



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 (F) 6

IN THE QATAR FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT
FIRST INSTANCE CIRCUIT

Date: 22 February 2024

CASE NO: CTFIC0037/2023

HKA GLOBAL LIMITED

Claimant

v

OBAYASHI HBK JV

1st Defendant

AND

CONPEL QATAR WLL

2nd Defendant

JUDGMENT

Before:

Justice George Arestis

Justice Fritz Brand

Justice Ali Malek KC

Order

1. Pursuant to article 9.4 of the Regulations and Procedural Rules of this Court, the Court declines jurisdiction in this matter.
2. The Claimant is to pay the reasonable costs incurred by the Defendants in challenging the jurisdiction of this Court, the quantum of such costs to be determined by the Registrar if not agreed.

Judgment

1. The Claimant, HKA Global Limited, an international company incorporated in the British Virgin Islands, has been established and licenced through to do business in the Qatar Financial Centre ('QFC'). The First Defendant, Obayashi HBK JV, is an unincorporated joint venture between two corporate entities, Obayashi Qatar LLC and Hamad bin Khalid Contracting Company WLL. The Second Defendant is a company, Conspel Qatar WLL.
2. The Claimant's business is to provide expert and advisory services in the construction and manufacturing industry. The dispute arose from a written contract between the parties which was concluded on 15 June 2017 (the 'Agreement'). In terms of the Agreement, the Claimant undertook to provide its services as an independent delay and quantity expert on behalf of the Defendants in litigation between the Defendants, as contractors, and Msheireb Properties, as the employer, regarding the Defendants' claims for extensions of time in terms of the construction contract.
3. With regard to the Claimant's remuneration for its services, the Agreement provided for a fixed amount of QAR 3,900,000. Apart from the fixed amount, it provided for additional amounts depending on the occurrence of specified contingencies which were to be calculated in accordance with rather intricate agreed formulae. Broadly stated, the Claimant's case is that, while it has received the fixed amount, the Defendants were

liable to it for additional amounts in excess of over QAR 3m in aggregate, calculated in accordance with the agreed formulae.

4. On the face of it, this Court has jurisdiction in terms of article 9.1.3 of the Rules to determine the dispute because it is “*a commercial dispute arising between entities established in the QFC and a contractor therewith*”. But, initially, the Claimant did not pursue its case against the Defendants in this Court. Instead, it instituted its action for the relief it now claims in other National Courts of the State of Qatar (the ‘**National Courts**’). On 26 October 2022, and in accordance with the report of a Court-appointed expert, the First Instance Court of the National Courts granted judgment in favour of the Claimant, essentially in the amount of its aggregate claim.
5. The Defendants never challenged the jurisdiction of the National Courts. Accordingly, they launched an appeal against that judgment on the merits of the case to the National Courts Appeal Court. Again, no challenge of that Court’s jurisdiction was raised by any of the parties. Nonetheless the National Courts Appeal Court raised the point of its own accord, and eventually held that the National Courts had no jurisdiction to determine disputes falling within the ambit of article 8(c) of the QFC Law (Law No. 7 of 2005) and the identical provisions of article 9.1 of the Rules. With regard to those claims, so the Court held, claimants are obliged to bring their cases to this Court. Accordingly, so the National Courts Appeal Court concluded, the Claimant had no right to bring its claims in the National Courts and, concomitantly, that Court had no jurisdiction to uphold those claims.
6. The Claimant instituted the present proceedings in this Court on 5 July 2023. The Defendants, on the other hand, decided to launch an appeal to the Court of Cassation against the National Appeal Court’s judgment, and they did so within the time allowed for such further appeal, on 14 July 2023. In the light thereof, and by agreement between all three parties, proceedings in this Court were stayed, pending the outcome of the appeal before the Court of Cassation.
7. On 16 January 2024, the Court of Cassation upheld the Defendants’ appeal. The material part of the judgment, as appears from an English translation made available to us, reads as follows:

Whereas, in the grounds of the appeal by cassation, the Appellants argue that the appealed judgement violates and misapplies the law, stating that the

jurisdiction of the Court of First Instance in Qatar Financial Centre is not related to public order, and that the First Appellee company filed its lawsuit before the ordinary judiciary, which constitutes a waiver of its right to resort to the aforementioned court. Furthermore, none of the litigants argued over lack of jurisdiction. However, the appealed judgement addressed this matter of its own accord, which renders it defective and necessitates setting it aside.

Whereas this argument is well placed, as the judiciary has general jurisdiction and is competent to decide on all dispute of whatever type, regardless of the parties thereof, unless a provision in the Constitution or the law prohibits them being heard or determines the jurisdiction to decide on them for another entity in order to serve a purpose that the legislature opined. This exception shall be constricted to its limits, without exceeding or expanding thereon, and shall not be a rule to be followed in other cases. Article 8 of the QFC Law promulgated by Law No. 7 of 2005 stipulates that:

Pursuant to this Law, a court called "the Civil and Commercial Court of the Qatar Financial Center" is hereby established as set out in the following:

a. The Civil and Commercial Court shall be composed of one or more first instance circuit, and an appellate circuit, each circuit shall consist of three Judges, ...

c. The First Instance Circuit of the Civil and Commercial Court shall have the jurisdiction to hear the following disputes: c/1...

c/4- Civil and commercial disputes arising from transactions, contracts or arrangements taking place between entities established within the QFC and residents of the State, or entities established in the State but outside the QFC, unless the parties agree otherwise...'. It indicates that, although the legislature has created a judicial system affiliated with the Qatar Financial Center, resorting to it is limited to companies and entities that were established within the QFC in relation to civil and commercial disputes. However, although this jurisdiction is based on the law, it does not relate to public order. Thus, it is not permissible for the court to address such a matter of its own accord, and the parties may agree to violate it. Such an agreement is not required to take a specific form, and may precede filing a case or be done at any subsequent time while the case being considered. Additionally, it may be express or it may be inferred implicitly. Resorting to judiciary in itself may be considered evidence of waiving the jurisdiction of the QFC Courts. Since the defense of lack of jurisdiction is, in accordance with the QFC Law, like all other types of defenses relating to the procedures, it must be stated initially, as the right to it is forfeited unless it precedes addressal of the substantive defense and pleas. Based on the foregoing and whereas the First Appellee company, despite being established within the Qatar Financial Center, had chosen to resort to the judiciary by filing its lawsuit before the courts. However, the appealed judgement addressed the matter of jurisdiction of its own accord and without having any plea made by any of the litigants, considering that the Qatar Financial Center Court to be competent to hear the lawsuit. Consequently, it is ruled to dismiss the appealed judgement that decided on the subject matter of the lawsuit. Therefore, it violates and misapplies the law, which necessitates setting it aside.

8. In consequence of that judgment, the matter must now go back to the National Courts Appeal Court to determine the Defendants' appeal against the judgment of the First Instance Court of the National Courts on its merits. In the event, the First Defendant seeks an order:

- i. declaring that, "*further to Article 9.4 of the Court's Regulations, its lack of jurisdiction over the current dispute due to the claimant's voluntary waiver of such jurisdiction along with the Parties' clear agreement, procedural history and conduct*";
- ii. dismissing the Claimant's case in accordance with the Cassation Court ruling; and
- iii. for the costs of these proceedings.

9. The Claimant, on the other hand, persists in its contention that this Court has jurisdiction under article 9.1 of our Rules to determine the dispute and seeks an order for the further stay of these proceedings pending the judgment of the Court of Appeal on the merits. In support of its contention based on article 9.1, the Claimant, inter alia, relied on the following dictum in *Aegis Services LLC v Al Qamra Facilities Management LLC* [2022] QIC(F) 29 (at paragraph 6):

The uncontroverted facts are that the claimant is an entity established with the QFC, that the defendant is an entity established in the State of Qatar outside the QFC and that this is a commercial dispute arising from a contract between these two entities. The position is thus that this Court has jurisdiction unless it is pertinently excluded by agreement between the parties It follows that since the defendant does not rely on any agreement excluding this Court's jurisdiction, we find no merit in the defense....

10. It is clear to us that the present circumstances are quite different from those prevailing when, by agreement between all the parties, we decided to stay the proceedings in this Court pending the finalisation of the appeal to the Court of Cassation, essentially on the basis that parallel proceedings in two courts regarding jurisdiction would be inappropriate. But now the jurisdiction issue has been finally decided by the highest Court in the land. The National Courts now assume jurisdiction to determine this dispute.

11. It is beyond contemplation that once the matter has been finally decided on its merits by the National Courts, this Court would exercise any jurisdiction it may have in theory,

to revisit the whole case by starting the very same proceedings all over again. Apart from anything else, it will be in conflict with the principle of finality in litigation.

12. The Claimant persists in its argument that we have jurisdiction under article 9.1 while the Defendants contend that the Claimant has waived its right to rely on that jurisdiction by instituting litigation in the National Courts. That seems to be one of the grounds on which the appeal was upheld by the Court of Cassation. But we find it unnecessary to go down that road. We find that because of the provision in article 9.4 of our Rules that:

Any issue as to whether a dispute falls within the jurisdiction of the Court shall be determined by the Court whose decision shall be final. If the Court considers it desirable or appropriate, it may decline jurisdiction or may refer any proceedings to another Court in the State.

13. Even if we do have jurisdiction under article 9.1, we are expressly authorised by article 9.4 to decline to exercise that jurisdiction if we find it appropriate to do so. In all the circumstances, we believe that this is a classic example of a case in which this Court should decline to exercise jurisdiction.
14. What remains is the question of costs. With regard to the jurisdictional challenge, we believe that the Defendants were successful, and we can see no reason why costs should not follow the event.
15. These are the reasons for the order we propose to 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 the Al-Mushiri Law Office (Doha, Qatar).

The First Defendant was represented by the Rashid Raja Al-Marri Law Office (Doha, Qatar).

The Second Defendant was represented by the Mana Nasser Jashan Law Firm (Doha, Qatar).