mr Omara's principal claim that the Omara Contract had been signed on behalf of the Bank by Dr Al Marri and that this had occurred prior to 17 November 2009. No such plausible explanation was proffered.
- 87 Fifthly, Mr Omara's evidence was inconsistent with or directly contradicted by evidence that was either not challenged or was not successfully challenged. For example, Dr Al Marri was not seriously challenged on his evidence that he would never have signed a contract containing the terms of the Omara Contract, and that he had not done so. In any event, we accept Dr Al Marri's evidence on the point. Even a cursory study of the document shows those terms to be bizarre indeed, as well as incoherent. A further example is that Dr Omara, Mr Omara's father, gave evidence that moneys he had deposited with the Bank and that were credited to the

Undisclosed Accounts, represented funds that he had invested with the Bank. Mr Omara's evidence was that the moneys from his father were intended for his (Mr Omara's) personal benefit and that he was free to withdraw them from the Undisclosed Accounts.

88 Sixthly, none of the affirmative evidence adduced by Mr Omara leads to any different assessment of his evidence. In particular, the evidence from a handwriting analyst, Mr Matley, to the extent it supported Mr Omara's case, was effectively rebutted by the evidence of Dr Giles.

89 Since Mr Omara has withdrawn his wrongful dismissal claim, no formal finding need be made, for the purposes of his case, that the Omara Contract did not come into existence until after his dismissal and was never signed by Dr Al Marri. Nonetheless, the fact that there is overwhelming evidence to support such finding has a bearing on Mr Babiker's credit, having regard to the evidence he gave supporting Mr Omara's reliance on the Omara Contract.

Mr Babiker's Evidence

90 We have reached much the same conclusion concerning the reliability and credibility of Mr Babiker's evidence as we have in relation to Mr Omara's evidence. That is, we do not accept any of Mr Babiker's evidence on contested issues unless it is supported by reliable independent evidence or objective facts or is against Mr Babiker's own interests. We again stress that we have formed this view quite independently of our assessment of Mr Omara's evidence.

91 Mr Babiker proved to be a shrewd witness. He clearly had taken considerable trouble to familiarise himself with the documentary evidence in the case. The strong impression we formed was that Mr Babiker was attempting to tailor his evidence to the documentation (including computer records), as he understood its effect.

92 That impression was reinforced by Mr Babiker's propensity not to respond directly to questions inviting an explanation, but to explain that, if he had wanted to act dishonestly or improperly, he would have achieved his objectives differently. Mr Babiker also had the curious habit of responding to awkward questions by saying that he did not "*admit to*" the particular allegation. Both tendencies are evidenced in the following passage:

"Q I have to suggest to you that that [the payment of QR 300,000 from the Undisclosed Accounts] was a straightforward payment to you out of an account that you knew was illegitimate. It was Mr Omara doing you a favour?

A. Well, I appreciate that. The answer is no, I don't admit to this.

Q. I also suggest to you that the reason that we have no documentation created in relation to this 300,000 is because you knew that it wasn't needed, because the undisclosed account was undisclosed and it was off the bank's books?

A. Okay. The answer is no, and very obvious. Why would they take loan for 350 and give security cheques when I can get free money without interest, without nobody knowing about it from undisclosed account which has 12 million QR at that time?

Q. Mr Babiker, can I suggest to you that the reason that documentation is created in relation to the 350,000 is that that comes from an account of the bank which does not appear in its books and records, whereas the 300,000 comes from an undisclosed account, which does not?

A. And I suggest to you I could have taken the 650 from the undisclosed account. I didn't have to go through all hassle of repaying the amount back to the bank and giving them security cheques."

Neither of the tendencies we have identified engendered confidence in Mr Babiker's responses.

93 When Mr Babiker's account of events was contradicted by the evidence of other witnesses, he did not hesitate to make serious allegations against

them. These allegations, which included perjury and forgery, were not only unsubstantiated, but usually inherently implausible. Moreover, we have had the opportunity to assess the evidence given by witnesses against whom Mr Babiker made allegations. His claims of widespread misconduct by others lack credibility.

94 We have, in addition, a number of specific reasons for finding Mr Babiker to be an unreliable witness and for rejecting his evidence on critical issues.

95 First, Mr Babiker gave evidence that directly contradicted the evidence of witnesses who had no motivation to tell untruths and whose evidence we accept. An example is the evidence given by Miss Bulus and corroborated by Mrs Hussain that, shortly before the termination of his employment, Mr Babiker instructed her to prepare a form of contract incorporating an increase in his salary to QR 100,000 per month. According to Miss Bulus, Mr Babiker instructed her to save the draft contract on a memory stick and told her not to mention the draft to anyone else at the Bank. Both Miss Bulus and Mrs Hussain were patently honest witnesses whose evidence was unshaken by cross-examination.

96 Mr Babiker did not merely deny that he gave instructions of the kind recounted by Miss Bulus, but asserted, as he did on other occasions in relation to other evidence, that both Miss Bulus and Mrs Hussain were lying to this Court. Mr Babiker supported his assertion by stating that he was Miss Bulus' boss and that she would unhesitatingly do whatever she was instructed to do, without question. Moreover, Mr Babiker professed to see no reason why Miss Bulus might be concerned about being asked to prepare a draft contract providing for Mr Babiker to receive a 50% increase in his salary and being told to keep the instruction confidential.

97 Miss Bulus' evidence that she was indeed concerned about what she had been asked to do was entirely convincing. No reason was suggested as to why Miss Bulus or Mrs Hussain would lie about a matter in which they had no personal interest, but which they had good cause to remember. Both

Miss Bulus and Mrs Hussain impressed us as frank, careful and unassuming witnesses and we accept their evidence as credible and reliable. Mr Babiker's assertion that they were lying on this issue and that he was telling the truth cannot be accepted.

- 98 Secondly, Mr Babiker gave implausible explanations when challenged about matters that he perceived to be contrary to his interests. One example occurred when Mr Babiker was questioned about a draft contract of employment for him which had apparently been created on 9 November 2009, just before his dismissal, and stored on a computer. The draft contract, which Mr Babiker did not suggest had ever been executed, contained terms more favourable to him than the Babiker Short Form Contract, including provision for a fixed term of five years. Mr Babiker denied any knowledge of the draft. When asked who might have caused a draft contract to be created with terms more favourable to him, his reply was that Dr Al Marri may have given the necessary instructions "*to paint an ugly picture about me*". This answer made little sense.
- 99 Thirdly, Mr Babiker demonstrated a marked tendency to change his account of events as the cross-examination proceeded. This tendency became apparent when Mr Babiker was cross-examined as to why his permanent address on the Babiker Contract was recorded as an address in Greensboro, North Carolina, whereas earlier versions of his employment contract on Miss Bulus' computer recorded a Doha address. Mr Babiker said that he had sold the Greensboro house in 2007 to his brother, but that the address was still recorded on his driver's licence.
- 100 Mr Babiker at first suggested that recording the Greensboro address on the contract was Miss Bulus' idea, presumably in order to enable Mr Babiker to receive annual air tickets to Greensboro as his "*home town*". Mr Babiker soon withdrew the suggestion and acknowledged that it was he who had provided the Greensboro address to Miss Bulus as his permanent address. When pressed further as to his reasons, he said that

the Greensboro address was for “*communication purpose[s]*”). This answer also made little sense.

101 Fourthly, Mr Babiker’s evidence contained apparent contradictions which, when pointed out to him, produced unconvincing if not disingenuous explanations. For example, shortly after denying any knowledge of the Undisclosed Accounts or the recording of his mobile telephone number on the opening account form, the following exchanges took place:

“JUSTICE DOHMANN: ... If somebody has your phone number, Mr Babiker, there is a real chance they might use it and phone you?

A. Sorry?

JUSTICE DOHMANN: If somebody sets up something secret and hidden and when doing so gives your phone number.

A. Yes.

JUSTICE DOHMANN: Then there is a real chance you find out about something that’s secret and hidden?

A. That’s right.

JUSTICE DOHMANN: I think that is the question Mr Swainston asked?

A. I agree with you. The person who opened this account didn’t want to keep it secret otherwise they would not have made it known to the whole bank. As far as I know, this account wasn’t secret in the bank. It could have not been disclosed to QFC or I don’t know whether it had been disclosed or not, but was not secret to the bank. From here, from the court itself, communication that this account was known to several staff including the CFO, CEO and Head of Compliance. So I don’t think that account was kept secret.

...

JUSTICE SACKVILLE: Mr Babiker, I want to clear up something to make sure I have not misunderstood it. You said a moment ago I think you thought this account was not secret within the bank.

A. Yes, because here from the court I heard – when the testimony of Mr Omara, he made it clear – I heard that it wasn't secret. We have communicated it other – he showed --

JUSTICE SACKVILLE: In your answer a couple of moments ago, you did not mean to convey you thought it was not a secret account within the bank?

A. Yes, I thought so. Even though I didn't know about it, but that's beside the point, because I am not – most of the communications about financial stuff I am not included in that part. So I wouldn't be surprised if they did not include my name on the emails. So I didn't know about it, but that doesn't mean that it's a secret, because I didn't know about it.

MR SWAINSTON: Well, Mr Babiker, if everybody knew about this account at the bank, why didn't that include you, when your number was on the account opening form.

A. These, two they don't click, your assumption, that because everybody knows and my account – my phone number was there. They are two issues. Everybody knowing about the account, we do not announce account numbers on like a PA in the bank. It is not like it was just something floating everywhere so everybody must know we have opened a new account in the Doha Bank and this is the new account number for your information. It is not like that. They would be concerned who are parties or had something to do with it they would know about it. I didn't have anything to do with it so I didn't know about it."

102 Fifthly, Mr Babiker's explanation as to the circumstances in which he received apparently undocumented payments totalling QR 300,000 from the Undisclosed Accounts was inconsistent, confused and implausible.

103 Mr Babiker's version, which varied in his evidence from time to time, was in substance that he went to the Sudan on about 25 September 2009 (having left Qatar on 18 September 2009) in order to purchase a property there. Prior to his departure, he received verbal approval for a loan of QR

350,000 to enable him to purchase the property. After he arrived in the Sudan, Mr Babiker realised that it would be more expensive to purchase a property than he had anticipated. He then contacted Mr Omara by telephone and SMS to obtain approval for a “*top up*” loan of QR 300,000. He duly received that approval. These verbal approvals explained the fact that he received QR 650,000 between 30 September 2009 and 4 October 2009 (QR 300,000 from the Undisclosed Accounts and QR 350,000 in cheques drawn on a known account of the Bank).

- 104 According to Mr Babiker, the large cash withdrawals from his account on 4 and 11 October 2009, totalling QR 616,850, were effected by his wife, acting on his instructions (since he was in the Sudan). These moneys were transmitted to him and went towards the purchase of property in the Sudan (see [77])
- 105 Mr Babiker acknowledged that the Muharaba Agreement, although dated 25 September 2009, had been created after 14 October 2009 (the date of Mr Harun’s email to Mr Omara). His version was that the Muharaba Agreement, despite referring only to a loan (in the form of a “*Cost Price*” of QR 350,000), was intended to be a “*master agreement*”, which would allow for top-up loans when the borrower required extra funds. Mr Babiker claimed that when extra funds were advanced, the master agreement would simply be amended.
- 106 Mr Babiker said that at the time he signed the Muharaba Agreement, he also signed four cheques in blank. He was adamant that the amounts were not filled in at that time so that the cheques could serve as security, not merely for the QR 350,000 loan, but for any top-up loans. Mr Babiker’s explanation of the amounts recorded on the cheques was that someone had filled in the amounts after his dismissal “*just to make the other amount look [as though] it was not a loan*” (see [74]).
- 107 It was pointed out to Mr Babiker in cross-examination on 11 October 2010, (the eighth day of the hearing) that the Muharaba Agreement made no

mention of any loan other than in respect of QR 350,000. He was asked why there was no documentation to support the “loan” of QR 300,000 from the Undisclosed Accounts. Mr Babiker’s response was that he had applied in writing for a top-up loan and that he could produce the application from his records.

- 108 The following day, 12 October 2010, Mr Babiker produced to the Court a copy letter on Bank letterhead, addressed to Mr Omara, as follows:

“Re; Loan Top up

In reference to my loan application dated 25/9/2009, in the amount of QR 350 Thousand, I am here requesting for a top up in the amount of 300 Thousand more with the same terms and conditions set in the previous loan, as I am in need for the mentioned loan for family emergency I request you consideration.

Thanking you in advance for your consideration.”

The letter purported to be dated 28 September 2009.

- 109 Mr Babiker could not provide a coherent explanation as to why the copy letter referred to a “family emergency”, when on his version all the moneys borrowed were needed to purchase property in the Sudan. Nor could Mr Babiker satisfactorily explain why he needed a “top up” of QR 300,000, when that sum (or most of it) was paid into his account **before** he received the cheque for QR 350,000. His explanation, insofar as it could be followed, was inconsistent with an account given in a supplemental statement he submitted shortly before giving oral evidence.
- 110 Mr Babiker was asked why the copy letter referred to a “loan application dated 25/9/2009” when there was no document answering that description. He was also asked to explain why the letter was dated 28 September 2009, given that he was overseas at the time and the Muharaba Agreement was not yet in existence. His answer, to the effect that he took

as his starting point the date recorded on the Muharabah Agreement (itself back-dated), created more questions than it answered.

- 111 The objective facts are that payments totalling QR 300,000 were made to Mr Babiker from the Undisclosed Accounts without any documentation from the Bank supporting the payment. The so-called Muharaba Agreement was put in place in relation to the other payments of QR 350,000 only after Mr Harun drew attention to the absence of any loan documentation. The Muharaba Agreement itself was backdated. On its face it is not a "*master agreement*" and, even if it could be so regarded, it was never amended to cover the "loan" of QR 300,000 from the Undisclosed Accounts. Mr Babiker's evidence endeavouring to give legitimacy to these transactions was not credible. We reject it.
- 112 Sixthly, Mr Babiker's evidence concerning the existence of the Omara Contract was very unsatisfactory indeed.
- 113 On 1 April 2010, Mr Babiker signed a statement affirming that the attached 24 page document, each page of which he signed or initialled, was the true and complete copy of the Omara Contract held in the Bank's records. Mr Babiker admitted that Mr Omara not only asked him to produce his statement, but actually drafted it for him and provided him with a copy of the Omara Contract. Mr Babiker also admitted that he would not have known whether the document he had initialled was in the same terms as any employment contract for Mr Omara that he had seen while working at the Bank. Indeed, although he claimed that he had seen the Omara Contract in January or February 2009, he shied away from suggesting that he had actually read the document.
- 114 For the reasons we have explained, we find that the Omara Contract did not come into existence until after 17 November 2009. Mr Babiker's evidence, given in a later statement, that he had caused the Omara Contract to be sent to Dr Al Marri, cannot be accepted. Similarly, his

evidence that he kept a hard copy of the Babiker Contract in his office cannot be accepted.

115 It is clear, in our view, that Mr Babiker gave false evidence in an attempt to assist Mr Omara make out a case of wrongful dismissal based on the Omara Contract.

FINDINGS OF FACT

116 The conclusions we have reached concerning the lack of credibility of the evidence given by Mr Babiker and Mr Omara do not, of themselves, establish that Mr Babiker was aware of the existence of the Undisclosed Accounts or that the payments to him from the Undisclosed Accounts were improper and not in the interest of the Bank. Rejection of the evidence given by a party does not affirmatively prove that propositions denied by that party are true. Nonetheless, once Mr Babiker's evidence is found not to be worthy of credit, the Court is more readily able to draw inferences against him from the facts otherwise established by the evidence.

117 In this case, there is ample evidence to support findings that Mr Babiker was fully aware of the existence of the Undisclosed Accounts and that the payment of moneys to him from the Undisclosed Accounts was improper and in breach of obligations that he and Mr Omara owed to the Bank.

118 The evidence supporting these findings includes the following:

- Mr Omara operated the Undisclosed Accounts in flagrant breach of his obligations as CEO of the Bank;
- Mr Omara authorised payments totalling QR 300,000 from the Undisclosed Accounts to Mr Babiker;

- Mr Babiker received those payments through transactions that were never documented, let alone documented in accordance with the policies and procedures of the Bank;
- Mr Babiker's claim that the documentation in place was intended to support the "loans" to him of QR 300,000 was false;
- Mr Babiker received sums totalling QR 350,000 from a known account of the Bank in transactions that were processed irregularly and were not documented until Mr Harun drew attention to the absence of any proper documentation;
- Mr Babiker gave conflicting and unacceptable evidence as to the purposes for which the moneys were paid to him from the Undisclosed Accounts;
- Mr Babiker's mobile telephone number was recorded on the account opening form for the Undisclosed Accounts;
- Mr Babiker had information readily available to him that revealed the source of the payments of QR 300,000 to his personal account (bank statements recording the transfers);
- Mr Babiker acknowledged in his evidence that he may have had communications with Mr Al Teter at the DIB, who was apparently responsible for opening the Undisclosed Accounts;
- As Mr Babiker accepted in evidence, he and Mr Omara had a personal relationship that was sufficiently close for each to lend or otherwise give substantial sums of money to the other:

"Well, that [a payment of QR 68,000 to Mr Omara from Mr Babiker's account] could be he asked me to lend him some

money or I took some money from him if I need some money. He would take money from me if needed.”;

and

- Mr Babiker’s personal bank account shows substantial unexplained dealings in cash.

119 For these reasons, we find that:

- Mr Babiker knew at all material times of the existence of the Undisclosed Accounts;
- Mr Babiker participated in the opening of the Undisclosed Accounts;
- Mr Babiker knew that Mr Omara was operating the Undisclosed Accounts in flagrant breach of his (Mr Omara’s) obligations as CEO of the Bank;
- Mr Babiker received undocumented payments of QR 300,000 from the Undisclosed Accounts into his personal account on 30 September 2009 and 4 October 2009; and
- Mr Babiker knew and appreciated that these payments were made improperly by Mr Omara and were not in the interests of the Bank.

EXECUTION OF THE BABIKER CONTRACT

The Babiker Short Form Contract and the Babiker Contract

120 A copy of the Babiker Contract was annexed as an exhibit to the Particulars of Claim which Mr Babiker filed on 11 May 2009. The Babiker Contract states that it was “*made and entered on 1st January 2008*”. As has been noted, Mr Babiker’s “*Permanent address*” is recorded as an

address in Greensboro, North Carolina. The signature page contains Mr Babiker's signature and that of Mr Omara as Managing Director and CEO of the Bank. Each page is stamped with an official stamp of the Bank, is printed on the Bank's official paper, bearing the Bank's "Licence No 100" and the statement that the Bank is authorised by the QFCRA.

- 121 The Babiker Contract is for a fixed term of three years. The salary of Mr Babiker is shown as QR 45,560 per month, with monthly housing and transportation allowances of QR 22,440, making a total of QR 68,000. There is also a furniture allowance of QR 80,000.
- 122 It will be recalled that the Babiker Short Form Contract, signed on 25 May 2008, provided for a monthly salary of QR 65,000, made up of a basic salary of QR 42,250 and a housing and general allowance of QR 22,750. In fact, however, the monthly salary paid to Mr Babiker was QR 68,000 from July 2008. When Mrs Hussain queried the apparent discrepancy with Mr Babiker he explained that this had been approved by Mr Omara.
- 123 The practice of the Bank was to require two counterparts of each contract of employment to be signed. One counterpart was kept in the HR department and the other was given to the employee. Mr Babiker's file, if this practice was followed, should have contained both the Babiker Short Form Contract and the Babiker Contract. A counterpart of the Babiker Short Form Contract was kept on file at the Bank and formed part of the Bank's records. There was no such record of the Babiker Contract. During the course of the hearing, however, Mr Babiker produced a signed counterpart of the Babiker Contract which appeared to match the copy annexed to his Particulars of Claim.

Evidence as to the Drafting and Signature of the Contract

- 124 Mr Babiker gave evidence that the contract was signed "*sometime in September, August or October, around that time. I would assume it was September.*" He went on to say "*... it is more likely September.*"

- 125 Miss Bulus gave evidence that her duties included compiling and updating a file for each employee of the Bank. Miss Bulus' duties also included preparing contracts of employment for signature. For this purpose, Miss Bulus adopted a template stored on her computer, inserting terms relevant to the particular employee.
- 126 As Miss Bulus explained, there was a template for contracts of indefinite duration and one for contracts of a fixed duration. These templates had been reviewed by Eversheds, a firm of solicitors, to ensure their compliance with QFC legislation. The review took place in March or April 2009, at the time these forms of contract were introduced by the Bank. As Mr Babiker received copies of the Eversheds emails, he had access to the templates.
- 127 The Bank's practice was that, after Mr Omara signed a contract of employment, the document was stamped on the signature pages. The stamp was kept by Ms Rania Saab, the Administration Manager. By May 2009, signed contracts of employment were held for all except four employees. Mr Babiker was one of the four. His file contained only the Babiker Short Form Contract. According to Miss Bulus, when she asked Mr Babiker for a copy of his contract of employment, he said that it had not been signed as he was still discussing an increased remuneration.
- 128 Miss Bulus also stated in evidence that the Finance Department had sought guidance from her when, on several occasions, Mr Babiker had approached that department asking to be paid QR 100,000 per month. She agreed with the Department's view that his salary could not be increased without an offer letter or contract stating that he was so entitled.
- 129 According to Miss Bulus, at the end of October 2009, Mr Babiker told her that he wanted to expedite finalisation of his employment contract. At that time, he provided her with the terms which he said had been agreed for her salary package, amounting to QR 100,000 per month. Miss Bulus

drafted the contract as instructed by him, using the Bank's template for the purpose. However, so far as she was aware, no contract had been finalised, and it remained in draft form on her computer. Miss Bulus said that up to the date of the termination of Mr Babiker's employment, she was never provided with, nor saw, any signed employment contract relating to him.

- 130 In evidence to which reference has already been made, Miss Bulus said that shortly before the termination of his employment, Mr Babiker asked her to save the contract she had drafted on to a USB stick and instructed her not to mention his request to anyone else at the Bank. As we have explained, Miss Bulus felt uncomfortable about Mr Babiker's request and consulted Mrs Hussain, whose advice was not to get involved. Mrs Hussain also said that she herself had been previously been informed by Mr Babiker that his contract had not been finalised as it was the subject of negotiation, and that he was anticipating a monthly salary of QR100,000. In the end, Miss Bulus did not carry out Mr Babiker's instructions before his employment was terminated on 17 November 2009.
- 131 We have referred earlier to Mr Babiker's response in cross-examination to the effect that Miss Bulus was lying when she said that he had asked her to draft a contract at the end of October 2009, incorporating a salary of QR 100,000 per month. Mr Babiker denied that he had asked for a draft contract to be placed on a memory stick and asserted that he had not asked Miss Bulus to keep his requests confidential.
- 132 Mr Babiker's account was that Miss Bulus had prepared a draft contract for him some time in July 2009. He had provided her with the figures to include in the draft which were based on his discussions with Mr Omara. Mr Babiker said that Mr Omara had not been available at the time to sign the contract, but that he (Mr Babiker) was not worried about his employment status since he had been with the Bank from the start. According to Mr Babiker, the only reason he signed the Babiker Contract when he did was that Mr Kashif Chaudry, the Compliance Officer, had

complained, saying that every employee should have a signed contract in his or her file.

- 133 Mr Fanshawe gave expert evidence about his examination of Miss Bulus' computer. He found there were three draft contracts relating to Mr Babiker. Two of them appeared to be identical and to have originated prior to April 2009. In each of them the contract was of indefinite duration. There was a basic salary QR 45,250, together with housing and transportation allowances of QR 22,750, making a total of QR 68,000. Mr Babiker's permanent address was given as being in Doha. In the third, which appeared to have been created on 9 November 2009, the contract was for a fixed period of five years. The basic salary was QR 67,000, and the housing and transportation allowances QR 33,000, making a total of QR 100,000. Mr Babiker's permanent address was given as being in North Carolina, as in the Babiker Contract.
- 134 Mr Babiker's response when this evidence was put to him was to query why Miss Bulus had three contracts on her computer. He claimed that the creation of a contract file on 9 November 2009, which, as Mr Fanshawe had found, was last accessed and written on 17 February 2010, indicated that someone had been tampering with the computer. He denied that he had been thinking of a five year contract and claimed he had never seen the draft contract before.
- 135 We have referred earlier to Mr Babiker's explanation as to why a contract had been created with more generous terms than he proposed. His implausible suggestion was that the draft had been modified on the instructions of Dr Al Marri to create an "*ugly picture about me*". We have also referred to and do not repeat Mr Babiker's explanation for his use of the North Carolina address as his "*permanent address*".
- 136 Mr Roger Phillips, Acting Chief Legal Officer of the QFCA, who is the senior manager responsible for all matters relating to its Employment

Standards Office (“ESO”), stated in an affidavit dated 21 July 2010 that a copy of Mr Babiker’s employment contract had been received by the ESO. The affidavit was prepared following an application by Mr Babiker for the production by the ESO of the copy of his employment contract. Mr Phillips stated in a further affidavit dated 28 July 2010 that he had carried out a review of the ESO files and records relating to Mr Babiker and the Bank. He had also had discussions with the manager at the ESO, who was personally familiar with the matter and had control of the records relating to these matters.

137 Mr Phillips was able to confirm from the ESO records that on 21 November 2009, at a meeting with Mr Mohammed Al Hajiri, the Bank’s Acting CEO, and Mr Hamad Al Marri, the Head of HR, Mrs Jane Thorpe, the then Chief Legal Officer of the QFCA, had requested copies of the contracts of employment of employees of the Bank. He also confirmed that a FedEx parcel containing employment contracts, including that relating to Mr Babiker, was received at the ESO on 25 November 2010, along with a compliments slip dated and signed by Mr Hamad Al Marri.

138 On 6 August the Liquidators filed a witness statement by Mr Hamad Al Marri in which he stated that he did not recall seeing an employment contract relating to Mr Babiker, and confirmed that, to the best of his knowledge no such contract was ever available in the Bank’s records. He was not called to give oral evidence before the Court.

Was the Babiker Contract Signed Before 17 November 2009?

139 We have found that Mr Babiker’s evidence cannot be accepted unless it is supported by reliable independent evidence or objective facts, or is against Mr Babiker’s own interests. There are additional reasons for concluding that Mr Babiker’s evidence as to when his contract was prepared by Miss Bulus and signed by Mr Omara is unreliable.

140 Mr Babiker's evidence is contradicted by that of Miss Bulus. We have said that she and Mrs Hussain were reliable witnesses. Miss Bulus was the person who would have prepared an employment contract for signature had the proper practice in the HR department been followed. Moreover, her evidence that Mr Babiker was still at the stage of creating terms for his contract in late October 2009 is supported by the draft which was created on her computer on 9 November 2009. The total monthly remuneration in that draft, QR 100,000, matches the figure which she recalled being given to her by Mr Babiker close to that time. We would add that the draft contracts which were on Miss Bulus' computer by July 2009 did not include a fixed term contract for Mr Babiker.

141 These considerations point away from acceptance of Mr Babiker's claim that the Babiker Contract was executed before 17 November 2009. Nonetheless, it is necessary to take into account the unchallenged evidence of Mr Phillips that a copy of the Babiker Contract was provided by the Bank to the ESO on 25 November 2009. It is also necessary to take into account the undisputed evidence that Mr Omara was taken into custody on 17 November 2009, soon after his dismissal on that day, and that he remained in custody beyond 25 November 2009. These are objective facts strongly suggesting that the Babiker Contract had come into existence prior to 17 November 2009.

142 Mr Swainston sought to deal with the difficulties created by the objective evidence by submitting that Mr Babiker bore the burden of proving exactly how and when the Babiker Contract came to be drafted and how it came into the possession of the ESO. We reject that submission. So far as the date of execution of the Babiker Contract is concerned, Mr Babiker merely needs to establish, on the balance of probabilities, that the Babiker Contract was executed before 17 November 2009.

143 Mr Swainston also sought to persuade us that it was possible that Mr Omara had signed the contract after Mr Babiker's employment was

terminated on 17 November 2009. This seems to us to be highly implausible. Following the termination of their employment in the morning of 17 November 2009, Mr Babiker, Mr Omara and Mr Majid Al Quradaghi went to the QFCA to complain about what had happened to them. While they were there they received calls asking them to report to various authorities. Mr Babiker went to the office of the Public Prosecutor, whereas Mr Omara and Mr Al Qaradaghi went to the Capital Police. Mr Omara was arrested and imprisoned. As we have found, he was kept in solitary confinement until 21 November 2009 and thereafter in regular incarceration.

144 Mr Babiker was called in by the authorities on 19 November 2009. He was arrested two days later and imprisoned until 28 November 2009 when he was temporarily released. It is clear Mr Babiker had no access to the premises of the Bank after the termination of his employment.

145 Despite our view as to the unreliability of Mr Babiker's evidence, the objective circumstances persuade us that the correct inference, on the balance of probabilities, is that the Babiker Contract was executed before 17 November 2009. This does not imply that we reject any of Miss Bulus' evidence, in particular that she did not finalise the Babiker Contract for signature. The Babiker Contract could have been prepared on another computer and could have been executed without her knowledge.

146 However, our conclusion that the Babiker Contract was executed before 17 November 2009 is not determinative of the question as to whether, to Mr Babiker's knowledge, Mr Omara had authority to sign the Babiker Contract. We now turn to this question.

MR OMARA'S AUTHORITY

147 In his capacity as the CEO of the Bank, Mr Omara was authorised to sign documents on behalf of the Bank, including contracts of employment. The liquidators rightly did not argue to the contrary. Nor was it contended on

behalf of Mr Babiker that Mr Omara would have had actual authority to act contrary to the interests of the Bank. The submission by Mr Naqvi was that he did not so act.

148 Mr Naqvi correctly submitted that the Babiker Contract is not extraordinary in its terms. As we have noted (at [127]), one of the templates which had been revised by Eversheds was for a contract of a fixed duration. However, there was no evidence that it was necessary to give Mr Babiker such a fixed term contract in order to retain his services. Neither Mr Babiker, nor Mr Omara, suggested any such necessity. Mr Babiker gave evidence that the only other employee who had a fixed term contract was Mr Seif Abdul Kareem, the former Chief Financial Officer of the Bank, whom he described as being "*one of the best*", and as having been paid an annual salary of QR 103,000 in his previous employment. Mr Kareem was another recipient of money taken by Mr Omara from one of the Undisclosed Accounts.

149 Further, the evidence given as to the relationship between Mr Babiker and Mr Omara, to which we have referred earlier, clearly supports the inference, which we draw, that Mr Omara would readily give Mr Babiker the valuable benefit of guaranteed remuneration for a minimum period of three years without consideration as to whether such a benefit was deserved or appropriate from the point of view of the Bank. We were not impressed by Mr Naqvi's submission that the benefit to Mr Babiker was neutralised by the penalty which he could in theory have incurred if he had terminated the Babiker Contract prematurely. In addition, it is clear from the evidence of Miss Bulus to which we have referred (at [129]–[130]) that Mr Babiker was aiming to obtain an even more advantageous contract not long before his employment was terminated.

150 We find that, on the balance of probabilities, the Babiker Contract was created after 10 October 2009, when Mr Babiker returned to Doha from Sudan, rather than, as Mr Naqvi submitted, before 18 September 2009. Mr Babiker gave a variety of possible dates in his evidence as to when the

Babiker Contract was executed following its drafting (on his account) in July 2009 (see at [125]-[133]). The possibilities ranged from August 2009 through to October 2009. While he suggested that the most likely date was September 2009, his own evidence is not inconsistent with the Babiker Contract having been executed after 10 October 2009.

- 151 It is also of some significance that the earliest draft of a fixed term contract relating to Mr Babiker on Ms Bulus' computer was created on 9 November 2009 (see [135]). Moreover, Mr Babiker and Mr Omara were prompted to set up the Murabaha Agreement after 14 October 2009 (which was back-dated to 25 September 2009), to cover the "*official*" part of the loans which Mr Babiker had already received (see [73]).
- 152 We find that Mr Babiker procured the execution of a fixed term contract without going through the well-established procedures of the Bank, and that he did so with the help of Mr Omara. If the correct procedures had been followed in the case of the Babiker Contract, Miss Bulus would have prepared it for signature, which she did not. Mr Babiker had access to the templates which had been revised by Eversheds, and thus had the means of printing a contract for a three year fixed term. Since he was the Head of Administration he also had access to the stamp which was kept in that department for use on the signature page of such contracts (see [128]).
- 153 The chronology tabulated in [66] and [67] clearly shows that on 27 September 2009 the sum of AED 3,000,000, which had been invested with the Bank by Mr Willi Diener, was transferred to the Undisclosed Accounts held in the name of the Bank with DIB. The first payment out of the Undisclosed Accounts on 30 September 2009 was of QR 250,000 to Mr Babiker. A further payment of QR 50,000 was made to him on 4 October 2009. On the basis of that evidence and the findings we have already made (at [119]-[120]), we accept Mr Swainston's submission that by early October 2009, to Mr Babiker's knowledge, Mr Omara was conducting the affairs of the Bank in his own interests and those of persons associated with him, including Mr Babiker, rather than in the interests of the Bank.

- 154 We further find that the four cheques which Mr Babiker gave to support the Murabaha Agreement, (see at [74] and [106]) were filled in as to amounts secured before Mr Babiker signed and delivered them, in support the Murabaha loan of QR 350,000. We reject Mr Babiker's evidence that the cheques were deliberately left blank in order to cover the "top-up" which brought loan monies to a total of QR 650,000. The chronology shows that by the time Mr Babiker signed and handed over the cheques, he had already received a total of QR 650,000. Mr Babiker's explanation was false.
- 155 We have said ([102]) that Mr Babiker's explanation as to the circumstances in which he received the apparently undocumented payments totalling QR 300,000 was implausible. We have rejected Mr Babiker's evidence designed to give legitimacy to these transactions (at [112]). Specifically we find that the letter purportedly dated 28 September 2009 (the evidence relating to which is set out (at [108] to [110]), is not contemporaneous, but is a manufactured document.
- 156 It follows from our findings that by the time the Babiker Contract was executed, Mr Babiker had received large, irregular, undocumented payments from Mr Omara out of what he knew to be the Undisclosed Account. Both Mr Omara and Mr Babiker knew all relevant facts relating to the irregular payments. In short, they were "*in it together*". Both also knew that the fixed term Babiker Contract was a valuable benefit for Mr Babiker, that it was undeserved, and that execution of the Contract could not have been in the interests of the Bank. Indeed, both Mr Omara and Mr Babiker, must have known that, had the Bank's Board of Directors been aware of the irregular payments, far from rewarding Mr Babiker with a valuable fixed term contract, they would have taken steps to dismiss him.
- 157 Any reliance by Mr Babiker on the "*ostensible authority*" of Mr Omara can be of no avail. He knew that the contract Mr Omara signed for him was

not in the interests of the Bank and that Mr Omara could have had no authority to grant it to him.

THE QUESTION OF DISMISSAL

158 In the light of the conclusions we have reached, it will not be necessary, so far as Mr Babiker's wrongful dismissal claim is concerned, to determine whether there were grounds for his dismissal without notice on 17 November 2009. As we have noted, if it was necessary to determine this question, our findings of fact would obviously have a direct bearing on our decision.

DETERMINATION

159 The Court's determination is that:

1. The Babiker Contract was executed before Mr Babiker's employment was terminated on 17 November 2009.
2. The Babiker Contract is invalid, having been executed by Mr Omara without authority to do so.

Representation:

For the Liquidators: Mr Michael Swainston QC and Mr Edward Harrison (Counsel, Brick Court Chambers, London, UK) and Mr Irvine Marr and Mr Mark Beswetherick (Solicitors, Clyde & Co, Dubai, UAE)

For Mr Babiker: Mr Feisal Hussain Naqvi (Counsel, Bhandari, Naqvi & Riaz, Lahore, Pakistan)