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: [2025] QIC (A) 5

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

APPELLATE DIVISION

[On appeal from [2024] QIC (F) 38]

Date: 20 March 2025

CASE NO: CTFIC0012/2024

DWF LLP

Claimant/Appellant

V

ROLAND BERGER LLC

Defendant/Respondent

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice George Arestis

Justice Chelva Rajah SC

Order

1. The appeal is allowed.

2. The Respondent is ordered to pay to the Appellant the sum of QAR 310,000 within 14 days of the date of this judgment.

3. The Respondent is to pay to the Appellant interest on the sum set out in paragraph 2, above, at the judgment rate of 5%, which amounts to QAR 16,308.48 as at the date of this judgment, continuing at the daily rate of QAR 42.47 until the date of payment.

4. Subject to any submissions that the Respondent may make within 14 days of the date of this judgment, the costs incurred by the Appellant are to be paid by the Respondent in such amount as may be agreed or, in default of agreement, in such amount as assessed by the Registrar.

Judgment

The nature of the dispute and the appeal

1. The Appellant ('**DWF**') appeals with the permission of this Court from the judgment of the First Instance Circuit (Justices Her Honour Francis Kirkham CBE, Fritz Brand and Ali Malek KC) given on 25 August 2024 holding that DWF was entitled to be paid QAR 195,500 (together with interest and costs) for legal work done for the Respondent ('**RB**'), and dismissing DWF claim for a further amount of QAR 570,880.

2. DWF, an international law firm with a branch in Qatar, agreed in June 2023 with the well known international global consultancy, RB, to undertake work in drafting and defining a mandate and operating model which RB was to prepare for Qatar's Supreme Committee for Delivery and Legacy ('**SCDL**').

3. Although the terms of the initial agreement between RB and DWF were the subject of a dispute between the parties, the parties agreed in the course of the hearing before the First Instance Circuit that an agreement was made on 11 June 2023 that DWF would

carry out for RB the scope of work identified in DWF's email of 8 June 2023 for a fixed fee of QAR 195,500.

4. It was the case of DWF before the First Instance Circuit that not only was it entitled to be paid QAR195,000 as the fixed fee for the work done which was within the scope of what was agreed on 11 June 2023, but, as it had done additional work at the request of RB, it was entitled to be paid for that work the sum of QAR 570,880. RB contended that the work done by DWF was deficient and it was therefore not liable to pay QAR 195,500. RB also denied that DWF had carried out any additional work beyond that agreed on 11 June 2023 and therefore no further sum was payable.

5. The First Instance Circuit held that:

    i. The work done by DWF was not deficient and therefore RB had to pay DWF QAR 195,500. No appeal has been brought by RB against that part of the decision. QAR 195,500 plus interest was paid into Court by RB and has subsequently been transferred to DWF.

    ii. DWF had done additional work, but DWF had failed to prove that it was entitled to be paid any sum for that work.

The background and the decision of the First Instance Circuit

<u>The agreement reached between DWF and RB on 11 June 2023</u>

6. DWF and RB entered into negotiations in May/June 2023 for DWF to perform legal work. There were exchanges of emails and a draft of a letter of engagement. As we have set out, agreement was reached on 11 June 2023 on the scope of work set out in the email of 8 June 2023 which was to be undertaken for the fixed fee of QAR 195,500. The terms included the following 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 failed attempt to agree a letter of engagement

7. After that agreement had been reached, RB asked that a letter of engagement be prepared to formalise the engagement. Such a letter would be usual. DWF sent a draft letter of engagement on the 11 June 2023. RB asked for a revised version. DWF sent the revised version on 13 June 2023 which was the subject of numerous tracked changes. The draft included the following at paragraph 8:

   8.1 Our charges will be determined primarily by reference to time we properly spend. Unless otherwise agreed by us, our time will be charged at the hourly rates of each fee earner involved.

   8.4 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.

8. RB commented that it wanted prior approval before additional work was undertaken. The draft also set out hourly rates, a partner being charged at an hourly rate of QAR 2,700 with other rates for more junior lawyers.

9. RB sent their in-house counsel's comments on the draft to DWF on 15 June 2023. One of the comments was:

   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.

10. DWF did not respond either then or when subsequently chased by RB. No letter of engagement was in the result agreed. DWF proceeded to carry out its work.

The work carried out and the invoices for further work

11. On 3 July 2023, DWF sent what it regarded as the final draft within the agreed scope as in its view the work within the agreed scope had been completed and everything further was additional work.

12. On 4 July 2024, DWF sent RB an email offering to create an Arabic version of the PowerPoint presentation, but noting that there would need to be an increase in the fee.

On 13 July 2023, DWF sent RB an invoice for QAR 195,500 –the fee agreed on 11 June 2023. It contained no details of the work done on the basis that the work was done for a fixed fee.

13. On 31 July 2023, DWF sent RB an invoice for QAR 330,700. As the First Instance Circuit explained at paragraph 38 of its judgment, annexed to that 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.*

14. Thereafter 3 further invoices were sent, each with similar detail:

    i. 31 August 2023 – QAR 142,090

    ii. 29 September 2023 – QAR 96,740

    iii. 31 January 2024 – QAR 1,350

15. RB made no response when it received the invoices, and made no payment either for the fixed fee of QAR 195,500 or for the amounts for additional work.

16. Proceedings were commenced by DWF in March 2024 and a counterclaim was brought by RB.

<u>The finding that the work done was not deficient</u>

17. At the trial, which took place remotely, the principal issue that was raised by RB was that everything done by DWF was deficient. It was entitled to set off the damages it had suffered against the sum of QAR 195,500. RB also contended that DWF had not done anything beyond the scope of the work to be done for the fixed fee. The First Instance Circuit held, at paragraph 55, that the contention the work was deficient failed:

> *RB 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 of SCDL's criticisms or to explain SCDL's dissatisfaction. RB has*

not demonstrated that any refusal by SCDL to pay RB is caused by any act or omission on the part of DWF. RB's counterclaim and thus its defence fails.

18. Thus, RB failed on the primary issue it raised. DWF was therefore entitled to succeed on its claim for payment of QAR 195,500. As no appeal was brought by RB, it is therefore unnecessary to say more about the issue of deficiencies in the work.

The findings of the First Instance Circuit that DWF was not entitled to payment for the additional fees claimed

19. The First Instance Circuit considered that there were three questions on which to base its findings.

20. The first question was whether any additional work had been done at the request of RB. It found at paragraph 22 that the scope of the work changed as a result of RB's requests to meet with and liaise with the SCDL, and of RB passing on to DWF all requests made by the SCDL. At paragraph 23, it set out its conclusion:

> *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.*

21. RB made no appeal against that finding.

22. Although the First Instance Circuit made this determination, it did not make any further findings as to the additional work done.

23. The second question was whether DWF was entitled to be paid for the work on basis of an agreement as to how additional work should be paid for. The First Instance Circuit concluded, at paragraphs 36 and 37 of its judgment, that DWF had not proved an express agreement to that effect:

> *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.*

> *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.*

24. The third question was whether DWF had proved its entitlement to any sum. The First Instance Circuit concluded that DWF had not. Although DWF had shown it had undertaken more work than originally envisaged, the burden was on DWF to prove the scope of additional work and the basis on which it should be paid. The First Instance Circuit decided that DWF had failed to do so. At paragraph 41, it said that DWF had 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.*

25. Nor had DWF proved the quantum of any aspect of the claim; the fact invoices had been sent was not sufficient. It had not shown by evidence how the fees in the invoices had been calculated and that they had been properly incurred. The First Instance Circuit concluded at paragraph 44 as follows:

> *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.*

Conclusions

26. We approach the appeal on the basis that the First Instance Circuit found that significant work additional work had been done at the request of RB, but that DWF could not recover because it had failed to prove what that additional work was or the remuneration for that work.

27. It is convenient first to examine whether there was the necessary evidence to establish what additional work was done.

<u>Had DWF proved the additional work done?</u>

28. The First Instance Circuit found that DWF did work beyond the scope of the agreement of June 2023. However, it did not determine what that additional work was, save to hold that DWF was instructed to "*undertake a significant amount of additional work*". It was contended by DWF that the First Instance Circuit had been wrong; the additional work done had been set out in the invoices and there was no challenge to any of the items.

The way in which DWF put its case before this Court

29. DWF put its case before the First Instance Circuit on the basis that the evidence that it had done additional work and the rates payable for that work were set out in the invoices. Before this Court, DWF contended that RB never submitted before the First Instance Circuit that the work set out in the invoices had not been done. The First Instance Circuit should therefore have accepted what was set out in the invoices as sufficient evidence of the work done.

The evidence before the First Instance Circuit as to the additional work done

30. DWF, which was represented before the First Instance Circuit by Mr Durrant, the partner who been the partner responsible for the work done for RB, could have provided a short witness statement to the effect that the work set out in the invoices had been done as additional work outside the agreed scope. That would have formally satisfied any evidential burden, and in the absence of challenge, that would have been sufficient.

31. However, all the detailed invoices were before the Court. No challenge whatsoever was made as to whether the additional work had been done or whether specific aspects of it were within the agreed scope. The question before us is therefore whether the failure to have followed the proper formal course of placing a short witness statement before the Court had the consequence that the Court could not rely on the invoices as evidence of the work done, in circumstances in which the First Instance Circuit had found that DWF had done a significant amount of additional work at the request of RB.

32. It is commonplace in civil courts (as distinct from criminal courts) to treat what is recorded in documents as evidence, save where it is suggested that the documents are untrue or inaccurate or unreliable. Indeed, in approaching some issues, courts have

greater regard to contemporaneous documents rather than subsequent recollection as evidence of what had happened. Given modern practice, we consider that the detailed invoices should have been treated as satisfying the initial evidential burden that rested on DWF of showing that the additional work had been done, leaving RB at the very least to raise questions as to the detailed items on the invoices and to challenge their reliability or accuracy; if there had been such a challenge, then DWF would have had to meet that challenge, but that is not the course the trial took.

Our conclusion on the additional work done

33. We therefore consider that the failure formally to call evidence did not entitle the First Instance Circuit either to disregard the invoices as evidence or, in the absence of challenge to the specifics of the work done, to conclude that the invoices did not amount to evidence proving the work had been done.

34. Having decided that in all the circumstances that DWF had proved the additional work done, we therefore turn to the question as to whether express agreement on the rate of remuneration was necessary if RB was under an obligation to pay for the additional work it instructed be done.

Was it necessary to have a specific agreement on the rate at which the work should be paid for?

The primary arguments of the parties

35. The First Instance Circuit held that there had to be an express agreement as to the rates at which DWF was to be remunerated. DWF contended that this was incorrect, but if it was correct, there was an agreement that DWF would be remunerated for work beyond the scope of that set out in the agreement of 11 June 2023. That agreement had been concluded by conduct under articles 15 and 20 of the QFC Contract Regulations 2005. Invoices had been sent on 31 July 2023, 31 August 2023, 29 September 2023 and 31 January 2024 setting out the rates payable. By instructing DWF to carry out further work after receipt of each successive invoice, RB accepted that the further work would be done at the rates specified in the invoices. The First Instance Circuit had ignored its own findings that the agreement reached on 11 June 2023 was for a specified amount of work at a fixed fee. Once it was determined that the scope of the work was fixed, then all additional work outside that had to be paid for.

36. RB contended that it had wanted an agreement that covered any additional work. Nothing was agreed. Even if there was a request to do further work and it was done (as the First Instance Circuit had found), there could be no recovery as there was no agreement as to how DWF would be entitled to charge for additional work. Without agreement on the rate, there could be no agreement. RB had on 6 August 2023 expressly refused to agree charging for all extra work.

The effect of DWF's acceptance that there was no agreement as to the rate of remuneration for the additional work done up to 31 July 2023?

37. It is convenient to consider the question as to whether an agreement on the rate of remuneration was necessary if DWF was to be paid for the additional work by examining the position that arose as at 31 July 2023 when the first of the invoices for additional work was sent. During his submissions before us, Mr Crangle who appeared for DWF accepted that in relation to the invoice of 31 July 2023, it was untenable to contend that RB had agreed to the rates set out in that invoice by conduct as it had no notice of those rates when it instructed DWF to do the work set out in that invoice.

38. Thus, for the additional work done up to 31 July 2023, as it could not be contended that there was any agreement as to the rates payable, it is necessary to determine whether RB was nonetheless under obligation to pay for the additional work RB had instructed be done.

Is DWF entitled to rely in this Court on Article 58 of the QFC Contract Regulations 2005?

39. The argument was therefore made by DWF that the work done in this invoice was covered by the provisions of article 58 of the QFC Contract Regulations 2005 and it was therefore not necessary to establish an agreement as to the rate to place RB under an obligation to pay for the work it had instructed be done.

> *ARTICLE 58 – PRICE DETERMINATION*
>
> *(1) Where a contract does not fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have made reference to the price generally charged at the time of the conclusion of the contract for such performance in comparable circumstances in the trade concerned or, if no such price is available, to a reasonable price.*
> *(2) ….*
> *(3) …*

40. At the trial, no reference was made to this provision. It was therefore contended by Mr Marwan Sakr that as this provision was never relied upon at the trial, it could not be relied upon before this Court. Article 58 moreover was a claim for a *quantum meruit* and not a claim under a contract. As the whole of DWF's claim was pleaded in contract, a quantum meruit under article 58 or remedy based on restitution or unjust enrichment could not be sought as it was a fundamentally different claim to the claims made at trial.

41. This Court has made clear that it will take a strict approach to new arguments or issues which have not been before the First Instance Circuit being raised on appeal: see *Klaas Bouwman v Kofler Middle East Group LLC* [2024] QIC (A) 1, *Aarnout Henri Nicolaes Wennekers v Qatar Free Zones Authority* [2024] QIC (A) 7, *Nigel Perera v Qatar Financial Centre Regulatory Authority* [2022] QIC (A) 6, and *Amberberg Limited and another v Prime Financial Solutions LLC and others* [2024] QIC (A) 4.

42. In considering whether DWF should be permitted to raise article 58, it is first necessary to address the argument made that this is a claim in restitution and not in contract, and therefore completely outside the contentions addressed to the First Instance Circuit.

43. Article 58 was based on the UNIDROIT General Principles for International Commercial Contracts. This is evident from article 5.1.7 of the Principles, as set out in the 2004 edition of the Principles, the provision (which is the same in the 2016 principles) states:

> *(1) Where a contract does not fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have made reference to the price generally charged at the time of the conclusion of the contract for such performance in comparable circumstances in the trade concerned or, if no such price is available, to a reasonable price.*
> *(2) ……*

44. Article 5.1.7 is included within section 1 of the Principles – the content of the contract. The commentary (which is materially the same in both 2004 and 2016 versions) makes clear that this provision is a contractual provision to address the problem which arises in a contract where the price has not been fixed or a method found for its determination:

> *A contract usually fixes the price to be paid, or makes provision for its determination. If however this is not the case, para. (1) of this Article presumes that the parties have made reference to the price generally charged at the time of the conclusion of the contract for such performance in comparable circumstances in the trade concerned. All these qualifications are of course significant. The provision also permits the rebuttal of the presumption if there is any indication to the contrary. This Article is inspired by Art. 55 CISG. The rule has the necessary flexibility to meet the needs of international trade.*

45. In our view, a claim under article 58 of the QFC Contract Regulations 2005 is not a claim in restitution. It is a default provision to operate under a contract where the price has not been fixed or a method for determining it agreed. The term *quantum meruit* is sometimes used to describe in English common law this type of claim (as in Chitty on Contracts (Hugh Beale ed, 35th edn, Sweet & Maxwell Ltd 2024, Vol. 1 at paragraph 33-077), but it is clear that it is a claim in contract to fix the price or remuneration under a contract where the price has not been agreed. In some systems such as under English law, the obligation to pay is treated as an implied term to pay a reasonable sum, but under the QFC Contract Regulations 2005, it is simply a term provided to be used where a provision for fixing the price has not been agreed.

46. Given that this is not a claim in restitution, but a different legal argument on the way a claim under the contract is being made, should we entertain it? It is important to point out that neither party sought to suggest that this Court should consider any new evidence, documentation or other material that had not been before the First Instance Circuit. As article 58 operates as a matter of law to provide a term of the contract in default of the agreement of the parties, and as no new material or evidence is relied on and there is no possible unfairness to RB, this Court will in the specific circumstances of this case admit the contention based on article 58.

Was the agreement to pay dependent on the express agreement of a rate?

47. It is in our judgement clear from the findings of the First Instance Circuit that the additional work was done on the instruction of RB. We have set out our conclusion in relation to the extent of that work; for the period between 4 and 10 July 2023, the extent was set out in the invoice. Although no price was agreed, it is clear that in so far as additional work was to be done by DWF beyond the scope set out in the email of 8 July 2023, it was implicit in the agreement between the parties that that was work to

be paid for; it was not work that was being done for free. In the assumptions set out in the email of 8 June 2023 DWF made clear:

> *Unless we later agree otherwise, our fee proposal above does not include any work outside the scope of work.*

48. There was no "*agreement otherwise*". When, therefore, RB instructed DWF to do additional work between 4 and 31 July 2023, it did so on the basis that this was to be paid for by RB and implicitly (expressly) agreed to do.

49. The whole purpose of article 58 was to address the position that arose in the absence of the parties fixing the price. That was the case for the work done between 4 and 31 July 2023. The agreement to pay for the additional work was not dependent on express agreement as to the rate of remuneration.

50. We therefore conclude that the obligation of RB to pay was not dependent on the agreement of a rate as the provisions of article 58 were applicable. Before considering the remuneration payable under article 58, we return to the question as to whether there was an express agreement on the rates payable for the additional work done after 31 July 2023.

<u>Was there an agreement as to the price to be paid for the work done after 31 July 2023?</u>

51. The short question is whether there was an express agreement as to the rates to be paid which had resulted from the conduct of the parties.

52. The invoice of 31 July 2023, and those of 31 August 2023 and 29 September 2023 were sent on those dates. Apart from the entry on the invoice of 31 August 2023 relating to work done on 31 July 2023, instructions to do the work after 31 July 2023 would have been given after RB had notice of the rates that DWF were going to seek to charge for the work. Did the conduct in giving those instructions after 31 July 2023 amount to an acceptance of those rates as the rates that were to be paid? If so, there was no need for dependence on article 58 for that period.

53. It is clear from the documentation prior to 31 July 2023 that RB had not agreed any rates for additional work. It was evident from the email of 16 July 2023 and the email

of 31 July 2023 that RB's position was that it would dispute the hourly rate payable, as had happened during the contract negotiations; it would also seek a cap. On 6 August 2023, RB had raised the question as to payment for extra work.

54. In the circumstances, the question therefore arises as to whether RB's conduct in giving instructions for additional work amounted to an acceptance that the additional work was to be paid for on the basis of the time spent multiplied by the hourly rate specified in the invoices. It is difficult to see that RB, by giving instructions to do the work, was agreeing to do anything more than to pay for the extra work at a reasonable overall price, if the work was additional work. It was not agreeing to pay at the rates specified.

55. This is therefore a case where article 58 is applicable to the entirety of the claim.

What is a reasonable remuneration under article 58 for the additional work?

56. It was suggested to us that the rates set out in the letter represented reasonable rates of remuneration; we were referred to the decision of Mr Registrar Grout in *Pinsent Masons LLP (QFC Branch) v Al Qamra Group* [2018] QIC (C) 1 as showing the rates allowed on a costs assessment.

57. However, we do not consider using the applicable rate set out in the invoices in respect of the hours spent in of doing the additional work provides in the circumstances a price that is reasonable remuneration for the additional work. An overall judgment has to be made as to what is reasonable remuneration and not the simple multiplication by given rates of hours spent (which we accept were spent as set out in the invoices). It is necessary for us to have regard to the fact that a fixed fee of QAR 195,500 for the work specified in the scope, the nature of what was done, and the expenses incurred as set out in the invoices and to look at the overall proportionality. As this case shows, a simple application of rates to hours, although common, is not the way that fees are always fixed or agreed. Before giving our conclusion as to what is reasonable remuneration for the period from 4 to 31 July 2023, we turn to consider the work done thereafter.

58. As we have explained, we accept the evidence as to the work done, but as by way of example happens on a costs assessment as to what is reasonable, account has to be

taken of all the circumstances. Taking into account the amount of the fixed fee, the very substantial amount work done, the nature of that work, the rates charged, the practice of fixing a lump sum and all other relevant matters in the legal profession in Qatar, we consider reasonable remuneration to be QAR 310,000 for the additional work.

Overall conclusion on the appeal

59. We therefore allow the appeal for the reasons we have given to the extent of ordering RB to pay a further QAR 310,000.

By the Court,

[signed]

Lord Thomas of Cwmgiedd, President

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

Representation

The Claimant/Appellant was represented by Mr Thomas Crangle of Counsel (4 Pump Court, London, UK), instructed by the Claimant/Appellant itself.

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