



محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim bin Hamad Al Thani,
Emir of the State of Qatar

Neutral Citation: [2023] QIC (F) 1

IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT

Date: 23 January 2023

CASE NO: CTFIC0017/2021

BANK AUDI COMPANY LLC

Claimant

v

ABDULLA AHMED AL-SEMAITT

Defendant

JUDGMENT

Before:

Justice Lord Arthur Hamilton

Justice Fritz Brand

Justice Ali Malek KC

Order

1. The Court holds that effective service of the Claim Form is to be treated as having been made on the Defendant on 13 September 2021.
2. The Court grants summary judgment for payment to the Claimant by the Defendant of the sum of QAR 7,400,564.90, being the aggregate of the principal sum and pre-contractual interest awarded against Classical Palace Trading & Decorating (the “**Company**”) by the Court’s Order dated 28 December 2020.
3. The Court further grants summary judgment for payment to the Claimant by the Defendant of the sum of QAR 1,453,798.00, being capitalised interest on that principal sum (QAR 6,477,518.50) at the rate of 9% per annum from 28 December 2020 to 31 January 2023.
4. The Claimant is entitled to interest at the rate of 9% per annum on the sum of QAR 6,477,518.50 from 31 January 2023 until payment.
5. The Claimant is further entitled to payment by the Defendant of its reasonable costs in pursuing the proceedings against the Company and in pursuing the present proceedings, each as may be agreed or, failing agreement, as may be assessed by the Registrar.

Judgment

1. By a loan agreement dated 15 May 2018 (the “**Loan Agreement**”), the Claimant granted to the Company a loan of QAR 7,583,921.00 to be drawn down for the purpose of settling a debt previously owed by the Company. Provision was made for the repayment of that loan with interest. The Loan Agreement also provided that it be governed and construed in accordance with Qatar Financial Centre law and that this Court should have jurisdiction.
2. Earlier, the present Defendant had granted to the Claimant a Personal Guarantee dated 11 September 2013 (the “**Personal Guarantee**”) by which he agreed to guarantee, jointly and severally with the Company, the payment of all amounts whatsoever owing by the Company currently and/or in the future to the Claimant and the fulfilment of all the Company’s obligations up to an amount of QAR 18,000,000.00. The Defendant was

and remains the sole owner and manager of the Company. The Personal Guarantee gave the same address (a P.O. Box in Doha) for the Company and the Defendant. It provided that it be “*governed and construed in accordance with the Qatar Financial Center Courts*” (sic) and that any action which the Claimant might bring against the Defendant as guarantor might be brought “*in any jurisdiction [the Claimant] deems appropriate*”.

3. In June 2020 the Claimant filed in this Court a Claim Form in which it sought certain remedies against the Company. That form was duly served on the Company. No Defence was filed by it. Thereafter, the Claimant filed and served an application for summary judgment (and later a revised application). No response was filed. The Court, having considered the revised application, in due course granted summary judgment to a restricted extent. That judgment, dated 28 December 2020, is to be found reported at [2020] QIC (F) 19.
4. The order made was for payment by the Company to the Claimant of QAR 6,477,518.50, together with interest on that sum at the rate of 9% per annum from 31 May 2019 until payment, including pre-judgment interest of QAR 923,046.40.
5. In September 2021 the Claimant filed a Claim Form in which it sought certain remedies against the Defendant under the Personal Guarantee on the narrative that the Company had failed to make payment as ordered in the above judgment. Filed with that form was a witness statement that the Claim Form and supportive documents “*were served on September 13, 2021 by hand. The documents were served to the defendant’s assistant NOVA at the premises of the company Classical Palace Trading & Decoration*”. No defence having been filed by the Defendant, the Claimant on 2 November 2021 filed an application for summary judgment. Filed with that application was a witness statement that “*the defendant has been served the revised application for summary judgment by fax on 2 November 2021*”.
6. The Regulations and Procedural Rules of this Court (the “**Rules**”) make provision by article 18.3 for the service of a Claim Form and any other documents which the Rules require to be served. Service, in the case of an individual in Qatar, may be made by:

18.3.1 personal service;

- 18.3.2 *delivery to the party's home address ...;*
- 18.3.3. *recorded or registered post to the address identified in article*
18.3.2 above;
- 18.3.4 *fax;*
- 18.3.5 *any method that has been agreed by the parties or directed by*
the Court.

7. When the papers in this case were first put before us in early 2022, we were not satisfied that the Claim Form had been effectively served on the Defendant. Article 18.3 makes no provision for delivery, in the case of an individual, to a place of business, as distinct from the party's home address. Further, there was no evidence that "*the defendant's assistant NOVA*" was authorised to accept the Claim Form on his behalf. Over the succeeding months the Claimant took various steps with a view to resolving the issue of service.
8. The State maintains a "national address" for every person lawfully resident in Qatar. The Claimant obtained from the State authorities the national address of the Defendant and attempted on several occasions to deliver the Claim Form to him there; but these attempts were unsuccessful as there was no one present. The Claimant's lawyer succeeded in speaking to the Defendant by telephone, but he was uncooperative about receiving any documents, saying that he would let his lawyer communicate. Nothing further was heard from the Defendant or any lawyer acting for him. The Registrar of the Court subsequently spoke by telephone to the Defendant's lawyer, but it was apparent that the Defendant was not prepared to provide such information as would allow service of the Claim Form on him.
9. Ultimately, the Claimant filed an application for the Court:

under Article 18.3.5 to consider that the service had been effectively achieved and that the defendant has had notice, and thus grant an order for retrospective alternative service.

10. The issue of service in this case is not without difficulty. There is no doubt that due service of a Claim Form is an important procedural step. It gives formal notice to the

person against whom a claim is made not only that proceedings to vindicate that claim have been commenced before the Court, but also of the factual and legal basis of that claim. The mere fact that that person happens otherwise to be aware of the claim and that it is being pursued is not enough.

11. Article 18.3 of the Rules provides for a range of methods by which a Claim Form may be served on a Defendant, and that the responsibility for service rests on the Claimant and not on the Court (article 18.1). Article 18.3, while allowing for service as “*directed by the Court*” (article 18.3.5), makes no express provision for retrospective validation of a non-compliant service nor for dispensing altogether with service.
12. In *Qatar Financial Regulatory Authority v First Abu Dhabi Bank P.J.S.C.* [2020] QIC (F) 2, the Authority sought to bring an application in this Court against the Bank for an order under the Financial Services Regulations 2010 that a financial penalty issued by it was a debt payable to and recoverable by the Authority. The Bank, which had previously had a branch in Qatar, peremptorily closed that branch without taking any steps to withdraw from the Qatar Financial Centre, and thereafter persistently refused to accept service of the application. A preliminary issue arose as to service of the application. Before the Court the Authority was represented by counsel; the Court was also assisted by an Advocate to the Court appointed by it in the absence of appearance by the Bank. In paragraph 19 of the judgment it is recorded that, by the conclusion of the hearing, counsel were agreed that an order for “*substituted service*” should be made. The Court is recorded as having agreed with counsel, though the order actually made was to grant the application “*made pursuant to Article 18.3.5 [of the Rules] for an Order by the Court that the Respondent has been properly served*”. No further service was required.
13. The order thus made was, in effect, an order validating retrospectively non-compliant service. The Court does not in that judgment spell out the legal basis on which it perceived that it had power to make that order. It may have considered it unnecessary to do so. It had before it the fruits of wide research by and legal submissions from distinguished senior counsel who were, in the end, agreed that the power existed.

14. We, who have not had the benefit of such assistance in this case, consider it unnecessary and inappropriate to attempt to give detailed reasoning here. Suffice it to say that it cannot be in the interests of justice that a person, whether natural or non-natural, against whom proceedings are sought to be brought should be able to frustrate such proceedings by deliberately and persistently obstructing service on him or it. The power to counter any such conduct may lie in reading the phrase “*as directed by the Court*” in article 18.3.5 sufficiently widely as to include the power to validate retrospectively non-compliant service or in concluding that such a power is, against the general intention and purpose of the Rules, implicit in them. The exercise of such a power will be appropriate only in exceptional circumstances.

15. We are satisfied that, for the following reasons, we should make such an order in this case.

16. The context is that the Defendant himself signed the Personal Guarantee and must be familiar with its terms. Likewise, he must, as sole director and owner of the Company, have been aware that proceedings had been brought against it by the Claimant and that no defence had been offered to the claim. Proceedings in turn against him, as guarantor under the Personal Guarantee of the Company’s debts, must readily have been anticipated by him in the event, of which he must also have been aware, of the Company failing to satisfy the judgment against it. The Claim Form was in September 2021 delivered to the business premises of the Company, where the Defendant remained as sole director. It was accepted there. Although delivery of a Claim Form at business premises was not within the compliant methods of service on an individual under article 18.3.2 and although there is no evidence that the assistant who accepted the form had the Defendant’s authority to accept service of it, he as sole director must have been informed of the delivery of the form.

17. Against that background oral communications took place separately between (a) the Defendant and the Claimant’s lawyer, and (b) the Defendant’s lawyer and the Registrar of the Court. On each occasion the subject matter was how the Defendant might effectually be served with the Claim Form. On the first occasion the Defendant was personally uncooperative but indicated that he would let his lawyer deal with the matter. Nothing was heard from his lawyer. When the Registrar ultimately succeeded in

communicating with the Defendant's lawyer, the latter, presumably under instructions, declined to supply information which would facilitate service by a compliant method. The proper inference is that the Defendant deliberately obstructed the effecting of such service.

18. The Claimant has taken reasonable, if not exhaustive, steps to effect service in accordance with article 18.3. The Defendant can properly be taken to have been aware of the contents of the Claim Form.
19. In these circumstances we are satisfied that this is a case in which the Court can and should validate retrospectively a method of service which is not one prescribed in article 18.3 of the Rules, namely by delivery of the Claim Form on 13 September 2021 to "*the defendant's assistant NOVA at the premises of the company Classical Palace Trading & Decoration*". An order is made accordingly.
20. The Court may now proceed to address the application for summary judgment under article 22.6 of the Rules (see also Practice Direction No. 2 of 2019 - Summary Judgment). The application is supported by a statement of truth verifying the claims. There is no defence to the claim under the Personal Guarantee for the principal sum for which judgment was given against the Company (QAR 6,477,518.50) nor for the sum of QAR 923,046.40 awarded against it in respect of pre-judgment interest. The Court is satisfied on the material before it that the Defendant has no prospect of successfully defending the claim. It further considers that there is no compelling reason why the case should be disposed of at a trial. The Claimant also seeks an order for payment of interest on that principal sum at the rate of 9% per annum from the date of the judgment. Interest at that rate from the date of judgment against the Company (28 December 2020) until the expected time of this judgment is calculated at QAR 1,453,798. Interest at the same rate will continue to run until payment.
21. The Claimant is further entitled to payment of the reasonable costs incurred by it in pursuing the proceedings against the Company and in pursuing the present proceedings, each as may be agreed or, failing agreement, as may be assessed by the Registrar.

By the Court,



[signed]

Justice Lord Arthur Hamilton

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

Representation

The Claimant was represented by D&C Legal Services LLC (Doha, Qatar).

The Defendant was not represented.