



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: [2024] QIC (A) 3

IN THE QATAR FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT
APPELLATE DIVISION

[On appeal from [2023] QIC (F) 36]

Date: 4 February 2024

CASE NO: CTFIC0027/2023

ASMA AL-SAUD

Claimant/Respondent

v

DEVISERS ADVISORY SERVICES LLC

Defendant/Appellant

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Ali Malek KC

Justice Dr Muna Al-Marzouqi

Order

1. Permission to appeal granted.
2. Appeal allowed to the extent that the Appellant is to pay the Respondent QAR 22,000 together with interest at a rate of 5 % per annum from 2 August 2023.
3. No order as to costs – see paragraph 35 below.

Judgment

1. The Appellant (**‘Devisers’**) seeks permission by an application dated 10 September 2023 to appeal from the judgment of the First Instance Circuit (Justices Dr Rashid Al-Anezi, Fritz Brand and Yongjian Zhang) given on 2 August 2023 in favour of the Respondent (**‘Ms Al-Saud’**) for QAR 30,000 together with interest from 2 August 2023 at the rate of 5%.
2. It is necessary in the light of the course these proceedings took to set out the factual background as appeared from the documents and other information placed before the First Instance Circuit and us.

The agreement between the parties

3. On 22 November 2020, a written agreement was entered into between Devisers, a company which offers immigration consultancy services, and Ms Al-Saud, under which Devisers was to assist her in obtaining a Sole Representative of an Overseas Business Visa for the United Kingdom. The agreed fee was QAR 30,000 which was paid that day. The terms and conditions of the agreement included the following clauses.

Page 1, Clause 5:

If the client revokes this Agreement or change his/ her mind or found to a criminal record after signing this Agreement then DEVISERS shall nevertheless be deemed to have performed its services satisfactorily.

Clause 6:

If the Visa application is refused due to the error by the applicant like but not limited to any false/ incorrect information provided by applicant OR any fake document provided by applicant for the application purpose OR If the High Commission makes an enquiry to any authority about the applicant and the authority does not reply to satisfactory level OR if the applicant fails to give correct reply to the questions in the official interview related to the visa application. In all these cases applicant will not be refunded any service charges paid to us.

Clause 7:

DEVISERS will represent the applicant until the successful result of the Visa application. In case the application remains unsuccessful without falling under clause no. 6 (above mentioned clause) of this agreement, any deposit received will be refunded in 2 weeks.

Clause 11

DEVISERS shall not be liable for any loss or damage of any description what so ever arising from the failure or delay in approval of any application due to the occurrence of an event of force measure, armed conflict, civil insurrection, earthquake, typhoon, tidal wave, and acts of God, or any legal prohibition on DEVISERS's ability to conduct the service including passing of a statute decree, regulation or order by a competent government authority prohibiting DEVISERS from conducting the service, legislative and regulatory acts of government, strike, lockout, computer failure, failure of power supplies outside the control of DEVISERS.

Terms of Business (page 2)

Clause 1:

You are automatically bound by the terms of this application process after you have paid an initial deposit of the total fees or have accepted by signing DEVISERS application form. You are free to decline our offered services before your Visa application is submitted to immigration authorities but you would lose any fee you may have paid to DEVISERS.

In addition you will be liable to pay full service charges or fees agreed in case of withdrawal after submission of application.

Clause 4:

These terms and conditions shall be governed and interpreted in accordance with the laws of the concerned authorities and/or Qatar and the parties submit to the exclusive jurisdiction of the concerned courts and or Qatar International Court of Dispute Resolution Centre (QICDRC) / Qatar.

Clause 7:

The Client undertakes on instructing DEVISERS to apply for a Visa for him/ herself or thereafter promptly on receipt of any request from DEVISERS to provide accurate and detailed information and documentation regarding the Client, like but not limited to the personal details, qualifications and work experience of the Client, and any other information or documentation that in its

sole discretion DEVISERS may deem necessary in order to obtain a visa for a client.

Clause 8:

The applicant agrees to create new personal e-mail address and to give its access to DEVISERS for the purpose of creating online application account of applicant for visa application and correspond for any visa application related matter. Applicant agrees to monitor this new e-mail address regularly.

4. A Sole Representative of an Overseas Business Visa, if granted, entitled the holder to apply after a period in the UK for indefinite leave to remain in the UK under the law then in force in the UK.
5. The documents show that Devisers requested documents on 25 November 2020. Ms Al-Saud supplied some on 5 January 2021. On 20 January 2021, Devisers sent a list of the documents which were outstanding. A further letter highlighting the documents that were outstanding was sent by Devisers on 22 May 2021. A chaser email was sent on 22 June 2021, and another on 8 September 2021. No response was received.
6. On 16 March 2022, an email was sent on behalf of Ms Al-Saud to Devisers which stated:

...it's been a long time since we haven't communicated about my wife's immigration file. We have had some troubles during the last period as it happened to everyone. And some things happened that made it impossible to continue that way. As you know, we paid large amount and did not take any service in return. We know that the first steps should have been from us but in the end the result is the same that we took nothing against that number. To be fair, we don't ask for the full amount, so we lose some of the costs. I hope you understand our situation...

7. On 5 April 2022, Devisers sent to Ms Al-Saud a letter informing her that the UK Government had discontinued the Sole Representative of an Overseas Business Visa with effect from 11 April 2022. Devisers requested her to provide the documents requested so that an application could be submitted online before that date. If this was not done, the only option that could be offered was to switch to an available suitable visa category.

8. The type of visa substituted by the UK Government did not entitle the person granted the visa to apply for indefinite leave to remain in the UK. Ms Al-Saud therefore rejected this and other suggestions made by Devisers as she had sought a Sole Representative of an Overseas Business Visa for the purpose of being able to apply for indefinite leave to remain.
9. Ms Al-Saud asked for the return of the sum paid, but Devisers refused relying on its Terms of Business.

The proceedings brought by Ms Al-Saud

10. On 16 May 2023, Ms Al-Saud commenced proceedings for the return of the funds.
11. The claim was assigned to the Small Claims Track and the case determined by the First Instance Circuit on the papers without oral evidence or oral submissions.
12. It was Ms Al-Saud's case that Devisers did very little before it was announced by the UK Government that the type of visa sought would no longer be available after 11 April 2022. No other visa available after that date provided her with what she wanted, namely the right to apply for indefinite leave to remain in the UK.
13. Devisers served a statement dated 4 July 2023 from one its employees stating that Devisers had made many requests for documents, but insufficient documents were supplied. Ms Al-Saud was therefore in breach of the agreement and that breach had resulted in Ms Al-Saud not being able to obtain the Visa.

The judgment of the First Instance Circuit

14. In its judgment the First Instance Circuit found that:
 - i. Ms Al-Saud's failure to provide the documents would be a good answer to the claim to terminate the agreement if the Sole Representative of Overseas Business Visa had still been available, as she would not have been entitled to do so.

- ii. However, the type of visa that Devisers was mandated to obtain was no longer available. This made performance of the mandate practically impossible. In the result any failure by her to provide the documents was irrelevant as what she did or did not do would not enable Devisers to obtain the visa for which she had bargained.
- iii. Devisers was not in any way to blame. The performance of the agreement had become impossible as result of the decision of the UK Government.
- iv. This resulted in force majeure under article 94 of the QFC Contact Regulations 2005 (the ‘**Regulations**’).
- v. The consequence of Devisers’ obligation being extinguished in this way was that Ms Al-Saud’s reciprocal obligation to pay the fee became extinguished at the same time. If she had not paid, she would have been entitled to refuse to pay as Devisers could not perform its part of the bargain. It made no legal difference that she had paid in advance. It meant simply she could claim her money back.

The grounds of appeal

- 15. Devisers sought permission to appeal on a number of grounds. In brief, it contends the First Instance Circuit was wrong on the findings of fact it made. There was another reason why Ms Al-Saud did not go through with the application. Devisers did more work than the First Instance Circuit acknowledged.
- 16. We decided that justice would be best served in the circumstances of this case by considering the application for permission and any argument on the appeal in a rolled up hearing. Pending that determination, we stayed execution of the judgment. Permission to appeal is granted.

The circumstances in which the agreement was terminated

- 17. It is clear, as the First Instance Circuit held, that the agreement made was for Devisers to provide services in respect of an application for a Sole Representative of Overseas Business Visa for the UK. We cannot see any basis on which Devisers can dispute the finding of the First Instance Circuit that the agreement was limited to an application

for this type of visa given the right under this type of visa to apply in due course for indefinite leave to remain in the UK.

18. On 15 March 2022, the UK Government amended the immigration regulations so that as from 11 April 2022, that type of visa was no longer available. However, Devisers contended, that for some considerable time prior to that date, Ms Al-Saud had failed to provide the documents she had agreed under the terms of clause 8 of the agreement to provide. If she had done so, that type of visa could have been obtained.
19. Moreover, she had in her email of 16 March 2022 in effect accepted that she was in breach of the agreement by failing to supply the documents. She then sought to terminate the agreement and requested a return of the money paid.
20. However, Devisers took no steps to treat this action as giving rise to a right to terminate under article 110 and article 111 of the Regulations and did not terminate it. On the contrary, on 5 April 2022 Devisers wrote to Ms Al-Saud asking her to supply the documents so an application could be made before 11 April 2022 for a Sole Representative of Overseas Business Visa. Devisers went on to state in its letter that if the documents were not supplied, the only option that could be offered was to switch to an available suitable visa category.
21. As no application for the Sole Representative of Overseas Business Visa was made by 11 April 2022, it was no longer possible to obtain a Sole Representative of Overseas Business Visa or for Devisers to carry out services in respect of it; there was no obligation of the part of Ms Al-Saud to accept any other type of visa as after the changes that came into effect on 11 April 2022, there was no other type of visa applicable to Ms Al-Saud that provided the important right to apply for indefinite leave to remain.

The express provisions of the agreement

22. It is therefore necessary to consider first whether the agreement made provision for this occurrence.

- i. Under clause 5 on page 1, Devisers was deemed to have performed its services if the client revoked the agreement or changed her mind; similarly, under clause 1 on page 2, the client was free to decline Devisers' services before the visa application was submitted to the immigration authorities, but the client would lose any fee paid. These provisions might have been applicable if Devisers had accepted the position set out in the email of 16 March 2022 and terminated the agreement, but it did not do so. If it had done so, it would be necessary to consider article 107 of the Regulations and the conclusion we reached in our judgment in *Manan Jain v Devisers Advisory Services LLC* [2024] QIC (A) 2 at paragraphs 40 - 44 in respect of that article, an appeal which we considered at the same time as considering this appeal.
- ii. Under clause 7 on page 1 of the agreement, Devisers was bound to refund the deposit paid within 2 weeks if the application remained unsuccessful without falling under clause 6 (above mentioned clause) of this agreement. The matters set out in clause 6 were all matters which arose after submission of the application to the immigration authorities; it seems clear, therefore, that clause 7 related to the position that might arise after submission of the application to the immigration authorities. This provision is therefore not applicable.
- iii. No other provisions of the agreement assist.

The Regulations

23. As the agreement made no express provision, it is necessary to consider the provisions under the applicable general law. We have set out in our judgment in *Manan Jain v Devisers Advisory Services LLC* [2024] QIC (A) 1 at paragraphs 24-30, the reasons why the applicable law is the Regulations and our approach to those Regulations.

Force Majeure – article 94

24. The First Instance Circuit found that article 94 of the Regulations was applicable on the basis that there was force majeure as defined in article 94(1) and it made performance of the agreement impossible.

25. The discontinuance of the availability of the Sole Representative of Overseas Business Visa as a result of the change in the UK immigration regulations was a circumstance not within the reasonable control of either party and neither party could reasonably have been expected to take it into account when the agreement was made; changes in regulations which affect the performance of an agreement are a common issue in force majeure cases. There is therefore no basis on which the finding of the First Instance Circuit that there was force majeure within article 94 (1) can be successfully challenged.
26. Other provisions of article 94, particularly 94 (2) and 94(5), make it clear that article 94 is intended to cover circumstances which prevent the performance of the agreement if caused by force majeure. Again, as there is no basis for challenging the decision of the First Instance Circuit in its view that the agreement was solely in respect of obtaining a Sole Representative of an Overseas Business Visa, the agreement became impossible to perform after 11 April 2022.
27. It therefore follows that neither party is in breach and there is an entitlement to terminate after 6 months on notice. However, the provisions of article 94 do not deal with the position of payments that have been made prior to the event giving rise to the impossibility of performance. We do not consider that the First Instance Circuit was correct in its view that it made no legal difference that the sum was paid in advance as distinct from an obligation to pay in the future. Article 94 simply does not deal with sums that have been paid in advance.
28. That may be because there is a more general provision dealing with it – the provisions in respect of restitution - article 115:
- On termination of a contract either party may claim restitution of whatever it has supplied, provided that such party concurrently makes restitution of whatever it has received. If restitution in kind is not possible or appropriate allowance should be made in money whenever possible.*
29. Although no notice was given, there was no doubt that the contract must have terminated on 11 April 2022 and notice therefore may have been unnecessary.

30. It is clear from the provisions of article 115 that the Court has a wide area of judgment in circumstances where restitution in kind is not possible by one party, as in this case it was a Ms Al-Saud could not provide restitution of the work that had been done by Devisers for her.
31. It would not be appropriate in this case to lay down the principles that should guide a Court in the way the monetary allowance should be assessed as no submissions were specifically addressed to us on article 115. Ordinarily, the Court would ask for assistance from the parties, but in the light of the fact that the sums in issue were towards the lower end of the Small Claims Track scale, we considered that it was not in the interests of justice to require further submissions from the parties and the consequent further costs.
32. In our view, some allowance should be made for the services performed by Devisers. We have looked at the work done over the extensive period of time between the contract date and the termination. On this basis, we assess the amount which, given the period of time for which Devisers had performed its services, at QAR 8,000.
33. We therefore order that QAR 22,000 should be repaid to Ms Al-Saud, QAR 8,000 being retained by Devisers for the work it performed.
34. The First Instance Circuit made an order for the payment of interest from the date of the judgment until actual payment. Under the terms of its judgment, the obligation to repay arose 14 days from the date of the judgment. Given the conclusion we have reached, we take the view that the award of interest to Ms Al-Saud was correct. She is entitled to be compensated for the loss of opportunity she has had to utilise the funds which Devisers has had the benefit of using.

Costs

35. Subject to any submissions the parties may wish to make within 14 days of the date of this judgment, the Court considers that no order should be made as to the costs incurred on the appeal as each party ought to bear their own costs. The order of the First Instance

Circuit is to stand as Ms Al-Saud had to bring the proceedings to recover the bulk of the money she had 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 self-represented.

The Defendant/Appellant was self-represented.