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 (C) 9

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

COSTS ASSESSMENT

Date: 25 August 2024

CASE NO: CTFIC0014/2021

AMBERBERG LIMITED

1st Claimant/Applicant

PRIME FINANCIAL SOLUTIONS LLC

2nd Claimant

v

THOMAS FEWTRELL

1st Defendant/1st Respondent

NIGEL PERERA

2nd Defendant/2nd Respondent

LOUISE KIDD

3rd Defendant/3rd Respondent

~~**CHRISTOPHER IVINSON**~~

~~**4th Defendant**~~

JUDGMENT ON COSTS

Before:

Mr Umar Azmeh, Registrar

Order

1. The Applicant is to pay the Respondents the sum of **GBP 17,254.20** within 7 days of the date of this order.

Judgment

Background

1. On 7 March 2024, the Appellate Division (Lord Thomas of Cwmgiedd, President, and Justices Her Honour Frances Kirkham CBE and Sir Bruce Robertson) dismissed the Applicant's application for permission to appeal the judgment of the First Instance Circuit (Justices Lord Hamilton, Fritz Brand and Helen Mountfield KC) dated 9 November ([2023] QIC (F) 45).

2. Both judgments referred to in paragraph 1, above, concern long standing litigation that was commenced by, inter alia, the Applicant against the Respondents. The judgment of the First Instance Circuit on 9 November 2023 was the fourth in a series of judgments concerning the purchase of a Qatar Financial Centre-incorporated company called Prime Financial Solutions LLC ('**PFS**') by the Applicant.

3. The purchase was made on the terms of a sale and purchase agreement ('**SPA**') dated 28 November 2019. In May 2021, the Applicant and PFS brought a claim against the Respondents for breach of warranty under the warranties in the SPA in respect of a claim by a Ms Aycan Richards who had earlier agreed to buy PFS, injected capital into it, but then did not go through with the purchase and sued PFS.

4. The Respondents unsuccessfully challenged the Court's jurisdiction ([2022] QIC (F) 3), with the Court subsequently holding that the Respondents were liable to the Applicant for breach of warranty under the SPA for not disclosing the claim against PFS by Ms Richards ([2023] QIC (F) 34). However, the Court later ruled that the Applicant was unable to prove its loss and awarded nominal damages of QAR 5 ([2023] QIC (F) 41).

5. The costs orders that the Court made in [2023] QIC (F) 45 were that the Respondents were to pay the Applicant its reasonable costs of the jurisdiction judgment, that the Applicant was to pay the Respondents' reasonable costs of a freezing order application, and that there should be no order as to costs in relation to the hearing on quantum. I determined the costs of the liability hearing on 9 October 2023 ([2023] QIC (C) 6).

6. The Applicant sought permission to appeal on four grounds: (i) there is a contractually binding agreement which provides for indemnification pursuant to which the Applicant is to be indemnified; (ii) the costs ordered in relation to the freezing order application; (iii) the costs award in relation to the quantum hearing, and (iv) the lack of a hearing and the general approach of the First Instance Circuit. The Respondents were invited to respond and provided a written submission along with exhibited documentation. The Appellate Division refused permission on all grounds and ordered that the Applicant must pay the Respondents' costs incurred on the application for permission to be assessed if not agreed. Those costs, clearly, have not been agreed (I will refer to some of the inter-parties correspondence on costs) and therefore these fall to be assessed.

Approach to costs assessment

7. Article 33 of the Court's Regulations and Procedural Rules reads as follows:

> *33.1 The Court shall make such order as it thinks fit in relation to the parties' costs of the proceedings.*
>
> *33.2 The general rule shall be that the unsuccessful party pays the costs of the successful party. However, the Court can make a different order if it considers that the circumstances are appropriate.*
>
> *33.3 In particular, in making any order as to costs the Court may take account of any reasonable settlement offers made by either party.*

33.4 Where the Court has incurred the costs of an expert or assessor, or other costs in relation to the proceedings, it may make such order in relation to the payment of those costs as it thinks fit.

33.5 In the event that the Court makes an order for the payment by one party to another of costs to be assessed if not agreed, and the parties are unable to reach agreement as to the appropriate assessment, the necessary assessment will be made by the Registrar, subject to review if necessary by the Judge.

8. In *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (C) 1, the Registrar noted that the "… *list of factors which will ordinarily fall to be considered*" to assess whether costs are reasonably incurred and reasonable in amount will be (at paragraph 11 of that judgment):

    i. Proportionality.

    ii. The conduct of the parties (both before and during the proceedings).

    iii. Efforts made to try and resolve the dispute without recourse to litigation.

    iv. Whether any reasonable settlement offers were made and rejected.

    v. The extent to which the party seeking to recover costs has been successful.

9. *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* noted as follows in relation to proportionality, again as non-exhaustive factors to consider (at paragraph 12 of that judgment):

    i. In monetary … claims, the amount or value involved.

    ii. The importance of the matter(s) raised to the parties.

    iii. The complexity of the matters(s).

    iv. The difficulty or novelty of any particular point(s) raised.

v. The time spent on the case.

vi. The manner in which the work was undertaken.

vii. The appropriate use of resources by the parties including, where appropriate, the use of available information and communications technology.

10. One of the core principles (elucidated at paragraph 10 of *Hammad Shawabkeh v Daman Health Insurance Qatar LLC*) is that "*in order to be reasonable costs must be both reasonably incurred and reasonable in amount*."

Submissions

11. The Respondents submitted a skeleton argument dated 11 April 2024 along with a bundle of documentation. In response, the Applicant filed and served a response dated 28 April 2024. A brief reply and bundle were filed and served on 9 May 2024 in response by the Respondents.

12. The Respondents claim a total of GBP 21,241.80, comprising the following:

i. GBP 17,187.60 up to and including 13 March 2024 (this being the date upon which the Respondents' legal team communicated the costs occasioned by the application for permission to appeal to the Applicant). This comprises solicitors' fees of GBP 10,823 and counsel's fees of GBP 3,500, all subject to VAT at 20%.

ii. GBP 4,054.20 from 13 March 2024 to 9 May 2024, comprising solicitors' fees of GBP 2,678.50 and counsel's fees of GBP 700, all subject to VAT at 20%.

13. The Respondents' skeleton argument dated 11 April 2024 submits that, under the criteria in *Hammad Shawabkeh v Daman Health Insurance Qatar LLC*, their costs are reasonable and proportionate, also submitting that the hourly rates charged by the Respondents' solicitors are lower than those charged by most firms in Qatar, and that

counsel's fees are reasonable in the circumstances. The skeleton argument also submits that the application ought not to have been made, was hopeless, and abjectly lacked merit.

14. The Applicant's response dated 28 April 2024 made, inter alia, the following points: (i) the *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* criteria are not addressed properly or at all, (ii) 35.5 hours as the time spent on the application for permission to appeal is neither reasoned nor justified, (iii) the application for permission was neither complex nor novel and was presented by a litigant-in-person, (iv) the hourly rates claimed are not substantiated, (v) the time spent on the case was "*unreasonably excessive*" and "*unreasonably substantial*", (vi) the ledger provided does not particularise the work done, and does not provide proper narratives, (vii) the disbursement to counsel in the sum of GBP 3,500 plus VAT is not clear, (viii) there was excessive partner input (quoted to be at 35%), (ix) VAT cannot be claimed, and (x) that the application was not weak and its merits are not relevant. It concludes by stating that the "… *fees are demonstrably unreasonable*".

15. The Respondents' skeleton argument in reply dated 9 May 2024 noted, inter alia, as follows: (i) the substance of the application was complex, (ii) the hourly rates claimed are eminently reasonable, citing judgments of this Court to substantiate that submission, (iii) the ledger is sufficiently detailed, (iv) VAT is due from the Applicant under the indemnity principle, and (v) the merits of the application are plainly relevant and goes to conduct.

Analysis

<u>The application for permission</u>

16. I do not agree that the subject matter of the application was straightforward. The application for permission to appeal was drafted by Mr Veiss, the Applicant's Authorised Representative. The application submission is 10 pages long. It quotes a number of different clauses of the SPA and makes submissions as to their effect. It makes submissions as to the proper construction of the words "*indemnify*" and "*indemnifying*". It submits that the Court "*committed a fundamental error in its judgment by failing to adequately consider and apply the explicit provisions of the Share Purchase Agreement (SPA) concerning legal and Claim Costs*" and makes

submissions on this point. It attacks the First Instance Circuit's position on the costs of the abandoned freezing order application that the Applicant served. It attacks the Respondents' conduct during the quantum hearing.

17. It further stated about of the judgment of the First Instance Circuit – in terms redolent with sarcasm and derision – the following (I must make it clear that this was not drafted by the Applicant's solicitors):

> *Alternatively, in case the Judgment of remains in place it would be an excellent and successful code of conduct guidance for any litigating parties in future to consider similar strategy during the proceedings.*
>
> *a) Promoting code of conduct by not responding or commenting on professional Expert Witness reports in the proceedings.*
> *b) Promoting code of conduct of non-participation to the Hearing.*
> *c) Relying on the Judges' expertise to defend the Claim.*
> *d) Invalidating any explicit agreements between the Parties (re: SPA).*
> e) *Abandoning the Court Rules Overriding Objective Article 4 Section 4.5.*

18. It is unclear whether these criticisms now apply to the judgment of the Appellate Division given that the First Instance Circuit judgment has been upheld in full.

19. My view is that the First Instance Circuit made a very standard and predictable set of costs orders in [2023] QIC (F) 45 (for example, following the standard rule that costs should generally be awarded to the successful party and explaining why that applied in that case). However, it is the Applicant that rendered the exercise before the Appellate Division complex by making intricate arguments on different aspects of the substantive proceedings. I therefore agree with Mr Williams that the application for permission was "*substantively complex*" and involved "*difficult matters of contractual interpretation*" and "*novel argument that an indemnity can apply to cover the legal cost of a losing party*".

20. Whilst the Court did not use Mr Williams' phrase "*hopeless*" to describe the application, it stated – among other things – that there was "*no basis*" for three of the grounds of appeal.

Hourly rates and counsel

21. It is not entirely clear whether the Applicant asserts that the hourly rates claimed by the Respondents' solicitors are too high or that the assertion that the rates are lower than those of comparable firms in Qatar is not substantiated. Either way, I find that the rates claimed are at the low end of the scale for those charged by either local or international firms in Doha. The examples provided by the Respondents are apt: *Amberberg Limited and another v Thomas Fewtrell and others* [2023] QIC (C) 3, and *Bank Audi LLC v Al Fardan Investment Company LLC and others* [2023] QIC (C) 4.

22. It is also unclear to what end the Applicant challenges the disbursement to Mr Williams who has been involved in this litigation since its inception as counsel. The Applicant's submission notes that, "*... Thomas Williams' fees without specifying what these disbursements related to, their relevance to the matter and / or why they were incurred*". This submission is somewhat baffling. The Respondents' skeleton argument responding to the application for permission to appeal was drafted by "*Thomas Williams, Counsel for the Respondents, King's Chambers, Manchester*" and dated 27 January 2024. The Statement of Costs at page 13 of the bundle states "*Fees of Thomas Williams (counsel)*". The ledger shows very clearly that there is counsel involvement in the case. The fee of GBP 3,500 plus VAT at 20% is entirely reasonable for a barrister of over 20 years call to have provided advice and a responsive skeleton argument in this matter. The post-13 March 2024 fee of GBP 700 plus VAT at 20% is also entirely reasonable for the responsive skeleton argument which had to address a significant number of points (see paragraph 14 above).

23. I also record that there is nothing in the VAT point. This is plainly recoverable as it is a reasonable cost (indeed unavoidable in this case) incurred by the Respondents.

Conduct

24. The pre-costs correspondence makes depressing reading (again, I must make clear that this correspondence was not drafted by the Applicant's solicitors). On 13 March 2024, the Respondents' lawyers wrote to the Applicant inviting payment of GBP 17,187.60. In letters dated 14, 20 and 25 March 2024, the Applicant sought to litigate/relitigate matters and made the novel suggestion that the Respondents – i.e. the successful parties in the appellate proceedings and in whose favour the Appellate Division made a costs order against the Applicant – pay to the Applicant the sum of GBP 17,187.60.

25. Furthermore, in that correspondence with the Respondents, the Applicant effectively threatened the Respondents, stating that should they seek their costs in relation to the application for permission to appeal – costs to which the Respondents are entitled according to the Appellate Division – the Applicant would file new proceedings against them:

> *Based on the provided clarification to various matters in this letter, we seek a confirmation that your clients will forfeit their right to seek any financial claim out of QFC Court Order dated 7 March 2024 against Amberberg in order to avoid automatically triggering new indemnity proceedings against your clients and subsequently additional indemnity costs and damages to our clients … on or before Tuesday 1 April 2024 at 4pm Qatar time.*

26. This approach, I am afraid to say, borders on the abusive. It prolongs matters. It increases costs. It does the Applicant no credit. The entire point of this type of correspondence is to save time and resources, to reduce costs as far as possible, and to come to a sensible agreement. The Applicant's behaviour has made this impossible.

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27. As I have noted above, my view is that the conduct of the Applicant rendered the application for permission to appeal more complex than it needed to be. I find that the Respondents' conduct throughout these appellate proceedings and costs assessment to have been reasonable. The Respondents have also been entirely successful as each proposed ground of appeal failed.

28. As far as proportionality is concerned, my view is that the appellate proceedings were of importance to the Respondents: the Applicant detailed in its application for permission to appeal the work required by the quantum litigation, and indeed it was represented by a prestigious international firm of solicitors. The Respondents were not required to pay any costs in respect of the quantum proceedings. The Applicant sought to overturn this decision on appeal. Had this been overturned, the Respondents would have been exposed to potentially significant costs liability. As noted above, these matters were also not straightforward and some difficult and novel points were raised on the application for permission.

Decision

29. The Applicant's refusal sensibly to engage with this process resulted in extra costs being incurred in the sum of GBP 4,054.20 as the costs of these proceedings. I will allow all of the post-13 March 2024 costs in full as reasonable and proportionate representing under 10 hours of solicitor time and a responsive skeleton argument from counsel that was compelled to respond to a large number of points as noted above.

30. In relation to the pre-13 March 2024 costs, I allow counsel's fees in full in the sum of GBP 3,500 plus VAT at 20% (GBP 4,200) as reasonable and proportionate taking account of the points that I have highlighted above.

31. The solicitor time pre-13 March 2024 amounts to GBP 10,823 plus VAT at 20% (GBP 12,987.60). Looking at the matter in the round, and taking account of my analysis above, I am satisfied that GBP 7,500 plus VAT at 20% (GBP 9,000) is a reasonable and proportionate amount to have been incurred for the timeframe specified.

32. The Applicant is to pay the Respondents the sum of **GBP 17,254.20** within 7 days of the date of this order.

By the Court,

[signed]

Mr Umar Azmeh, Registrar

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

Representation

The Applicant represented itself through its authorised representative Mr Rudolfs Veiss in the application for permission to appeal and was represented by Eversheds Sutherland (International) LLP in respect of the costs proceedings.

The Respondents were represented by Mr Thomas Williams of Counsel, formerly of Sultan Al-Abdulla & Partners (Doha, Qatar), and presently of King's Chambers (United Kingdom) instructed by Francis, Wilks & Jones (London, United Kingdom).