



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) 38

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

Date: 25 August 2024

CASE NO: CTFIC0012/2024

DWF LLP

Claimant

V

ROLAND BERGER LLC

Defendant

JUDGMENT

Before:

Justice Her Honour Frances Kirkham CBE

Justice Fritz Brand

Justice Ali Malek KC

Order

1. The Defendant is to pay the Claimant the sum of QAR 195,500 within 14 days of the date of this judgment.
2. The Defendant is to pay the Claimant interest on the sum in (1), above, which amounts to QAR 8,860.50 as at the date of this judgment, continuing at a daily rate of QAR 26.85 until the date of payment.
3. The Defendant is to pay the Claimant its reasonable costs in pursuing this claim, to be assessed by the Registrar if not agreed.

Judgment

Background

1. The Claimant, DWF LLP (**'DWF'**), entered into an agreement with the Defendant, Roland Berger LLC (**'Roland Berger'**), in June 2023, by which DWF agreed to undertake work for Roland Berger. This was for the drafting and defining of a mandate and operating model which Roland Berger was to prepare for Qatar's Supreme Committee for Delivery and Legacy (**'SCDL'**).
2. There is no evidence as to the nature of the contractual or other relationship between Roland Berger and SCDL. DWF was not a party to any such arrangement. There was no contractual relationship between DWF and SCDL.
3. DWF undertook work between June and September 2023; it now claims a total of QAR 766,380 in respect of its fees for the work it carried out.
4. Roland Berger has made no payment. In its defence and counterclaim, Roland Berger denied liability on the ground that DWF's work was deficient. It also counterclaimed losses it might incur and an indemnity in the event that Roland Berger is liable to SCDL.
5. At the hearing of the dispute, Mr Kirk Durrant represented DWF. Mr Durrant was at material times DWF's Managing Partner in Qatar. He was closely involved with the project, being the main point of contact between DWF and Roland Berger, and also

with SCDL. Roland Berger was represented by Mr Marwan Sakr of SAAS Lawyers Avocats (Beirut).

6. At the beginning of the hearing, all readily agreed to Mr Sakr's request that matters be dealt with as quickly as possible given the unrest and imminent risk of further unrest in the region. The Court dispensed with oral openings, as both parties had filed helpful skeleton arguments. The Court heard from the Defendant's two witnesses. The Claimant called no witnesses. The Court directed written closings and reply submissions.
7. On 14 May 2024, the Court had fixed the date for the hearing as 28 July 2024 and had so notified the parties. On 10 July 2024, DWF issued an application for summary judgment. Article 23.4 of the Court's Regulations and Procedural Rules (the '**Rules**') provide that a party served with an application has a period of 28 days in which to respond. There was insufficient time for Roland Berger to respond to DWF's summary judgment application before the substantive hearing. DWF did not ask that the time limits in article 23 of the Rules be curtailed and there was no apparent reason to do so. The Court considered that the dispute should proceed to a full hearing as had already been arranged. The parties were informed that the Court would deal with the disputes at the full hearing. The substantive hearing held on 28 July 2024 dealt with all issues.

The contract

8. Roland Berger approached DWF on 4 June 2023. It wanted to instruct DWF to provide:
 1. *Draft revised SC mandate*
 2. *Draft revised SC governance structures and model*
 3. *Draft presentation outlining changes to current mandate (as shown on screen yesterday)*
 4. *Any other laws and legislation in correspondence and relation with the current and future SC mandate*
 5. *Any other official documents in correspondence and relation with the current and future mandate*
 6. *Any mandates of other relevant government bodies (i.e., Qatar tourism, Ministry of Sports & Youth etc.) your team might have available from the efforts of drafting the new SC mandate.*
9. Roland Berger went on to describe the activities with which it wanted DWF to be involved:

1. Review the new SC mandate draft from a legal perspective to ensure it is solid and sound (including clear recommendations of improvement / changes where needed)
2. Define additional local laws that may need to be referred to and included in the new mandate
3. Review the legal implications of the proposed changes from the current to the new mandate in consideration of mandates of potentially impacted/connected other government agencies
4. Identify potential overlaps, contradictions and / or gaps the new mandate is creating/closing compared to the mandates of potentially impacted/connected other government agencies
5. Identify potential implications if the new mandate needs to include a new commercial entity and / or other businesses created or acquired in the future
6. Review the draft governance structures and model and identify alternative governance approaches where applicable.

9. DWF responded with a proposal including for a fee estimated at QAR 300,000. That sum was not acceptable to Roland Berger. DWF then proposed a fee estimated at QAR 235,000. Again, Roland Berger did not accept that.

10. On 8 June 2023, DWF sent Roland Berger its detailed proposals including:

Scope of work:

Our scope of work (the 'Scope of Work') in the matter will include assisting Roland Berger LLC with the following work streams:

1. Review the new Supreme Committee for Delivery and Legacy ("SC") mandate draft from a legal perspective (including reviewing the existing governance structure and model to ensure that existing structure/model is capable of supporting the new mandate).
2. Define additional local laws that may need to be referred to and included in the new mandate:
*This would include reviewing the intended activities under the new mandate against local laws to ensure that applicable laws are considered and the activities are aligned with these applicable laws.
This work stream will be provided as part of a ppt presentation unless a different format is preferred by Roland Berger LLC (pdf or doc.).
The language of the document will be in English unless Arabic is preferred by Roland Berger LLC.*
3. Assess the legal implications of the proposed changes from the current to the new mandate:
This includes assessing the intended activities under the new mandate and identifying any legal requirements (from among the applicable local laws) and implications that would need to be considered to implement the amendments in the new mandate.

*This work stream will be provided in a ppt document unless a different format is preferred by Roland Berger LLC (pdf or doc.).
The language of the document will be in English unless Arabic is preferred by Roland Berger LLC.*

- 4. Identify potential overlaps, contradictions and/or gaps between SC new mandate and the mandate of other governmental bodies in Qatar operating in the same space:*

This would include reviewing the mandate of Qatar Tourism Authority; Ministry of Sports and Youth; Qatar Olympic Committee; Qatar Football Association; Ministry of Culture; and Aspire Zone Foundation, and highlighting any overlaps and/ or gaps that may need to be addressed in order to ensure that the new SC mandate is compliant/aligned.

This work stream will be provided in a ppt document unless a different format is preferred by Roland Berger LLC (pdf or doc.).

The language of the document will be in English unless Arabic is preferred by Roland Berger LLC.

- 5. Identify potential implications if the new mandate needs to include a new commercial entity and/or other businesses created or acquired in the future:*

This includes reviewing applicable local laws and the potential/proposed establishment mechanism (decree, legislation etc.) against the intended activities (to determine whether there are options to commercialize the activities that are aligned with particular establishment mechanisms).

This work stream will be provided in ppt document unless a different format is preferred by Roland Berger LLC (pdf or doc.).

The language of the document will be in English unless Arabic is preferred by Roland Berger LLC.

Fees:

Subject to the below assumptions, we estimate our fees for the Scope of Work to as follows:

- 1. Work stream 1 QAR47,000*
- 2. Work stream 2 QAR31,500*
- 3. Work stream 3 QAR22,500*
- 4. Work stream 4 QAR72,000*
- 5. Work stream 5 QAR22,500*
- 6. Rev. Total QAR 195,500*

Assumptions:

Any drafts/documents prepared by us will, if required, be subject to one round of revision only (i.e. an initial draft and one revision to that draft).

We will not be required to advise on any business, financial or tax matters.

All disbursements, including translations (if any) and taxes are not included in our fees.

Unless we later agree otherwise, our fee proposal above does not include any work outside the Scope of Work.

The above indicative scope and fee is subject to clearing any conflict of interests....”

11. Roland Berger wrote to DWF on 11 June 2023, including:

Thank you very much for your support and effort the past week. We have decided to proceed with your firm and look forward to our collaboration over the next 10 days.

To formalize the engagement, please prepare a letter of engagement for us and share it at your earliest convenience.

*Please note that we would require the documents in both, Arabic and English
....*

12. That day, DWF sent a draft Letter of Engagement (**‘LoE’**), but the content was never agreed.

13. The parties now both agree that they agreed on 11 June 2023 that DWF would undertake for Roland Berger the work identified in DWF’s email of 8 June 2023 for the sum of QAR 195,500.

14. DWF’s case is that it entered into a binding agreement with Roland Berger whereby DWF would carry out work for an estimated fee to deliver a specific scope of work subject to the specified assumptions. Roland Berger almost immediately began instructing different and additional work well beyond the agreed scope of work, with the full knowledge that instructing additional work would incur additional fees. DWF completed the additional work. DWF is entitled to be paid for the extra work. Roland Berger has failed to pay any fees at all.

15. Roland Berger’s case is that it agreed the scope of work set out in DWF’s email of 8 June 2023. DWF’s offer was to undertake work for a fixed fee of QAR 195,500. DWF and SCDL considered DWF’s work to be deficient. Roland Berger denies that the work which DWF carried out included any additional or varied work. It has no obligation to pay any sums to DWF.

16. DWF sent a draft LoE on 11 June 2023. Roland Berger asked for a revised version addressed to Mr Essig. DWF sent this on 13 June 2023. In section 8 of the draft, DWF included provisions as regards fees payable for its work. Paragraph 8.4 of the draft included DWF’s position:

These charges apply to the services as described in this letter. In the event of additional or alternative services being provided then additional or alternative charges may be incurred.

17. On 15 June 2023, Roland Berger responded that it had taken legal advice on the draft. It raised a number of points which are relevant to the issues here including (i) the number of revisions to be included in the scope of DWF's work, (i.e. in effect rejecting DWF's approach that there would be only a single revision), (ii) referring to Roland Berger's wish to link any additional payment to SCDL's acceptance of deliverables, (iii) requiring written approval for any additional work to be undertaken by DWF, and (iv) rejecting DWF's approach to fees. Its comments included:

The LOE states that you will charge per hour, without a cap of your fees. Considering we discussed a price estimate upfront, we kindly suggest to cap the fees to the estimates that were provided by DWF in the LOE.

18. DWF did not respond. Roland Berger chased DWF in early July 2023. No agreement was reached as to the content of the LOE. None was effected.

19. We conclude that the parties agreed in the emails of 4, 8 and 11 June 2023 that DWF would carry out the scope of work set out in the June 2023 emails and that the assumptions listed in those emails would apply. The fee for that would be QAR 195,500.

DWF's work

20. DWF's case is that Roland Berger instructed work which went substantially beyond the agreed scope of work and outside the assumptions which the parties had agreed in June 2023.

21. Roland Berger's case is that the scope of work originally agreed did not change. No additional work was requested. DWF did not deliver any out-of-scope work. DWF did not deliver the required quality of work. Roland Berger provided feedback to assist DWF in improving the quality to enable documents to be shared with SCDL. Many corrections were needed. SCDL's emails indicate that it was dissatisfied with DWF's work. Roland Berger was managing its client's

expectations. Multiple iterations of the same document did not constitute additional work. Roland Berger accept that it asked for documents in presentational format, but say this did not amount to additional work.

22. We do not accept Roland Berger's position. The documents show that between 11 June 2023 and about 20 September 2023, DWF undertook a great deal of work on the project. Soon after 11 June 2023 Roland Berger asked DWF to meet and liaise with SCDL. Indeed, the documents indicate that Roland Berger largely acted as a post box between DWF and SCDL. SCDL asked for many iterations of the documents to be provided. More revisions were requested than had been envisaged in the June 2023 emails. Mr Biegert (Senior Manager at Roland Berger and Project Manager in this matter) in his evidence sought to give the impression that SCDL were doing little more than requiring corrections to what he considered to be DWF's inadequate work, but the documents show that that was not the case. Roland Berger required DWF to do more. Roland Berger adopted every requirement of SCDL and passed these on to DWF. These included SCDL's requests for changes and additional features. It required DWF personnel (principally Mr Durrant) to attend meetings with SCDL to discuss content and to prepare and make presentations to SCDL.

23. We conclude that the scope of work did change as a result of SCDL's requests which Roland Berger adopted as its own and passed on to DWF. There were requests for additional work and changes which were not needed as a result of any deficiency on DWF's part. Roland Berger also requested many changes to the way in which information would be presented to SCDL. It instructed DWF to undertake a significant amount of additional work in excess of the scope set out in DWF's email of 8 June 2023.

24. Roland Berger's case is that SCDL was dissatisfied with what Roland Berger and DWF presented. There is, however, little evidence to assist with this. In his witness statement Mr Biegert said:

... despite the efforts of the Claimant, the Defendant's client has openly challenged the quality of the Claimant's work during and after the engagement of the Claimant, and was consequently doubtful of the legal advice the Claimant

provided. This has finally led the Defendant's client to not accept the majority of the deliverables provided by the Claimant.

25. However, there is little persuasive evidence to support Roland Berger's case that SCDL's expectations were not met, or – if that was so – how DWF is said to have been the cause. The documents indicate that SCDL ultimately accepted what DWF provided. The sparse documents and evidence from Mr Castillo and Mr Biegert do not support Roland Berger's position that SCDL have not paid them because of dissatisfaction with DWF's work.
26. On balance we conclude that, by 20 September 2023, DWF had undertaken the work it had agreed to do, so that by then DWF finally achieved a set of documents which Roland Berger found acceptable and which it in turn delivered to SCDL.
27. We conclude, therefore, that DWF has demonstrated entitlement (subject to Roland Berger's defence and counterclaim) to payment of the agreed sum of QAR 195,500 for completing at least the scope of work referred to in the June 2023 exchanges.

Fixed fee or estimate?

28. The parties have devoted much time to the question of whether they agreed a fixed fee (as Roland Berger contends) or whether they agreed, as DWF contends, that the fee of QAR 195,500 was simply an estimate and thus subject to change. Both accept, however, that the sum payable for the agreed scope of work was QAR 195,500.
29. DWF relies on use of the word "*estimate*". Use of the word "*estimate*" must be considered in the context. We consider that use of the word "*estimate*" alone was insufficient to indicate that DWF's offer was to undertake work which was susceptible to being charged at a sum different from QAR 195,500. In its email of 8 June 2023, DWF did not explain that "*estimate*" indicated that this was not a fixed fee. It did not, for example, say that the fees payable might increase if e.g. the scope of work changed. There was no mention of how additional or varied work would be charged.

30. The near contemporaneous discussion about the LoE indicated that Roland Berger was looking for a fixed fee. These exchanges indicated that Roland Berger did not accept that the QAR 195,500 was not a fixed fee.

31. DWF did not (except in one case) make clear to Roland Berger as work on the project progressed that it would expect to be paid for the extra work which Roland Berger was instructing it to undertake. It did raise this in an email to Roland Berger dated 4 July 2023, in which Mr Durrant wrote:

If you would like us to create an Arabic version of the PowerPoint we can do that. There would need to be a slight increase in the fee as we have already exceeded the agreed cap – so we are already in write-off territory.

32. This email raises two points. The first is that DWF’s indication that an additional fee might be payable was made solely in the context of a particular circumstance, namely translation of documents into Arabic. While it is understandable that there would be a cost incurred if additional translations were needed, the message does not warn that any other additional or varied work would attract a higher fee.

33. Secondly, Mr Durrant expressly refers to “*the agreed cap*”. We have no evidence to assist us with this beyond what is contained in the documents. It may indicate simply that Mr Durrant’s understanding at that point was that the QAR 195,500 was the agreed i.e. “*capped*” fee for the agreed scope of work.

34. On 31 July 2023, SCDL informed DWF of its latest requirements and that it wanted a response in a short timescale. DWF contacted Roland Berger on 5 August 2023:

I am just sending this out of an abundance of caution and to ensure that we are on the same page (so please forgive me in advance). Of course, the below [ie SCDL’s request of 31 July] will attract additional fees and I just want to make sure we are aligned in that understanding (as the instruction technically came from SC and not RB). We are working on the updates to the deliverables, but please let us know if we should in any way not continue/complete the deliverables as requested by Dr. Hassan (again... this is just to keep things tidy). If we do not hear otherwise we will assume that you are content with us completing the deliverables as requested and we will do our very best to meet the timeline suggested by Dr. Hassan. The timeframe is a little complicated as I am traveling, but we will do our best.

35. Mr Essig replied on 6 August 2023:

We agreed fees early on in the contract. Since then, there have been several iterations with DWF trying to produce a document to meet client expectations incl. "proper Arabic" (client quote).

If you expect us to pay for every single attempt to get to an acceptable quality for a deliverable acceptable by the client this will not work.

36. However, the question whether the parties agreed a fixed fee or a capped fee, or a fee which might increase is not determinative of this dispute. As we have set out earlier, the parties agreed that DWF would carry out the work defined in the June 2023 emails for a fee of QAR 195,500. We accept that DWF carried out more work than the agreed scope. In the normal course, if a client instructs additional work, there would be an expectation that it should pay for this. Here, the relevant questions are whether DWF has demonstrated any agreement as to how additional or varied work should be valued.

37. No express agreement was reached as to how DWF would be entitled to charge for additional or varied work. It had not, for example, agreed that hourly rates should be used to calculate further fees or what those rates should be. In the absence of an express agreement as to the basis on which DWF should be remunerated for any work in excess of the agreed scope, the question is whether DWF have proved entitlement to any sum in excess of QAR 195,500.

38. DWF issued five invoices to Roland Berger:

- 13 July 2023 – QAR 195,500
- 31 July 2023 – QAR 330,700
- 31 August 2023 – QAR 142,090
- 29 September 2023 – QAR 96,740
- 31 January 2024 – QAR 1,350

Total **QAR 766,380.**

Annexed to each invoice was a detailed schedule listing the name of the relevant fee earner, date, type and description of activity, hours worked, and sums charged. Mr Durrant's hourly rate was charged at QAR 2,700. The hourly rates for two other fee earners were QAR 2,400 and QAR 2,000, and a paralegal was charged at QAR 800.

39. Roland Berger has made no payment at all.
40. DWF relies on the fact that Roland Berger continued to instruct work after it had received DWF's invoices for additional fees as evidence that Roland Berger accepted that further fees would be payable. Roland Berger, in turn, relies on the fact that DWF continued to work on the project even though Roland Berger did not make any payment as evidence that DWF accepted that no further fees were payable. Neither proposition is persuasive.
41. DWF accepted at the hearing that some, albeit minor, work was necessary to correct minor errors such as spelling mistakes. It relies on the full exchange of emails over the period of the project to illustrate its case that Roland Berger, and SCDL directly, made many demands. But it has not provided any analysis to enable us to understand what, of the sums it claims, it says is for (i) work within the agreed scope, (ii) variations to the agreed scope, (iii) additional work, and (iv) work needed to correct errors.
42. Even if DWF had been able to demonstrate a contractual entitlement or commitment by Roland Berger to pay for additional or varied work, it has not proved the quantum of that aspect of the claim. Mr Durrant explained at the hearing that DWF relied on the fact that it had sent Roland Berger the five invoices and that Roland Berger had not objected. That is simply insufficient. The burden was on DWF to prove how fees were calculated and that they had properly been incurred. It has not provided the necessary evidence.
43. In the discussions, Roland Berger had said that it wanted prior agreement before fees in excess of the agreed sum of QAR 195,500 were incurred. Although this was not agreed, it did give DWF an indication of what Roland Berger expected.
44. The burden is on DWF to prove the scope of additional and varied work and the basis on which it should be paid. Thus, although DWF has demonstrated that it undertook more work than was envisaged in the scope originally agreed, it has failed to prove the quantum of the claim. DWF has failed to prove (i) an express

agreement that Roland Berger must pay for additional or varied work, (ii) that Roland Berger accepted that it should pay for the additional or varied work it had instructed, and (iii) that the sums it claims (in excess of QAR 195,500) were sums properly payable for any extra work instructed to carry out. There is no evidence as to the basis on which we can determine the amount of any further payment to DWF.

Roland Berger's defence and counterclaim

45. In its Defence and Counterclaim, Roland Berger pleaded that SCDL was so dissatisfied with DWF's performance that it had refused to pay Roland Berger more than 10% of QAR 195,500:

[Roland Berger] ... will have to incur substantial expenditure and losses in remedying the damage and repairing the defects. And is presently subject to [SCDL's] refusal to pay for more than 10% [of] [DWF's] deliverables ie QAR 19,500.

46. Pursuant to article 91 of the QFC Contract Regulations 2005, Roland Berger was entitled to withhold payment because of DWF's defective performance.

47. However, at the beginning of the hearing Mr Sakr confirmed, and repeated in his closing submission, that Roland Berger's case is as follows:

...the basis of their counterclaim is a set-off between any sums awarded to DWF and 90% of the agreed fixed fee of QAR 195,500 claimed. The basis of this calculation arises from the Supreme Committee's refusal to pay for more than 10% of DWF's fixed fee ... the balance of 90% becoming pure loss for Roland Beger if they are ordered to pay the fixed fee to DWF.

48. Roland Berger has not provided evidence of any loss or expense said to have been incurred as a consequence of DWF's performance.

49. There was of course no contractual relationship between DWF and SCDL. Roland Berger's evidence as to the position as regards SCDL is scant. Its evidence is that Dr Hassan of SCDL considered that DWF's work was worth only 10% of the QAR 195,500 agreed fee. Roland Berger called no evidence from SCDL.

50. Mr Castillo, Managing Director for Roland Berger in the Middle East and Director for Roland Berger LLC, referred to discussions with SCDL over many months about fees. No detail of those discussions has been provided. Mr Castillo described

a discussion with Dr Hassan on behalf of SCDL in September 2023. He said that Dr Hassan was dissatisfied with DWF's performance and said, "*he would not pay DWF more than 10% of the fees that we had agreed upon with DWF*". That evidence was not challenged at the hearing.

51. Mr Castillo also said that SDCL had not paid Roland Berger because no invoice had yet been provided, the explanation being that no invoice would be raised until an agreed position as between Roland Berger and SCDL been reached.

52. Roland Berger also relies on emails referring to SCDL's dissatisfaction. Mr Biegert said in his statement:

... feedback was extensive and pointed out major quality issues and gaps in the analysis as well as the expected detail, based on the scope agreed. Consequently, the Claimant has attempted to address the received feedback. However, the Claimant missed many of the feedback points within their revision attempts. Hence, the Claimant was asked multiple times by the Defendant and its client to further refine their deliverables to reflect all the feedback received, and fulfil all scope items at the required quality and detail.

53. Roland Berger has not disclosed the detail of the relationship with SCDL. We do not know the scope of the work which Roland Berger had agreed to undertake for SCDL or whether Roland Berger completed any scope with which DWF had no involvement. Even if it is the case that SCDL has refused to pay Roland Berger, that does not of itself demonstrate that Roland Berger is not liable to pay DWF.

54. The latest document provided to us - dated 20 September 2023 - is the last in a string of emails which indicate that, by that date, deliverables acceptable to SCDL had been provided by DWF.

55. Roland Berger has provided no evidence as to its own satisfaction or dissatisfaction with DWF's work. It relies solely on SCDL's criticisms. There is little evidence as to the basis for SCDL's criticisms or to explain SCDL's dissatisfaction. Roland Berger has not demonstrated that any refusal by SCDL to pay Roland Berger is caused by any act or omission on the part of DWF. We conclude that that Roland Berger's counterclaim and thus its defence fail.

56. Accordingly, DWF's claim succeeds in respect of the QAR 195,500 which Roland Berger should have paid.

Interest

57. DWF invoiced for its fee of QAR 195,500 on 13 July 2023. Roland Berger should have paid that sum by no later than end September 2023, as it appears that, by about 20 September 2023, deliverables within the scope of work agreed between DWF and Roland Berger had been provided to SCDL.

58. We conclude that DWF is entitled to interest on QAR 195,500 from 1 October 2023 until the date of this judgment at the rate of 5% per annum i.e. a total of QAR 8,860.50 as at the date of this judgment and continuing at a daily rate of QAR 26.85 until the date of payment.

Costs

59. DWF have succeeded in respect of part of its claim. It would probably not have been paid any sum without these proceedings.

60. We conclude that Roland Berger must pay DWF's costs of these proceedings, to be assessed by the Registrar if not agreed.

By the Court,



[signed]

Justice Her Honour Frances Kirkham CBE

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

Representation

The Claimant was self-represented.

The Defendant was represented by Mr Marwan Sakr of SAAS Lawyers and Avocats (Beirut, Lebanon).