



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

**Neutral Citation: [2023] QIC (A) 10**

**IN THE QATAR FINANCIAL CENTRE  
CIVIL AND COMMERCIAL COURT  
APPELLATE DIVISION**

**[On appeal from [2022] QIC (F) 19]**

**Date: 3 October 2023**

**CASE NO: CTFIC0012/2022**

**KBF TRADING AND CONTRACTING COMPANY WLL**

**Claimant/Appellant**

**v**

**AKRAM HIDRI**

**1<sup>st</sup> Defendant/1<sup>st</sup> Respondent**

**AND**

**CREATREA LLC**

**2<sup>nd</sup> Defendant/2<sup>nd</sup> Respondent**

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**JUDGMENT**

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**Before:**

**Lord Thomas of Cwmgiedd, President**

**Justice Sir Bruce Robertson**

**Justice Chelva Rajah SC**

**Order**

1. Permission is granted to the Appellant to appeal only against the dismissal of the clause 4.1 claim.
2. The appeal against the dismissal of the clause 4.1 claim is allowed. In consequence, the First Respondent must pay to the Appellant the sum of QAR 100,000 within 56 days of the date of this judgment together with interest at the rate of 5% from 1 October 2021 until payment, amounting to QAR 10,041 at the date of this judgment and continuing at a daily rate of QAR 13.70 until payment.
3. No order as to costs.

**Judgment**

1. In a judgment dated 27 October 2022, the First Instance Circuit ([2022] QIC (F) 19; Justices Her Honour Frances Kirkham CBE, George Arestis and Dr Rashid Al-Anezi) dismissed all the claims of the Appellant/Claimant, KBF Trading and Contracting Company WLL (**'KBF'**) against the Respondents, the 1<sup>st</sup> Respondent/Defendant, Mr Akram Hidri (**'Mr Hidri'**), and the 2<sup>nd</sup> Respondent/Defendant, Creatrea LLC (**'Creatrea'**), a company incorporated in the Qatar Financial Centre (**'QFC'**) on 3 September 2019. Mr Hidri and Creatrea are referred to together as the **'Defendants'**.
2. In a written application made on 12 December 2022, KBF applied for permission to appeal against the dismissal of all KBF's claims against the Defendants.

**The Case**

3. KBF had brought these proceedings against the Defendants for breach of a Shareholder Agreement signed, made and entered into on 22 February 2021 (the ‘**Agreement**’) between the three of them. Prior to the Agreement, Mr Hidri was the sole shareholder and sole director of Creatrea.
4. Under the Agreement,
  - i. Mr Hidri sold 50% of his shares in Creatrea to KBF with effect from the signing of the Agreement for QAR 35,000 (clause 3); and
  - ii. KBF agreed to deposit QAR 265,000 as funds for Creatrea’s business operations into Creatrea’s bank account with Qatar National Bank (clause 4).
5. The deposit of the QAR 265,000 was to be made in five tranches and paid by way of cheques as follows:
  - i. QAR 100,000 on 22 February 2021.
  - ii. QAR 50,000 no later than 22 May 2021.
  - iii. QAR 50,000 no later than 22 August 2021.
  - iv. QAR 50,000 no later than 22 November 2021.
  - v. QAR 15,000 no later than 22 February 2022.
6. KBF paid a total of QAR 215,000 to Creatrea between February 2021 and September 2021 under clause 4.1. There was a dispute between the parties as to whether the sum of QAR 35,000 payable under clause 3 had been paid. The First Instance Circuit found it unnecessary to determine that issue.
7. Clause 4.1 of the Agreement also provided that:

*... in the event [Mr Hidri] was unable to secure a Deal/Contract/Project amounting to 200,000 Qatari Riyals or more, either individually or collectively, during a period of not more than three months (3) from the date of signature of this Agreement, [Mr Hidri] shall promptly return to KBF an amount of 100,000 Qatari Riyals.*

8. This 3-month period commenced on 22 February 2021 and ended on 21 May 2021 (the **'3-month period'**).
9. As is set out at paragraphs 14-20 of the judgment of the First Instance Circuit, disputes arose between the parties and these proceedings were commenced by KBF seeking the following orders:
  - i. that the Agreement be terminated, and the Parties reinstated to the position in which they were before the Agreement;
  - ii. that the Defendants jointly repay KBF the QAR 250,000;
  - iii. that Mr Hidri pay KBF QAR 100,000 pursuant to Clause 4.1 (the **'Clause 4.1 Claim'**) as Mr Hidri had failed to secure Deals/Contracts/Projects amounting in aggregate to QAR 200,000 or more in the 3-month period from 22 February 2021;
  - iv. that the Defendants jointly pay KBF QAR 200,000 in compensation for all damage incurred by KBF as a result of incurred losses and loss of profit; and
  - v. that the Defendants jointly pay KBF's legal fees and expenses.
10. The Defendants denied all these claims and each of them raised counterclaims against KBF, which KBF in turn denied.
11. The First Instance Circuit dismissed all of KBF's claims against the Defendants. The First Instance Circuit also dismissed all the respective counterclaims of the Defendants against KBF. As none of the parties had succeeded in any of their claims, the First Instance Circuit made no order as to costs.

### **The Permission application**

12. In considering the application for permission to appeal brought by KBF in respect of the dismissal of its claims, we noted that the First Instance Circuit dismissed the clause 4.1 claim as the First Instance Circuit found that Mr Hidri, *“has provided substantial detail of and explanation for the Deals, Contracts and Projects secured during the three-month period, with possible values well in excess of QAR 200,000.”* (see paragraph 51 of the judgment).
13. It was not clear to us what the substantial detail and explanation provided were. We therefore fixed the permission application for a rolled-up hearing with the appeal. This hearing was conducted on-line on 5 July 2023 when we heard submissions from both parties. We also gave Mr Hidri the fullest opportunity to take us in detail each of the matters on which he relied and to refer us the documentation he filed on the appeal to show how under the terms of clause 4.1 of the agreement the Deals, Contracts and Projects amounted to QAR 200,000 during the three-month period. We refer to that documentation as (the ‘**Hidri BOD**’). In addition, he explained to us in detail the matters referred to in a schedule of projects at Hidri BOD 19.

### **The main issue in the Appeal**

14. For the reasons we set out at paragraph 48, we refuse KBF permission to appeal on all other than the clause 4.1 claim. In considering the clause 4.1 ground, the main issue was whether there were in fact the Deals, Contracts and Projects that were secured during the 3-month period that amounted to an aggregate value of QAR 200,000 or more. We have approached this question by assessing the evidence and not by resort to whether the legal burden of proof rested on either party. Given the circumstances in which the information as to whether the QAR 200,000 threshold was reached lay with Mr Hidri (and not KBF), that Mr Hidri was asserting that the threshold had been reached, and that KBF held security by way of a post-dated cheque, it was for Mr Hidri to bring before the Court necessary evidence to show that the threshold had been reached.
15. The First Instance Circuit found that in the context of the Agreement, *“Contracts”*, *“Deals”* and *“Projects”* had the following meanings:

- i. “Contract” means an agreement under which Creatrea was,
  - a. committed to provide service(s) to a third party; and
  - b. for which the third party had an obligation to pay.
  
- ii. “Deal” means a mutual understanding that,
  - a. Creatrea will undertake work; and
  - b. the third party will be expected to pay for the service(s) provided; and
  - c. the terms of the Deal would commonly be included in a subsequent written contract.
  
- iii. “Project” means a plan agreed with a third party whereby,
  - a. Creatrea and the third party had decided that Creatrea would provide service(s) for that third party;
  - b. the parties would have a broad understanding of what might be needed or achieved, but the detail might be at an early stage;
  - c. while there would be an expectation that work would be commissioned and paid for, there would not be a binding commitment; and
  - d. it might not be possible to attribute a potential value to a Project, or at least to do so with any accuracy.

16. We understand the, “*expectation*” in (iii) above, alludes to a mutual expectation. KBF has not challenged the meanings as found by the First Instance Circuit; the meaning the First Instance Circuit gave to the term “*project*” was consistent with such little authority

as we have been able to find: see the authorities referred to in Stroud's Judicial Dictionary 10<sup>th</sup> Edition Supp. 2 (26 July 2022). We will apply these meanings in its consideration of the main issue in the appeal.

17. The parties do not dispute that contracts to the value of QAR 37,900 were secured during the 3-month period. The question that remains is whether Deals and Projects for an aggregate value of QAR 162,100 were also secured during the 3-month period.

18. The First Instance Circuit were of the view that, (at paragraph 47)

*So far as Deals and Projects are concerned, the First Defendant has provided extensive documentary evidence of potential future work for Creatrea attributable to the period of three months after 22 February 2021. Nine of these are listed on pages 7 and 8 of the defence. Of these one (for which the First Defendant ascribes no value) must be discounted because it predates the Agreement.*

19. We examined each of these 9 arrangements between Creatrea and third parties to see if firstly; they were Deals or Projects; secondly, they were secured within the 3-month period; and thirdly, what amount was payable by the third party. If any one of the three requirements was not met, that arrangement would not count towards making up the QAR 200,000 in clause 4.1.

#### **The 1<sup>st</sup> Deal/Project**

(i) *Signing a sponsorship agreement with Mada Center on February 14, 2021.*

20. Leaving aside whether this evidenced a Deal or a Project, as this arrangement was not secured during the 3-month period, it does not count.

#### **The 2<sup>nd</sup> Deal/Project**

(ii) *A contract for the supply and development of a hologram device for the benefit of Mada Center, with a value of 470,000 Qatari Riyals.*

21. The available documentary evidence is an email dated 29 August 2021 from MadaTC to Mr Hidri (see Hidri BOD 157), stating that Mr Hidri's firm had been selected:

*... to pitch for the services as per the attached Request for Proposal (RFP)...*

and that the,

*... reply should be submitted to Mada No later than SEPTEMBER 13, 2021.*

22. August 2021 is outside the 3-month period.

23. At the appeal hearing Mr Hidri told us:

*For example, the Hologram project, I mean it was with Mada Center and I received a request for quotation for it, and because of increase in demand, I participated as a seller in raising prices, so we lost this project.*

24. This email was a request for tender. It did not evidence a Deal/Project. Even if the tender was successful, it would not matter for purposes of clause 4.1 as it would not have been secured during the 3-month period. This item does not count.

### **The 3<sup>rd</sup> Deal/Project**

*(iii) A contract to develop the second part of the Tawasol application, at a value of 314,738 Qatari Riyals.*

25. The only documentary evidence referring to “Tawasol” are two invoices issued by Creatrea shown in Hidri BOD 79 and 80. The former, which is addressed to Mada, is for QAR 83,790 for services to, “Develop 3D Tawasol Symbols”. No date is printed on the invoice, but it has a handwritten date, “Aug-06-2020”. The latter is for QAR 74,840 for services described as, “Tawasol augmented reality application” and is addressed to Dr Dena Ahmad Al-Thani. It has the date “September 30, 2020” printed on it. Page 80 also sets out a copy of a receipt from Creatrea for payment of QAR 74,840 on which is superimposed a copy of a cheque for QAR 74,840 dated 4 October 2020 in favour of Creatrea.

26. These documents show that the services for the “Tawasol” Deal/Project predated the Agreement and fall outside the 3-month period. This too does not count.

### **The 4<sup>th</sup> Deal/Project**

*(iv) A three-dimensional survey contract for the benefit of the Commercial Street Company, with a value of 75,400 Qatari Riyals.*

27. This arrangement is described in the Defence as a contract with Commercial Street Company for QAR 75,400. At the appeal hearing, Mr Hidri referred to a purchase order



for QAR 75,300 from The Commercial Avenue (see Hidri BOD 174). We will treat both references as pertaining to the same transaction. The purchase order is dated 6 October 2021 which is outside the 3-month period.

28. Mr Hidri told us at the appeal hearing:

- i. *there are two projects for Le Mirage, and one for The Commercial Avenue, which is a government agency, on which we agreed during the same period and then the Covid-19 wave hit us. So, these projects were put on hold and we completed them later.*
- ii. In answer to a question from the Court, Mr Hidri told us,

*I just want to make sure I understand what you're saying. This contract was signed on the 6<sup>th</sup> of October 2021, are you saying you were working on this, this was a project that you got within 3 months of February 2021, and because of the pandemic there was a delay in getting the contract for the.. down until October? [Court]*

to which Mr Hidri replied, "*Correct, correct.*"

29. The invoice is dated 6 October 2021. This is outside the 3-month period. Mr Hidri, however, says that the Deal/Project with The Commercial Avenue was secured during the 3-month period i.e. sometime between 22 February and 21 May 2021, "*and then the Covid-19 wave hit us. So, these Projects were put on hold and then we completed them later*".

30. The World Health Organization declared a Public Health Emergency of International Concern on 30 January 2020 and characterised the outbreak as a pandemic on 11 March 2020. Mr Hidri says he secured The Commercial Avenue Deal/Project before the Covid-19 Pandemic hit. That means this Deal/Project must have been secured before April 2020 which predates the 3-month period by some 10 months. This Deal/Project too cannot count.

### **The 5<sup>th</sup> Deal/Project**

(v) *An application development contract for the Commercial Street Company, amounting to QR 688,212.*

31. There is no documentary evidence of any such Deal/Project with The Commercial Street Company or The Commercial Avenue. Nor did Mr Hidri mention at the appeal hearing any such arrangement or any payment received by or payable to Creatrea. This Deal/Project has not even been shown to exist, much less being secured during the 3-month period. It cannot count.

#### **The 6<sup>th</sup> Deal/Project**

(vi) *A contract for the design and development of an application for the benefit of Mada Center, with a value of 1,605.4 Qatari Riyals, which was in the process of implementation.*

32. Again, there is no documentary evidence of any such Deal/Project with the Mada Center or whether it was secured during the 3-month period. Mr Hadri did not raise it at the appeal hearing. This Deal/Project too does not count.

#### **The 7<sup>th</sup> Deal/Project**

(vii) *A contract for the repair of 3D works of Mada Center, with a value of 175,000 Qatari Riyals.*

33. Again, there is no documentary evidence of such a Deal/Project for repair of 3D works of Mada Center. There is also no evidence of such a Deal/Project being secured and if so, whether it was within the 3-month period. There was also no mention by Mr Hidri of such a Deal/Project at the appeal hearing. This too cannot count.

#### **The 8<sup>th</sup> Deal/Project**

(viii) *A contract to develop an accessible virtual reality application for Mada Center and the Qatar Museums at a value of 858,000 Qatari Riyals, project has been disrupted due to the Corona pandemic, and has recently resumed.*

34. The Hidri BOD 186 to 190 set out a proposal regarding the development of interactive virtual tour platform for Qatar Museum and galleries for QAR 858,000 by Mr Hidri to an unidentified party. It is undated although the fifth page of the proposal (Hidri BOD 190) says that the proposal is valid for 15 days. There is no indication whether or not this proposal was made during the 3-month period, much less as to whether a Deal/Project in connection thereto was secured and if so, when.
35. When asked at the appeal hearing about the date of the proposal document, Mr Hidri was replied that he did not attach a copy of the email that forwarded the document. He further

said that it was sent during the 3-month period and that he obtained initial approval for it from the Mada Center but then the Covid-19 Pandemic hit. There is no documentary evidence of when the approval was obtained. There is no oral evidence from Mr Hidri in this regard other than that it was before the Pandemic hit.

36. As the Pandemic hit in March 2020 and the approval was obtained prior thereto, this means the approval predates the 3-month period by more than 10 months. That means this Project too does not count.

### **The 9<sup>th</sup> Deal/Project**

*(ix) Signing an agreement with Mada Center and Qatar Airways on a research project in the process of implementation. The development of an application for people with special needs has been completed, and an official request has been made by Hamad International Airport to implement it for them.*

37. This contract is a sponsorship agreement made and entered into on 24 February 2021 between Mada, a non-profit organisation committed to connecting persons with disabilities to the world of information and communication technology, and Creatrea. A copy of the contract is found in Hidri BOD 118 to 139.

38. Creatrea was to provide a flight simulation lab for children with autism. However, it does not appear that Creatrea was to be paid under the contract. No price or amount is set out in the contract. This contract does not fall within the meaning given to “Contract” by the First Instance Circuit as there was no commitment under it for Mada to make any payment to Creatrea for providing the flight simulation lab.

39. Similarly, as there was no understanding between the parties that Mada was expected to pay for the flight simulation lab to be provided, it was not within the meaning of “Deal”. Nor was it even a “Project” as there was no plan agreed with Mada that Creatrea would be commissioned to provide a service to Mada for which Creatrea would be paid.

40. At the appeal hearing, Mr Hidri maintained that it was this:

*... agreement with Mada Center that served as an umbrella for all projects that were subsequently signed, from which [Creatrea] received significant*

*payments exceeding two hundred thousand riyals. For example, [Creatrea] received an offer for something that we invented, such as the hologram project.*

41. But as Mr Hidri himself accepted, the hologram project came to naught. Nor has Mr Hidri shown any other Deals/Contracts/Projects that have materialised for Creatrea through Mada, or for that matter with anyone else, by reason of this sponsorship agreement. Even if this contract was a Deal/Contract/Project within the context of clause 4.1, any Deals/Contract/Projects that may have sprung therefrom could not be taken into account to make up the QAR 200,000 stipulated in clause 4.1, unless they were secured during the 3-month period and had a money value to them. There is nothing under sponsorship agreement to count.

42. Apart from the QAR 37,900 derived from Contracts secured during the 3-month period, none of the nine Deals or Projects referred to in paragraph 47 of the judgment contributed towards the QAR 200,000 required under clause 4.1.

43. At paragraph 48 of its judgment, the First Instance Circuit said:

*[Mr Hidri] relies in particular on the arrangement he had agreed with the MADA Centre which includes a number of projects. One of the projects discussed with MADA and Qatar Airways, and evidenced in a document dated 9 March 2021 (ie within the relevant three-month period) has apparently been completed and [Mr Hidri] says that a request has been made for its implementation. [Mr Hidri] ascribes a value of QAR 858,000 to that project.*

44. The document dated 9 March 2021 (see Hidri BOD 140 to 151) refers to the, “*Item List - 9/3/21*” for the Flight Simulation Lab for Kids with Autism referred to in Annex 4 (see Hidri BOD 135) of sponsorship agreement between Mada and Creatrea referred to in paragraph 37 of this judgment. As set out in the sponsorship agreement, Creatrea does not receive any payment thereunder. It also does not receive any payment under the “*Item List - 9/3/21*” document. This document does not relate to a Deal/Contract/ Project within the meaning in clause 4.1.

45. Furthermore, the QAR 858,000 does not relate to either the sponsorship agreement or the Flight Simulation Lab. The only document the QAR 858,000 relates to is the proposal crafted by Mr Hidri with regard to the Qatar Museum which is dealt with in paragraph 34

of this judgment. There is nothing here that can count towards the QAR 200,000 requirement in clause 4.1.

### **Conclusion on the appeal**

46. We find for the reasons set out above that the Deals/Contracts/Projects during the 3-month period amounted to only QAR 37,900. The terms of clause 4.1 were tightly drawn. It may be that Mr Hidri (who was an engaging person and very committed to and capable in his IT work) did not appreciate the strictness of the terms to which he had agreed, but those terms were clear and were not met, sympathetic though many may be to his position. As that is the clear conclusion from our detailed examination of the evidence, it is not necessary to resort to the legal burden of proof as the First Instance Circuit did at paragraph 52 of its judgment. KBF is accordingly entitled to its clause 4.1 claim of QAR 100,000. As that sum should have been promptly repaid, interest must be paid at the rate of 5% per annum on that sum from 1 October 2021.

47. We accordingly allow KBF's application for permission to appeal in respect of the clause 4.1 claim and allow KBF's appeal against the dismissal of that claim.

### **Refusal of Permission**

48. KBF sought permission to appeal against the First Instance Circuit's dismissal of KBF's other four claims. The application was made on three grounds; permission in respect of each is refused for the following reasons:

- i. KBF did not have the opportunity to ask questions and investigate: it was submitted that as the shares were not transferred until 12 July 2021 and Sheikh Abdullah did not become an authorised signatory until 6 September 2021, KBF could not have considered the documents during the period up to the end of May 2021; the First Instance Circuit was therefore wrong in its conclusion on this claim. However, the First Instance Circuit was entitled to find that there was opportunity after that time, but KBF did not take advantage of it.
- ii. The claim against Creatrea was a claim that should have succeeded: it was submitted that the First Instance Circuit was wrong to dismiss the claim against Creatrea and to find there was no basis for terminating the agreements. However,

the agreements were made between KBF and Mr Hidri; Creatrea was not a party to either agreement:

- a. Under the share transfer agreement, shares in Creatrea were transferred from Mr Hidri to KBF and no claim could arise against Creatrea under that agreement.
  - b. Similarly, the Agreement was an agreement between the shareholders for the management of Createra; no claim could arise against Createra under that agreement.
- iii. KBF was entitled to damages and to the termination of the agreements: it is submitted that as Mr Hidri was in breach of the agreements, KBF was entitled to damages and the termination of the agreement. However,
- a. Both agreements were between KBF and Mr Hidri as shareholders under which capital was provided by Sheikh Abdullah. Under the shareholders' agreement, Sheikh Abdullah was entitled to the return of QAR 100,000 if the Deals/Contracts/Projects were not secured as set out in clause 4.1 or to damages for losses caused through any other breaches of the agreement by Mr Hidri.
  - b. KBF has succeeded on its clause 4.1 claim.
  - c. It appears that Mr Hidri was in breach of clause 4.2 of the agreement in not providing funds for the cheque provided by way of security for the return of QAR 100,000 under clause 4.1, but no separate loss was caused by the failure to provide security for that sum; as we have ordered Mr Hidri to pay interest from the date, the QAR 100,000 should have been repaid.
  - d. KBF failed to show any other breach by Mr Hidri. The First Instance Circuit found that the delays in transferring the shares and appointing

Sheikh Abdullah were not due to the fault of Mr Hidri. There is no material or any other basis to challenge that finding.

- e. If other breaches of the agreement were not established, then KBF was not entitled to damages or to the termination of the agreements.
- f. These were agreements for investment in an IT company. If KBF could not show a breach of the agreements by Mr Hidri that caused loss other than the failure to meet the clause 4.1 claim, then any losses sustained fell upon KBF as shareholders in a company which had not succeed in its IT business.

### **Costs**

49. KBF has succeeded in obtaining permission to appeal against the dismissal of its clause 4.1 claim and gone on to succeed in the appeal. However, it has failed to obtain permission to appeal against the dismissal of its other claims. In the circumstances, it is our view that the appropriate order would be for each party to bear its own costs and so orders.

**By the Court,**



**[signed]**

**Lords Thomas of Cwmgiedd, President**

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

Representation

The Claimant/Appellant was represented by Emad Abouelmaati of the Sharq Law Firm (Doha, Qatar).

The 1<sup>st</sup> Defendant/1<sup>st</sup> Respondent represented himself and the 2<sup>nd</sup> Defendant/2<sup>nd</sup> Respondent.