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) 33

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 30 July 2023

CASE NO: CTFIC0032/2023

AEGIS SERVICES LLC

Claimant

v

EMOBILITY CERTIFICATION SERVICES

1st Defendant

MUHAMMAD NAWAB

2nd Defendant

MOHITH MOHAN

3rd Defendant

MARILYN BIARES

4th Defendant

JUDGMENT

Before:

Justice Dr Rashid Al-Anezi

Justice Fritz Brand

Justice Yongjian Zhang

Order

UPON consideration of the documentary evidence and the submissions by the parties it is ordered:

1. With reference to the Order of this Court in this matter dated 1 June 2023 (the '**Order**'), that:
    i. The actions for final injunctions instituted by the Claimant against the Defendants under case numbers CTFIC0029/2023, CTFIC0030/2023 and CTFIC0031/2023 referred to in paragraph 1 of the Order, are postponed for hearing on 8 and 9 October 2023.
    ii. The interim injunction contemplated in paragraph 1(ii) of the Order, pending the final outcome of the actions in referred to in (i), above, is refused.
    iii. The interim injunction in paragraphs 3 and 4 of the Order is set aside.

2. That the costs of these proceedings are to stand over for determination in the actions referred to in 1(i) above.

Judgment

1. The Claimant, Aegis Services LLC ('**Aegis**'), is a company established within the Qatar Financial Centre ('**QFC**') and registered as a consultant in the field of International Standardization Organization ('**ISO**') certification.

2. The First Defendant, EMobility Certification Services ('**EMobility**') is a company registered in the State of Qatar, but not within the QFC, where it conducts business in the same field and in direct competition with Aegis.

3. The Second Defendant (Mr Muhammad Nawab), Third Defendant (Mr Mohith Mohan), and the Fourth Defendant (Ms Marilyn Biares) are former employees of the Claimant who are now employed, or at least asssociated with, EMobility. For ease of reference, I shall refer to the Defendants collectively as the '**Defendants**' unless it becomes necessary to distinguish between them.

4. Broadly stated, the dispute between the parties arises from the employment contracts between the Claimant and the three individual Defendants as its former employees, and more particularly the non-disclosure, non-competition and non-solicitation provisions in those contracts. In May 2023, the Claimant instituted three separate actions against the Defendants on the grounds that (i) the three individual Defendants were recently employed by EMobility; and (ii) they were acting in breach of the said provisions of their employment contracts with the Claimant by soliciting the Claimant's clients for EMobility and by disclosing confidential information to their new employer which was used by the latter in furtherence of its business which is in direct competition with the Claimant.

5. Based on these grounds the Claimant instituted actions for a permanent injunction prohibiting the Defendants from acting in breach of the said clauses in their employment contracts. At the same time, it brought a separate application under this case number for an interim injunction, pending the finalisation of the actions for a final injunction, prohibiting the Defendants from using any content or material or intellectual property of the Claimant in breach of these clauses of their employment contracts for the benefit of EMobility. After consideration, this Court granted an order on 1 June 2023, inter alia, in the following terms:

> *1. The four Defendants are directed to show cause (if any), by ....*
>
> *ii Appearing before this Court on Monday 4 July 2023 at 10am Doha time at a virtual hearingby.. explaining why an interim injunction shall not be granted against them, pending the final outcome of the actions for final injunctions instituted by the Claimant, prohibiting them from using any content or material or intellectual property of the Claimant....*
>
> *2...*
>
> *3. Pending the return date in 1 (ii) the rule in 1 will continue as an injunction with immediate effect against the Second – Fourth Defendants (continuing from the Order dated 30 May 2023).*

4. *For the avoidance of doubt the Second – Fourth Defendants / Respondents are prohibited with immediate effect from taking any action that contravene the non-disclosure and non-compete clauses in their employment agreements with the Claimant, and if already contravening that clause must desists forthwith, and must take all actions to cease using the First Defendant as a vehicle through which that clause is contravened.*

6. On 4 July 2023, the parties appeared before this Court in a virtual hearing. At the hearing, the Claimant was represented by Mr Amar Gupta of M/S J. Sagar Associates, while the Defendants were represented by Ms Sheeja Anis and Mr Anis Karim of Fidedigno Advisory Services WLL.

7. Before we turn to the background facts, there is the matter of jurisdiction. Because this Court is a creature of statute, its jurisdiciton is confined to the four corners of its creating statute. With reference to the creating statute – Law No. 7 of 2005 – that jurisdiciton is circumscribed by article 9 of the Court's Regulations and Procedural Rules (the '**Rules**'), read with article 8.3(c) of Law No. 7 of 2005. Since the Claimant is an entity established in the QFC, this Court clearly has jurisdiction in the actions against the 3 Defendants in terms of article 9.1.3 of the Rules, which contemplates "*Civil and Commercial disputes arising from entities established in the QFC and contractors therewith and employees thereof*".

8. Jurisdiction in the action against EMobility is more complicated. Since EMobility formally conceded this jurisdiction, the issue was neither addressed nor ventilated in argument at the hearing. Yet, we think that the concession was rightly made, albeit that there is no contractual link between the Claimant and EMobility. We say that, firstly, because the action against EMobility is inseparably linked to the actions against the three Defendants in the same proceedings, which clearly falls within the jurisdiction of this Court. Secondly, because the case seems to reside within the ambit of article 9.1.4 of this Court's Rules which bestows jurisdiction on the Court in:

> *civil and commercial disputes arising from transactions, contracts and arrangements taking place between parties established in the QFC [such as the Claimant] and residence of the State [such as the three individual Defendants in this case].*

9. We believe this to be so because article 9.1.4, unlike article 9.1.3, does not require a contract directly beween the parties to the litigation. All it requires is that the dispute

must have its origin in a contract, or a transaction or an arrangement, between an entity established in the QFC and a third party who is resident in the State of Qatar. Insofar as the Claimant's action against EMobility therefore arises from a breach by the three individual Defendants of their contracts, the dispute seems to arise from contracts contemplated in article 9.1.4. But having said that, in the absence of any proper argument, we are reluctant to come to any firm conclusion on the interpretation of clause 9.1.4 in the sense of creating a precedent for cases to come.

10. A further preliminary issue relates to the test to be applied in an application for an interim injunction. In this regard it will be borne in mind that this is not an application for a final injunction, and that in consequence we heard no evidence which would enable us to resolve the disputes of fact between the parties arising on the papers. All that is still to be tested in cross-examination and resolved in the proceedings which are set down for hearing in October 2023. Instead, this is an application for an interim injunction pending the outcome of those proceedings. Although we have not been referred to any direct authority in this Court, the time honoured requirements for interim injunctions, well established in most jurisdictions, seem to be that (i) the Claimant must establish a *prima facie* right to the relief sought in the main action, albeit open to some doubt, and (ii) that the balance of convenience favours him, in the sense that the prejudice he will suffer if the interim relief sought is wrongly refused will outweigh the prejudice caused to the respondent if the order eventually proves to have been wrongly granted. Ultimately, the required approach seems to turn on a balancing act between the considerations in (i) and (ii). In practical terms, that means that the stronger the Claimant's *prima facie* case, the less the balance of convenience it has to establish, and vice versa. In argument before us, it appeared to be common ground that this is the approach we should adopt.

11. This brings us to the background facts. Mr Nawab entered into an employment contract with the Claimant on 5 January 2020 and resigned from that position about two years later on 2 January 2022. The relevant terms of his employment contract are in clause 13 which provides in relevant terms:

> *NON-DISCLOSURE AND NON-COMPETE AGREEMENT*
>
> *13.1 The Employee shall not use or reveal to others any technical aspect or any information related to the Services or Employers activities, except when it is necessary for rendering the Services and*

with previous written authorisation from the Employer. For the purpose of this Article, the term "Confidential Information of the Company", both technical and related to other aspects of the Services and Employers "activities" mean every piece of information used, learned or to which Employee had contributed during the period of this contract, regardless if it is a written piece of information or presented under any other tangible format and that would not usually be a the disposition of the public or that would give a competitive advantage to whoever came in contact to such information. For the avoidance of doubt, Confidential Information under this contract and the employment, includes without limitation any and all information related to the Employers operations, processess, plans, product information, know-how, designs, trade secrets, software, market opportunities, clients, suppliers and customers.

13.2 Nothing in this contract shall be construed to mean a transfer of ownership and/or license of confidential information from Employer to the Employee and/or any of its representatives.

13.3 Upon Employer's request, the Employee must return or destroy any confidential information provided by the Employer to the Employee and/or any of its representatives during the term of this contract....

13.4 To protect the Employers business and its clients' privacy of information, the Employee shall not enter into employment contract with the Employers competitors (any ISO-related companies within Qatar).

13.5 Contact or join the Employers clients for a period of 2 years after the termination of employment.

13.6 ....

13.7 Otherwise a penalty for breach of contract amounting up 500,000USD shall be charged by the Employer against the Employee.

13.8 The Employee acknowledges and agrees that all the pledges and obligations mentioned in this Article shall outlive the termination of the present contract.

12. Mr Mohan joined the employment of the Claimant on 11 November 2020 and resigned from that position with effect from 30 March 2022. Although the non-disclosure and non-competition provisions of his contract are in clause 12 thereof, they are virtually identical to clause 13 of Mr Nawab's contract.

13. Ms Biares was employed by the Claimant from 14 June 2020 and ostensibly resigned from that employment on 2 June 2022. We say ostensibly, because she says she actually resigned on that date from employment with the Claimant's sister company Excelsior with whom she has been employed since October 2020. But her letter of resignation is nonetheless addressed to the Claimant. We shall revert to the significance of that dispute. The non-compete provisions of her contract are contained in clause 10, while the non-disclosure provisions are in a separate document. But the

provisions of these clauses are virtually identical to clause 13 of Mr Nawab's contract. On 2 June 2022, she resigned from her employment.

14. We find it convenient first to deal with that part of the Claimant's case which relies on the non-competition and non-soliciting provisions of the employment contracts. These are contained in sub clauses 13.4 – 13.7 of Mr Nawab's contract and the similarly worded clauses in the contracts of the other two individual Defendants.

15. The Defendants' first answer to this claim is that the provisions of the contract relied upon are in conflict with article 20 of the QFC Employment Regulations 2020 in that they contain an unreasonable restraint of trade. Article 20 provides in relevant terms:

> ***Restrictive Covenants***
> *Any provision in an employees employment contract that provides that the employee may not work on any similar projects or for a company which is in competition with the employer must be reasonable, must not constitute an unreasonable restraint of trade and must be appropriate to the circumstances of the employees employment with the employer.*

16. As the factual basis for their contention that the restraint imposed by the employment contracts are in the circumstances unreasonable, the Defendants contended that:

    i. While Mr Nawab resigned from the Claimant's employment in January 2022, he only joined EMobility in April 2023, and that in the meantime he was occupied as an Uber driver.

    ii. While Mr Mohan resigned from the Claimant in March 2020, he was only offered employment by EMobility in April 2023 and he has not yet accepted that offer. In the meantime he worked for an unrelated company.

    iii. Ms Biares transferred from Claimant to the sponsorship of its sister company Excelsior on 19 October 2020, and although she ostensibly resigned from the Claimant's employment in July 2022, that actually happened in October 2020 which was more than two years before she joined EMobility in March 2023.

iv. Under Qatari National Law (as recently amended) a contractual restriction of this kind is only valid for one year.

17. As the legal basis for this defence against the Claimant's reliance on clauses 13.4 – 13.7 of the employment contracts, the Defendants relied on two recent judgements of this Court in *Samia Shqair v Aegis Services LLC* [2021] QIC (F) 13 and *Syed Syed Meesam Ali Mousvi v Aegis Services LLC* [2021] QIC (F) 16. Although the facts and circumstances in those two cases were distinguisable from the present, the provisions in the employment contracts were virtually the same. In fact, clause 13 of Mr Musvi's contract was almost identitical to the same clause of the contract of Mr Nawab. In both those cases the Claimants sought an order declaring that, in the circumstances of those cases the provisions of clauses 13.4 – 13.7 of the employment contracts with the Claimant were invalid and unenforceable for being in conflict with article 20 of the QFC Employment Regulations 2020 and in both instances the declaration sought was granted by this Court.

18. In arriving at the conclusion that it did, the Court derived assistance from the following passages in the judgment of the Appellate Division in *Chedid & Associates Qatar LLC v Said Bou Ayash* [2023] QIC (A) 2 at paragraphs 31-32:

> *Next we consider Mr Kennel's submission [on behalf of the Defendant / Employee in that case], accepted by the Court below and repeated before us that there was no justification for paragraph 1 of Section 5.2 which prohibited the Defendant from entering into a contract of employment with a competitor of the Claimant. Mr Kennel accepted that it was reasonable for the Claimant to impose a restraint on the Defendant soliciting business from clients of the Claimant with a restraint imposed by Section 5.2.7. He submitted however that the Claimant has no legitimate interest in prohibiting the Defendant from working for a competitor. So to do that was an unreasonable restraint of trade.*
>
> *In our view this issue lies at the heart of the dispute between the parties. In resolving it, it is necessary to way the interest of the general public and of the Defendant himself against the interests of the Claimant. Qatar is a small country, with almost all business activity concentrated in Doha. Qatar has always welcomed foreign nationals willing to provide services that may otherwise be unavailable or in short supply. It is in the public interest that a foreigner who has taken up employment with one employer should be free to continue to provide his services by taking up employment with an alternative employer should his initial employment come to an end. It is of course even more in the interest of the employee himself that he should be free to do so."*

19. We are conscious of the fact that the reasonableness of a restraint clause must be determined with reference to the facts of each case. Yet in the light of these authorities, it seems to us that the imposition of a restraint period on an employee of two years, coupled with a penalty for non-compliance which borders on the unconscionable in the sense that it would constitute roughly 400 times the employees' monthly income, is, on the face of it, unreasonable. During argument we were urged by Mr Gupta for the Claimant that if we should come to that conclusion, we should "*trim down*" the restraint period to what we regard as a reasonable period.

20. But that raises the rhetorical question – trim down to what period? We have been informed that, that according to the Qatar National Law, the maximum permissible period of restraint is one year. It is true, as pointed out by the Claimant in reply, that in terms of article 2.4 of the QFC Employment Regulations 2020, Qatari State Law is excluded from employment contracts governed by these Regulations. Yet, we think we can derive some general guidance from what is regarded as reasonable in Qatari National Law which after all is the jurisdiction nearest to us. We appreciate that when all these issues are ventilated at the trial, we may come to a different conclusion, but on the material before us we are not pursuaded that even if we were to trim down the restraint period provided in the employment contracts, it would be for a period of more than one year which is what we are dealing with in this case.

21. In its replying papers the Claimant relied on various arguments as to why a period of restraint exceeding one year would not be unreasonable in all the circumstances of the case. Included amongst these were the considerations (i) that the Claimant is a small company in a highly competive industry that cannot survive without restraining its former employees from soliciting its clients for its competitors; (ii) the fact that the Defendants were trained by it to the level where they can now compete with it; (iii) the Defendants had access to the Claimant's computer system which enabled them to establish when the periods of clients' certification came up for renewal that and then to contact them on behalf of their new employer; and (iv) that there are 10 other individuals employed by the Claimant who are dependant for their livelihood for the continuation of its continuation as a profitable entity. We are not insensitive to these considerations and when this evidence is presented and tested at the main hearing, we may be persuaded that a restraint period of one year was not

unreasonable. But on the evidence now before us, we cannot find that this is so.

22. On this basis the restraint sought to be imposed against Mr Nawab and Mr Mohan would be unreasonable. They left the Claimant's employment more than one year before they joined EMobility. With regard to Ms Biares, the Claimant's contention is that she left the employment less than one year before she joined EMobility. But her version is that in the interim she worked for Excelsior which is a different company, albeit a sister company of the Claimant. Self-evidently, we are not in a position to resolve that factual dispute in these proceedings. Moreover, even on the Claimant's version she left its employment about 9 months before she joined EMobility and there is no evidence that she herself solicited any clients on behalf of EMobility. That again is an issue we would have to resolve at the trial

23. It follows that, in our view, the Claimant had failed to establish a *prima facie* case that it is entitled to the injunction sought. The Defendants also raised some other defences against the application of the non-solicitation and non-compete clauses, including, for instance, that the evidence of solicitation relied upon by the Claimant resulted from a collusion between the Claimant and the client involved. But in light of our earlier findings, it is not necessary for us to consider these other defences.

24. This brings us to the Claimant's reliance on the non-disclosure provisions of the employment contract. There is no suggestion that these provisions are unreasonable. On the other hand and rather unsurprisingly, the Claimant was not able to produce direct evidence of actual disclosure of its confidential information to EMobility by the three individual Defendants. Its case is based on inferences that the individual Defendants must have disclosed information confidential to it to their new employer, EMobility. This inference, so the Claimant contended, is to be drawn from the almost identical wording in their websites, the Linkedin profiles, the proposals to customers, and the marketing material of the two companies.

25. The Defendants' first argument as to why these inferences cannot be drawn relies on the proposition that these similarities are to be expected in material relating to business activities involved in the same industry and that in any event the format of the material complained of is available on Google which can be downloaded by

anyone. But at this stage of the proceedings these arguments leave us unpursuaded. We agree with the Claimant's response that on the face of it the similarities in the websites, the Linkedin profiles and other marketing material of the two companies revealed by the comparisons put forward by the Claimant, are just too close to be ascribed to coincidence only. On the probalities, someone on behalf of EMobility copied the Claimant's material.

26. But the Defendants' further answer to the Claimant's case based on non-disclosure seems to rest on firmer ground. It relies on the absence of any evidentual link between the three individual Defendants, on the one hand, and the similarities in EMobility's challenged material, on the other. In this regard the Defendants pointed out:

    i. EMobility's website was created by a developer in India in October 2022 which was before any of the individual Defendants joined the company.

    ii. EMobility was started in August 2022 with employees other than the three Defendants.

    iii. The three Defendants joined the company more than six months thereafter.

27. It is true that findings of fact need not be supported by direct evidence. They can also be established by inference from established facts. But as a matter of principle, an inference can only support a finding of facts if that is the most likely or probable inference from those facts. In the circumstances of the case which are known to us at this stage, we are not pursuaded that on balance the similarities relied on by the Claimant derived from input by the individual Defendants. They may just as well have resulted from a study of the Claimant's material by some other employee who joined EMobility before them. We do not exclude the possibility that, after disclosure of documents have been made by the Defendants as they are bound to do and after their evidence had been tested at the main hearing on 8 and 9 October 2023, we may find that the Defendants did indeed disclose the Claimant's confidential information to EMobility. But at this stage we cannot make a prima facie finding that this is what happened despite suspisions that may well arise that this is so.

28. It follows that in our view the Claimant had not established on a *prima facie* basis that the Defendants have acted in breach of the non-disclosure provisions of their employment contracts.

29. The Claimant's case against EMobility rests on a somewhat different footing. Since it had no agreement with the Claimant, EMobility could not be liable to it on any contractual basis. In its pleadings, the Claimant seems to rely on rather wide ranging allegations of breach of copyright, trademark protection, unfair competition and the like for its case against EMobility. But these grounds were not pursued in argument.

30. In any event, we do not think we would have jurisdiction to entertain any actions of this kind. As indicated by way of introduction, this Courts jurisdiction over EMobility is in our view confined to claims linked to those against the individual Defendants or arising from contracts between them and the Claimant. That would exclude claims against EMobility based on such grounds as breach of copyright or trademark infringement from our jurisdiction.

31. Accordingly, as we see it in the context of this case, this Court's jurisdiction in proceedings against EMobility is confined to a claim based on the tortious wrong of inference with contractual relationships which has become well established in common law jurisdictions and has recently been recognised in principle by this Court in *Zaid Al-Salman v Rashid Al-Mansoori* [2023] QIC (F) 28. The legal principles applicable to this wrong were expounded by the Appellate Committee of the House of Lords in *OBJ Ltd v Allan* [2007] UKHL 21, especially in the speech of Lord Hoffmann at paragraphs 30 – 44. Lord Hodge, now Deputy President of the United Kingdom Supreme Court applied these principles when sitting in the Court of Sessions in Scotland in *Global Resources Group v Mackay* [2008] CSOH 148, paragraphs 7 – 14. Lord Hodge's analysis was subsequently cited with approval in the England and Wales Court of Appeal in *Kawaski Kisen Kaishi v James Kemball Ltd* [2021] ECWCA Civ 33, paragraphs 20 – 21. The five elements encapsulated by him were: (i) there must be a breach of contract by B; (ii) A must induce B to break his contract with C by pursuading, encouraging or assisting him to do so; (iii) A must know of the contract and know his conduct will have that effect; (iv) A must intend

to procure the breach of contract either as an end in itself or as the means by which he achieves some further end; and (v) if A has a lawful justification for inducing B to break his contract with C, that may provide a defence against liability.

32. The key element of this wrong, as appears from this exposition by Lord Hodge, is a breach of contract by B, in this instance, the three individual Defendants. Since we found that the Claimant had failed to establish such breach, the claim against EMobility must also fail. The balance of convenience as we see it does not really favour either side. But since we have found that the Claimant has failed to make out a prima facie, the order granted on 1 June 2023 is to be set aside.

33. As to the issue of costs of this application, we hold it appropriate to direct that these costs stand over for determination in the main case.

34. These are the reasons for the Order we make.

By the Court,

[signed]

Justice Fritz Brand

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

Representation

The Claimant was represented by Mr Amar Gupta, Mr Pranav Tanwar and Mr Akshay Shankar of M/s J Sagar Associates (New Delhi, India).

The Defendants were represented by Ms Sheeja Anis and Mr Anis Karim of Fidedigno Advisory Services WLL (New Delhi, India).