



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 (A) 8**

IN THE QATAR FINANCIAL CENTRE  
CIVIL AND COMMERCIAL COURT  
APPELLATE DIVISION

[On appeal from [2023] QIC (F) 10]

Date: 10 August 2023

**CASE NO: CTFIC0001/2023**

FAT CAT CAFÉ LLC

**Claimant/Applicant**

v

AHK ENTERPRISE LLC

**Defendant/Respondent**

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**JUDGMENT**

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**Before:**

Lord Thomas of Cwmgiedd, President

Justice Ali Malek KC

**Justice Dr Muna Al-Marzouqi**

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**Order**

1. Permission to appeal refused.
2. The Applicant must pay the Respondent its reasonable costs of its submission to the Court, to be assessed by the Registrar if not agreed.

**Judgment**

1. The Applicant (the ‘**Claimant**’) seeks permission by an application filed on 4 May 2023 to appeal from the judgment of the First Instance Circuit (Justices George Arestis, Dr Rashid Al-Anezi, and Fritz Brand) given on 2 April 2023 in favour of the Respondent, AHK Enterprise LLC (‘**AHK**’), for QAR 37,500 together with costs.
2. The Claimant and AHK (both incorporated in the Qatar Financial Centre) entered into a contract for a temporary rental space (also described as a “*General Service Agreement*”) dated 18 September 2022 in respect of the provision of a kiosk at the Arabian Village Project at Lusail which the Claimant intended to use for the purpose of selling beverages during the FIFA World Cup in 2022. The sum to be paid was QAR 75,000, half of which was paid in advance. A dispute arose between them: the Claimant sought the return of the deposit and AHK sought by its counterclaim the balance of the sum due.
3. The claim was allocated to the Small Claims Track and the matter determined by the First Instance Circuit on the basis of documents and submissions without an oral hearing.
4. In its judgment given on 2 April 2023, the First Instance Circuit held that the Claimant was not entitled to the return of the deposit paid and that AHK was entitled to succeed on its counterclaim for the balance of the sum due under the contract, QAR 37,500.
5. The contract provided, using the English text:

**Third Item:** *[AHK] undertakes to take the necessary precaution and make every effort to complete any of the following works in a timely manner*

1/3: *Providing the rental space to the second party in the Arabian village project with the agreed dimensions.*

2/3 *Presenting promotions to the customer via local media.*

3/3 *A kiosk as agreed in the attached document.*

4/3 *Designing advertisements on behalf of the client and publishing them on the social media platforms and the website of [AHK].*

5/3 *Presenting promotions and issuing the necessary licences.*

[The Arabic text had an additional sentence: “All of these are delivered no later than 1-1-2022”.]

**Fifth Item:** *Financial Obligations*

*It was agreed between the two parties that the first party would receive a sum of money amounting to QAR 75, 000 for a period of 80 days (50% advance/ 50% upon handover of the space) for the services described in advance when signing the contract.*

**Seventh Item** *Duration of the contract*

*The term of this contract (80 days) starts from the date of signing this contract until 1/1/23.*

[The Arabic text did not contain a reference to the period being 80 days. In fact, the period from 18 September 2022 to 1 January 2023 was more than 80 days.]

**Eighth Item:** *In the event of the first or second party does not comply with its obligations on time, the first or second party has the right to stop carrying out any business that it has for the first or second party and terminate this contract on its own without the need to resort to court obtain a court ruling.*

6. It was the Claimant’s case that it agreed to enter into the contract on the basis that the kiosk would be ready by 1 November 2022 as specified in the Arabic text of the contract. The opening match of the FIFA World Cup 2022 was scheduled to be played on 20 November 2022 at Lusail Stadium, and the Final of the FIFA World Cup 2022 was scheduled to be played at Lusail Stadium on 18 December 2022.

7. On 2 November 2022, AHK sent an email to all those who were leasing kiosks, including the Claimant in the following terms:

*Greetings from Arabian Village!*

*The World Cup is upon us and we are so excited to have you as one of our partners! You can finally start to set-up your kiosks and have your equipment and appliances ready (fit outs and other electrical set ups).*

*We're going to have a soft opening, the 11th of November, so please make sure everything is in place and have submitted all requirements. ...*

*After we have opened the village to public, you will not be allowed to renovate or to do a construction activity, so please make sure everything is in place.*

*On the 17th of November 2022, we will hold a grand opening for the Arabian Village ...etc.*

8. The Claimant alleged that:
  - i. AHK failed to provide the kiosk on 1 November 2022; it did so only on 17 November 2022.
  - ii. AHK modified the location of the entrances.
  - iii. The specification of the kiosk was different to those on the maps and referred to in item 3 of the contract.
9. The second and third matters alleged by the Claimant were dismissed by the First Instance Circuit, and no application for permission to appeal is made in respect of them.
10. The First Instance Circuit also held that the contention that AHK had failed to hand over the kiosk on 1 November 2022 failed; AHK was not in breach of the contract and AHK was entitled to the balance of the agreed sum. Its reasons can be summarised:
  - i. AHK was right to contend that the email of 2 November 2022 showed the kiosks for the Claimant and all those who had entered into similar contracts were ready by 1 November 2022; the purpose of the email was to ensure all the kiosks were fitted out by 11 November 2022, when the kiosks would be open to the public with a formal opening on 17 November 2022, just before the opening match of the FIFA World Cup 2022 at Lusail Stadium.
  - ii. The Claimant had changed its case when that contention was made by AHK. The Claimant had not thereafter contended that the kiosk had not been provided by 1 November 2022. Instead, it contended that AHK, by delaying the official opening until 17 November 2022, had reduced

the period during which the Claimant could sell beverages to a much shorter period than the period stipulated in the contract. There would be little business after the FIFA World Cup 2022 Final on 18 December 2022, and therefore any period after that would be a period in which few beverages would be sold.

- iii. Although the purpose of the contract was to provide a kiosk to sell beverages to those attending the FIFA World Cup 2022, the contract had stipulated that the period of the contract was from 18 September 2022 to 1 January 2023. This period was, in fact, the duration of the FIFA World Cup 2022 matches.
- iv. The Claimant had failed to prove any breach of contract, as the kiosk had been provided on time, and the Claimant had agreed to the period which ran from 18 September 2022 to 1 January 2023. The Claimant was therefore not entitled to a return of half of the payment made and must pay the balance due under the contract, QAR 37,500.

11. Having considered the submissions of the Claimant and AHK, we have concluded that there are no substantial grounds for considering that the decision of the First Instance Circuit was erroneous and would result in substantial injustice, as set out in article 35.1 of the Court's Regulations and Procedural Rules, and paragraph 27 of the judgment in *Leonardo v Doha Bank Assurance Company* [2020] QIC (A) 1. We therefore refuse permission to appeal for the following reasons.

### **First Ground of Appeal**

- 12. It is contended by the Claimant in seeking permission to appeal that the contents of the e-mail sent by AHK on 2 November 2022 had certain consequences, the most important of which was the amendment of the effective start date of the agreement to 17 November 2022. AHK specified in that email the opening of the Village and the commencement of operations as 17 November 2022; AHK in this way amended the effective start date of the contract to 17 November 2022 which would therefore run for 80 days from that date.
- 13. It is further contended that the First Instance Circuit failed to consider the effect of such amendment by the unilateral action of AHK on the subject matter of the lawsuit. By

adjusting the start date to 17 November 2022, the contract would only have an effective period till the FIFA World Cup 2022 concluded – a period of about 30 days; this was not the period of 80 days for which the Claimant had agreed to pay. The Claimant was therefore entitled to the return of the deposit and not bound to pay the balance.

14. However, these contentions do not, in our judgement, provide any reasons as to why the decision of the First Instance Circuit was erroneous or would result in substantial injustice. The start date of the contract was the date of signing – 18 September 2022. It was expressly agreed the period of the contract ran from then until 1 January 2023. The Arabic text of the contract specified the kiosk would be provided by 1 November 2022. No doubt this was to give AHK time to provide the kiosk by the time stipulated and for there to be time for the Claimant to do any further work required before the agreed opening of the Arabian Village on 17 November 2022 and the opening match of the FIFA World Cup 2022 on 20 November 2022. There was no evidence that AHK did not make the kiosk available by the time stipulated in the contract and the balance of the period was agreed in the obvious knowledge of both parties that the activities at Lusail would be from the opening of the Arabian Village to the conclusion of the FIFA World Cup 2022 on 18 December 2022. The Claimant agreed to the duration of the contract from 18 September 2022 to 1 January 2023 in this knowledge and, as there was no breach by AHK in failing to provide the kiosk by the agreed date, the Claimant is not entitled to a refund of the sum paid. Moreover, as AHK pointed out, the contention of the Claimant was contradictory; just as there would be no business after the end of the World Cup there would be no business before the Grand Opening of the Arabian Village.

### **The second ground of appeal**

15. The Claimant's second ground of appeal is a contention that no further sum is due to AHK for the same reasons as put forward in the first ground. As we have rejected the application on the first ground, the second ground cannot succeed, and the balance must be paid.

**By the Court,**



**[signed]**

**Lord Thomas of Cwmgiedd, President**

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

Representation

The Claimant was represented by Dr Fahad Al-Thani (Doha, Qatar).

The Defendant was represented by Ahmad Ali Al-Hail (Doha, Qatar).