



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: [2020] QIC (C) 2

IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE

29 July 2020

CASE No. CTFIC1009/2018

CASE No. 2 of 2019

BETWEEN:

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

Applicant

v

FIRST ABU DHABI BANK P.J.S.C

Respondent

COSTS ASSESSMENT

Before:

Mr Christopher Grout, Registrar

JUDGMENT

Introduction

1. The background relating to this case is set out in the judgment of the First Instance Circuit of the Court reported at [2018] QIC (F) 12 and the judgment of the Appellate Division reported at [2019] QIC (A) 3. Suffice it to say, the First Instance Circuit of the Court granted an application filed by the Applicant and ordered the Respondent, among other things, to comply forthwith with a Regulatory Notice dated 19 March 2019. The Appellate Division of the Court granted the Respondent permission to appeal but dismissed the substantive appeals. It gave the Respondent a limited opportunity to apply to the First Instance Circuit in relation to certain specified aspects of the Regulatory Notice. The Respondent did not do so.
2. Prior to the hearing of the appeal, the First Instance Circuit convened on 17 February 2019 to consider various applications in relation to a stay of execution (sought by the Respondent) and a request that the Respondent file an affidavit concerning certain matters (sought by the Applicant). In its judgment reported at [2019] QIC (F) 2, the First Instance Circuit dealt with these various applications and ordered, among other things, that the Respondent was to pay the Applicant's reasonable costs of the hearing, to be determined by the Registrar if not agreed. That order was not interfered with on appeal.
3. On 9 June 2019, the Appellate Division awarded the Applicant its reasonable costs in respect of the appeal.
4. Subsequently, proceedings were initiated against the Respondent for contempt. For reasons the First Instance Circuit gave at [2019] QIC (F) 8, the Respondent was held to be in contempt of various orders of the Court. Despite this finding (and for the reasons given at paragraph 13 of its judgment) the First Instance Circuit made no order as to costs in respect of the application for contempt.
5. On 9 October 2019, the Applicant filed an application for costs to be assessed as it had been unable to reach agreement with the Respondent.

6. No response was received from the Respondent. I wrote to the Respondent on 27 October 2019 inviting it to file and serve a response to the Applicant's application by no later than 24 November 2019. It failed to do so. I warned the Respondent, in the letter of 27 October 2019, that if no response was filed, I would proceed to conduct the Costs Assessment, without further reference to it, on the basis of the materials provided by the Applicant in support of its application.

7. I should add that, since the judgment of the Appellate Division granting permission to appeal but dismissing the substantive appeals, the Respondent has not engaged with correspondence from the Court. Indeed, it has gone out of its way to avoid receipt of communications. Copies of my correspondence (along with the Applicant's application for a Costs Assessment) were sent to the Respondent at its QFC registered office, as well as, by courier, to its head office in Abu Dhabi. Copies were also sent by email to the individual holding the 'senior executive function' of the QFC office as well as to the Respondent's previously instructed legal representatives ('previously instructed' because they purported to come off the record following the judgment of the Appellate Division). As to the QFC registered office, although no formal application has been made to the Applicant to deregister and close the office, it is, for all practical purposes, closed, a notice to this effect having been affixed to the door of the office. The email to the individual holding the senior executive function of the QFC office was met with an auto-generated response which stated that the email had been 'quarantined.' The documents sent to the head office in Abu Dhabi were not accepted by the Respondent who informed the courier to return them. Evidence to this effect was filed by the courier. The Respondent's previously instructed legal representatives consider themselves to be no longer acting and so they have been unable to assist. Accordingly, I am satisfied that all has been done that could reasonably have been done to notify the Respondent and encourage it to engage in the Costs Assessment. I have come to the conclusion that it has made the deliberate decision not to engage and so the Costs Assessment has been carried out without further reference to it.

Ancillary Matters

8. On 21 August 2019 the Applicant imposed upon the Respondent a financial penalty of QAR 200,000,000.00 for reasons explained in its accompanying Decision Notice. That Decision Notice was not appealed to the QFC Regulatory Tribunal and so the Applicant brought proceedings before the Court to seek recovery of the unpaid financial penalty as a debt. The Court, in its judgment reported at [2020] QIC (F) 2, granted that application and further ordered payment of interest “at a rate to be determined by the Registrar.” In the meantime, the present Costs Assessment had been stayed, by me, so that all outstanding matters could be dealt with together. On 27 July 2020, the Applicant filed detailed submissions in relation to the question of interest which raised issues of wider importance as the Court has not previously considered the issue of interest rates applicable to financial penalties determined by the Court to be debts payable to and recoverable by the Applicant pursuant to the relevant provisions of the Financial Services Regulations. Coincidentally, on the same day, a differently constituted Court (dealing with an entirely unrelated matter) was asked to consider very similar issues. Accordingly, I decided to stay the interest determination arising out of the Court’s judgment at [2020] QIC (F) 2 until such a time as the Court (in the unrelated matter) has issued its judgment. So as not to further delay the Costs Assessment in the present cases, I decided to determine and release it now.

The Need for a Hearing

9. I am afforded a ‘wide discretion’ as to the procedure to be adopted when undertaking a Costs Assessment.¹ Ordinarily, such assessments will be undertaken on the papers, i.e. without the need for an oral hearing. In this case, the Applicant has not sought an oral hearing. Although it is regrettable that the Respondent has not engaged with the process, I am satisfied that it is appropriate to undertake the Costs Assessment on the written material provided to date without the need for any oral submissions.

¹ *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (F) 2, at paragraph 21. That principle was not interfered with by the Appellate Division of the Court in the same case in its judgment dated 11 September 2017.

The Principles to be Applied

10. Ordinarily, for costs to be recoverable, they must be reasonable. In *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (C) 1 I laid down the principles to be applied when assessing ‘reasonable costs.’ At paragraphs 10-12 I said:

How is the issue of reasonableness to be approached? In my judgment, in order to be recoverable costs must be both reasonably incurred and reasonable in amount. If they are not then they are unlikely to be recoverable.

I have identified the following (non-exhaustive) list of factors which will ordinarily fall to be considered when assessing whether or not costs have been reasonably incurred by a party and, if they have, whether they are also reasonable in amount:

- (a) Proportionality;*
- (b) The conduct of the parties (both before and during the proceedings);*
- (c) Efforts made to try and resolve the dispute without recourse to litigation (for example through Alternative Dispute Resolution);*
- (d) Whether any reasonable settlement offers were made and rejected; and*
- (e) The extent to which the party seeking to recover costs has been successful.*

When considering the proportionality factor, the following (again non-exhaustive) factors are likely to fall to be considered:

- (a) In monetary or property claims, the amount or value involved;*
- (b) The importance of the matter(s) raised to the parties;*
- (c) The complexity of the matter(s);*
- (d) The difficulty or novelty of any particular point(s) raised;*
- (e) The time spent on the case;*
- (f) The manner in which work on the case was undertaken; and*
- (g) The appropriate use of resources by the parties including, where appropriate, the use of available information and communications technology.*

11. Those principles were, upon review by the First Instance Circuit of the Court, approved.² In the present case, the Applicant did not seek to suggest, in its written submissions, that those principles should not be applied here.

The Submissions

12. Although the Respondent has not engaged in the process, it is still for the Applicant to establish that the costs it claims have been reasonably incurred and are reasonable in amount.

13. In its application of 9 October 2019, the Applicant seeks a total of QAR 477,201.00. The Applicant submits that this amount is ‘reasonable and proportionate’ considering, in particular, the following:

- (a) The case was one of considerable importance and justified the instruction and attendance of leading counsel with specialist knowledge of international financial services law. The litigation (which still continues) was complex, involved novel issues and FAB is a major global bank who sought to robustly defend itself and who instructed a large international law firm;
- (b) The Regulatory Authority has minimised its own costs by not instructing an external law firm and by using its in-house legal expertise. If an external law firm had been instructed, costs would have been substantially higher;
- (c) FAB has ample financial resources and is able to pay any award made. Had the Regulatory Authority lost the claim, it would no doubt have been asked to pay costs far higher than those claimed by it now; and

² *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (F) 2 at paragraph 20. The decision of the Court to approve those principles was not interfered with by the Appellate Division of the Court in the same case in its judgment dated 11 September 2017.

- (d) The Respondent's conduct of the proceedings has significantly increased the costs incurred, in particular by its refusal to provide reasonable information requested or to co-operate.

The February 2019 Hearing

14. In relation to the February 2019 hearing, the Applicant's costs claimed amount to QAR 105,761.00. This is broken down as follows- (a) preparation costs, QAR 34,344.00, (b) counsel's fees, QAR 49,513.00, and (c) other fees, QAR 21,904.00.
15. The preparation costs comprise 36 hours spent by the Director of Enforcement of the Applicant essentially preparing and reviewing pleadings and drafting correspondence. An accompanying table, prepared by the Applicant, explains precisely what work was undertaken. Counsel's fees relate to preparation for, and attendance at, the hearing. The other fees relate to flights and accommodation of counsel (for attending the hearing) plus transcription.

The Appeal Proceedings

16. In relation to the appeal proceedings, the Applicant's costs claimed amount to QAR 371,440.00. This is broken down as follows- (a) preparation costs, QAR 109,863.00, (b) counsels' fees, QAR 234,907.00, and (c) other fees, QAR 26,670.00.
17. The preparation costs comprise 188 hours spent by two staff members of the Applicant (including the Director of Enforcement) essentially preparing and reviewing pleadings in respect of the appeal and drafting correspondence. Again, an accompanying table, prepared by the Applicant, explains precisely what work was undertaken. The hourly rates and number of hours spent by each of the two staff members is provided. Counsels' fees relate to preparation for, and attendance at, the hearing. Notably, because the originally instructed counsel was not available to undertake the appeal, a

second counsel was instructed part way through the process. The other fees relate to flights and accommodation of counsel (for attending the hearing) plus transcription costs and various courier charges.

Consideration and Conclusions

18. I have not had the benefit of any submissions from the Respondent. It is therefore unclear which, if any, of these costs it takes issue with and why. In reaching a conclusion, I intend to apply a reasonably broad-brush approach whilst keeping firmly in mind the principles set out at paragraph 10 above.
19. Briefly, in relation to the Applicant's submissions, I observe as follows. First, I accept that the case was one of considerable importance. As the various judgments make clear, the underlying regulatory issues were both serious and complex. I need not rehearse the reasons why here.
20. As to the Respondent's assertion that it has minimised costs by relying on in-house expertise, that may be right. As I observed recently (see *Horizon Crescent Wealth LLC v Qatar Financial Centre Regulatory Authority* [2020] QIC (C) 1 at paragraph 18):

Whilst instructing external lawyers is quite often an expensive exercise, the counter point is that people who are specialists in the field are being instructed and so are able to spend less time considering and preparing a case than a lay person would. More importantly, they are able to identify and focus upon the important issues which should help in improving the efficacy of the litigation process. In the present case, each of the in-house personnel employed by the Respondent are experts in their respective fields. They are not, however, litigators. It is, therefore, at least arguable that any savings that may have been made by utilising in-house expertise are not as substantial as the Respondent considers them to be.

21. Since issuing that judgment, the Applicant has explained that, in fact, one of its number has relevant litigation experience. I accept that. More importantly, however, is the fact that, for the reasons explained in *Horizon*, I accept that such costs are, as a matter of principle, recoverable providing that they have been reasonably incurred and are reasonable in amount. I am satisfied that the hourly rates claimed are significantly lower than what would have been charged by external lawyers. As in *Horizon*, I can reach this conclusion with confidence given the professional rates claimed in other cases I have dealt with. Whether the total number of hours spent is reasonable is a different matter which I shall return to below.
22. The Applicant asserts that the Respondent has ample financial resources and thus the ability to pay any award made. Whilst that may well be right (indeed it undoubtedly is given the identity of the Respondent) the ability to pay does not go directly to the question of whether costs have been reasonably incurred. For example, it would be wrong, in principle, for a party to incur unjustified and/or unreasonable costs and then be permitted to recover them simply because the paying party can afford it.
23. Finally, the Applicant's criticisms of the Respondent's conduct are at least partially justified. The fact that the Respondent has, since the issuing of the Appellate Division's judgment, refused to engage with the Court, is not relevant for the purposes of this Costs Assessment (which concerns matters which occurred before then). However, the Respondent's conduct which led to the February hearing is certainly questionable- see, for example, paragraphs 27, 30, 32 and 35 of the Court's judgment at [2019] QIC (F) 2, and a relevant consideration.
24. Turning to the various heads of costs:

The February 2019 Hearing

25. Having accepted that the preparatory costs are recoverable in principle and having accepted that the hourly rates are reasonable, the question is whether the total time expended in preparation of this hearing (and the associated cost) was reasonable. It seems to me that, bearing in mind the nature of the litigation and, in particular, the fact

that many of the hours were incurred as a result of the obstinate and unhelpful position taken by the Respondent, the 36 hours spent preparing the case are reasonable. The associated cost (QAR 34,344.00) seems to me to be reasonable and so, on the face of things, is recoverable.

26. In relation to the instruction of counsel, I am satisfied that the case warranted the instruction of an experienced counsel. The fee notes provided are detailed enough to allow me to come to the conclusion that the nature of the work undertaken by counsel was reasonable as are the fees claimed. Accordingly, I am satisfied that the QAR 49,513.00 claimed is reasonable and so, on the face of things, recoverable.
27. As to the other costs, QAR 21,440.00 relates to accommodation and flight costs of counsel. The Applicant chose to instruct counsel based abroad and incurred costs in bringing him to Doha. It seems to me that, in the context of the present case, these costs were not reasonably incurred. This was a submissions-based application; counsel could very easily have been accommodated over the video-link. Bringing counsel to Doha was the choice of the Applicant and one which it was entitled to make; the Respondent, however, should not be liable for the associated flight and hotel costs. Accordingly, the claim in this regard is refused. QAR 464.00 relates to transcription. This was a reasonable expense incurred in furtherance of the application and is, on the face of things, recoverable.
28. That brings the total sum, in relation to the February hearing, so far deemed to be recoverable to QAR 84,321.00. One of the additional factors that needs to be considered is the extent to which the party seeking recovery of its costs was successful at the hearing. In relation to the February hearing, the Applicant was not entirely successful as the Respondent succeeded in respect of some of the interim relief which it sought, and which had initially been opposed by the Applicant. The Court, in its judgment at [2019] QIC (F) 2 at paragraph 39, observed that

Although the Bank was successful in obtaining a stay in respect of the requirement for production that was before us not a contested matter. The substance of the hearing was preservation and reporting thereon, upon which the Regulator was successful.

29. It seems to me that it would be artificial, in the context of this particular case, to try and make some sort of proportionate reduction to reflect the outcomes of the February hearing. The substance of the hearing was, as the Court observed, resolved in favour of the Applicant and I do not consider that the Applicant's costs would have been in any meaningful way lower had it not initially resisted certain matters. Accordingly, the Applicant is entitled to recover QAR 84,321.00.

The Appeal Proceedings

30. As noted above, the Applicant expended 188 hours in preparation of the appeal, amounting to QAR 109,863.00. For the reasons given above, I am satisfied that in-house preparatory costs are, in principle, recoverable and that the hourly rates of the two staff members involved are reasonable, being significantly less than that which would have been charged by external lawyers. At first blush, 188 hours spent in preparation appears to be quite high. However, the detailed breakdown which accompanies those hours explains how the time was spent. The actions which were undertaken present as entirely reasonable, taking into account in particular the nature and complexity of the proceedings as well as the fact that the Applicant obviously had a legitimate interest in seeking to uphold the judgment of the First Instance Circuit. Moreover, the amount claimed in this regard- QAR 109,863.00- is, in the context of this serious piece of litigation, modest. I am satisfied that it is, on this occasion, substantially lower than the costs that would have been incurred by an external law firm. Accordingly, I have come to the conclusion that the Applicant is entitled to recover the full amount of QAR 109,863.00.

31. Counsels' fees amount to QAR 234,907.00. I am entirely satisfied that it was reasonable to instruct specialist counsel and that the work undertaken by counsel (as well as the associated rates) was reasonable. The problem that exists is that there appears to be, from looking at the various fee notes, some duplication of work by virtue of the fact that counsel who was involved with the first instance proceedings was not available to represent the Applicant at the appeal and so it was necessary to instruct a second counsel. Indeed, one of the fee notes, in the sum of GBP 24,140.00, itself has a note on it explaining that the fees incurred are 'largely due to having to replace counsel at the last minute.' Other fee notes include fees for the various conferences that counsel

had with each other in advance of the appeal. In circumstances where the Applicant's preferred counsel was no longer available, it was of course reasonable for it to instruct an alternative one. However, it seems to me that it would be unfair to place the entire financial burden of this state of affairs on the Respondent- after all it was not its fault that the Applicant's preferred counsel was not available. Having gone through the various invoices, it seems to me that the appropriate amount to award, in the circumstances, is QAR 177,407.00. This figure represents what I consider to be a reasonable amount, making some reduction for the reason mentioned.

32. As to the other fees, QAR 23,390.00 relates to flights and accommodation of counsel to attend the hearing. For the reasons explained in relation to the February hearing, I do not consider that such costs should be borne by the Respondent. In this instance, as with the February hearing, the costs could have been avoided by utilising the video-link. As such, they were not reasonably incurred. QAR 2,741.35 relates to reasonable transcription costs in furtherance of the proceedings and is recoverable. The remaining QAR 538.18 relates to courier charges. I am unable to determine, on the information available, whether such expenses were reasonably incurred and so this amount is not recoverable. Accordingly, the Applicant is entitled to recover QAR 2,741.35 under its claim for other fees.

33. Accordingly, the total amount recoverable as part of the appeal proceedings is QAR 290,011.35. I have considered whether, given the liberty to apply that was afforded to the Respondent in the Appellate Division's judgment, this award should in any way be reduced. I have come to the firm view that it should not, the appeal having been dismissed and the discrete opportunity afforded to the Respondent to apply back to the First Instance Circuit having no meaningful impact on the costs that were incurred as part of the appeal.

Conclusion

34. For the reasons given above, the Applicant's submissions in relation to its reasonable costs are successful, but only to the extent of QAR 374,322.35.

35. Accordingly, the Respondent shall pay to the Applicant the sum of QAR 374,322.35.

By the Court,



Mr Christopher Grout

Registrar

