



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: [2021] QIC (F) 12

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

17 May 2021

CASE No. 13 of 2020

BETWEEN:

MOHAMED ABDULAZIZ MOHAMED ALI AL EMADI

Claimant

v

HORIZON CRESCENT WEALTH LLC

Defendant

JUDGMENT

Before:

Justice Arthur Hamilton

Justice Fritz Brand

Justice Helen Mountfield QC

ORDER

1. The Defendant's defence as formulated in its statement of defence, dated 6 September 2020, is struck out.
2. The Claimant's application in so far as it seeks a debarring order and payment into Court is refused.
3. The parties may, within 21 days of issue of this judgment, file and serve their respective proposals for further procedure in this case, including with respect to any matters consequential upon the striking out order in paragraph 1 above.
4. The Defendant shall pay the Claimant's reasonable costs occasioned by this application, to be assessed by the Registrar if not agreed.

JUDGMENT

1. This is an application by the Claimant for an order that:
 - (a) The Defence is struck out; the Defendant is debarred from contesting the Claim; and judgment may be entered; or
 - (b) The Defence will be struck out; the Defendant will be debarred from contesting the Claim; and judgment may be entered, unless within 21 days, the Defendant pays into Court the sum of QAR 500,000.00; and
 - (c) The Defendant pays the Claimant's costs.
2. The application arises in the context of a claim against the Defendant under an alleged oral contract of employment. The Claimant's case is set out in detail in his statement of claim, dated 27 July 2020. In broad outline the Claimant contends that by virtue of an oral agreement entered into on 22 March 2015 between him and Mr Robert Sharrat, acting on behalf of the Defendant, he was employed as deputy chairman of the Defendant between 1 July 2015 and 27 March 2018. Pursuant to this agreement, so the Claimant contends, he is owed substantial sums by the Defendant. Those sums

comprise QAR 4,558,000.00 by way of salary; US\$ 1,375,000.00 in terms of annual bonus and various amounts by way of expenses he incurred on behalf of the Defendant which have not been paid.

3. A statement of defence was filed on 6 September 2020. The gravamen of the Defendant's position that appears from the statement is that there was no employment contract between it and the Claimant at all; the Claimant was never employed by the Defendant and no sums are owed to him. Moreover, allegations were made against the Claimant in paragraph 11 of the statement of defence which would seem to constitute fraud or at least serious breach of trust on his part, but those allegations were not properly particularised as a fraud allegation is required to be, and no relief was sought on the basis of them.
4. The Claimant maintained that the statement of defence was vague and that he required further information and documents to respond. In consequence he sent the Defendant a request for such information and for the disclosure of documents on 29 September 2020, but did not receive any answer. The Claimant therefore made an application to this Court on 4 November 2020 under article 24.1.3 of the Regulations and Procedural Rules of the Court ('the Rules') to compel the further information and disclosure sought. At the same time the Claimant brought an application for security to be furnished for both his claim and costs, essentially on the basis of the Defendant's financial position which he alleged to be precarious. After a hearing on 13 December 2020, the Court granted an order on 23 December 2020 compelling the Defendant to furnish the majority of the information and documents sought by no later than 21 January 2021. The application for security for the Claimant's claim and costs was, however, refused. On 15 January 2021 the Court struck out paragraph 11 of the statement of defence referred to above, having previously warned the Defendant that, subject to any counter-representations by it, the Court intended to do so.
5. The Defendant failed to comply with the order of 23 December 2020, whether by the prescribed date or at all. This failure gave rise to the Claimant's present application which was filed on 28 January 2021. On 4 February 2021 the Court directed the Defendant to provide its response by 25 February 2021. All that happened on that date

was, however, that the Defendant filed a letter by Mr Robert Sharrat, addressed to the Defendant's director Mr Baeriswyl, which essentially disavows that an employment agreement between the parties ever came into existence. The letter is clearly not, nor did it purport to be, either a response to the application or an attempt to comply with the order of this Court. Nor did the Defendant provide any explanation as to why it failed to respond or comply. On 3 March 2021 the Registrar of the Court informed the parties that the application had been set down for hearing on 13 April 2021 and pertinently indicated that the Defendant had an opportunity to make representations against the orders sought in the application. At the same time the parties were directed to file and serve Skeleton Arguments by 31 March 2021. The Claimant duly complied with this direction but the Defendant did not. In fact, there was no reaction whatsoever by the Defendant prior to the hearing.

6. On 13 April 2021 the application was heard online due to the Covid pandemic. The Claimant was represented by Mr Thomas Williams, Mr Umang Singh and Mr Ahmed Durrani of Sultan Al-Abdulla & Partners. Although Mr Sami Abdullah Abu Shaika appeared for the Defendant, he indicated at the outset that due to lack of funds he was not briefed to address the Court on the merits and that the purpose of his appearance was twofold. Firstly, to show his respect for the Court and, secondly, to ask for a postponement of the hearing. The application for a postponement was opposed on behalf of the Claimant. Since we concluded that no case was made out for a postponement, that application was refused. Thereafter Mr Abu Shaika requested to be excused from further attendance. That request was granted. In the event, the application proceeded on an unopposed basis.

7. The main application rests on Article 31 of the Rules which provides in relevant part:

“31.1 Where a party has without reasonable excuse failed to comply with a direction or order of the Court or a provision of these Regulations and Procedural Rules, the Court may:

31.1.1 make an order as to costs against that party in accordance with article 33 below;

31.1.2 where that party is the claimant or applicant ...

31.1.3 where that party is the defendant or respondent strike out the whole or part of the defence or response and, where appropriate, direct that the defendant will be debarred from contesting the proceedings or application.”

8. Article 31.1 must be read subject to Article 4 which provides under the rubric “*the overriding objective*”:

“4.1 The overriding objective of the Court is to deal with all cases justly.

4.2 The Court must seek to give effect to the overriding objective when it exercises its functions and powers given by the QFC law, including under these Regulations and Procedural Rules and under QFC Regulations”

9. The first question arising is therefore: would it be fair and just, in the circumstances of this case, to strike out the Defendant’s statement of defence either in whole or in part? In contending that it would, counsel for the Claimant relied exclusively on judgments of the High Court of England and Wales and the provision of the Civil Procedure Rules of England and Wales to which they referred. With regard to this approach, we believe it appropriate to sound some note of caution. We note, in this respect, the observations of President Phillips, giving the judgment of the Appellate Division of this Court in *Chedid & Associates Qatar LLC* [2015] QIC (A) 2 at paragraph 18 in which he said:

“... on behalf of the Defendant it was submitted that in order to resolve the issue of whether the restraint provisions were in unlawful restraint of trade the Court should be guided by English case law. This is not the correct approach. QFC Regulations set out detailed codes of employment law and general contract law. Some of the provisions reflect principles of common law, but in many respects conditions in Qatar differ markedly from conditions in England and other common law countries. Where an issue is governed by a QFC Regulation, the correct approach is to apply that Regulation according to its natural meaning and having particular regard to conditions in Qatar. Foreign jurisprudence can sometimes be of assistance, but it should be used sparingly as a last and not a first resort”.

We consider the same applies to procedural law. So before simply transplanting the judgments of one jurisdiction onto another, it is imperative to have regard to the context in which those judgments have been given. This includes not only the wording of the procedural rules of that system but also the background against which those rules originated and developed in its system of origin. Moreover, considerations of justice and equity which we are enjoined to apply are in this instance inextricably bound to the facts of this particular case.

10. Having said that, we indeed derived assistance from the approach adopted by Teare J in *David Towler v Doctor Julian Wills* [2010] EWHC 1209 (Comm) to which we were referred by the Claimant’s counsel. In *Towler* the defendant sought further information in respect of the claimant’s amended particulars of claim under Part 18 of the English Civil Procedure Rules 1998 (the CPR). The response by the claimant was deficient in that the defendant could not properly discern the case against him. He therefore applied to strike out the claimant’s pleading under Rule 3.4 of the CPR which largely mirrors the provisions of our Article 31.1 when read with Articles 4.1 and 4.2. In granting the application Teare J expressed himself as follows (in para 19 of the judgment):

“It is not fair and just that the defendant cannot be sure of the case he has to meet. It may well be that, with appropriate legal advice, the claimant could have pleaded a concise, clear and particularised case against the defendant but that

has not been done. If the Amended Particulars of Claim are not struck out there is a real risk that unnecessary expense will be incurred by the defendant in preparing to defend allegations which are not pursued, that it will be impeded in his defence of allegations which are pursued and that the Court will not be sure of the case which it must decide.”

11. In our previous judgment of 23 December 2020 this Court held (in paragraph 12):

“We accept that the majority of the claimant’s requests for further information and documents are well founded having regard to the issues between the parties and the overriding objective. They are applications for information which the claimant needs to know in order properly to consider the defence he has to meet to his claims against the defendant.”

12. Although *Towler* concerned a request from a defendant for further information from a claimant, we consider that like considerations apply here, where the Claimant – who bears the burden of proof – needs to have fair specific notice of any positive defence being presented to his claim, in order properly to advance his claim without incurring unnecessary expense in addressing matters which may not be opposed. That being so and applying the line of reasoning adopted by Teare J in *Towler*, the inevitable conclusion is that it would not be fair and just if the Claimant were constrained to present his case without knowing the defences he has to meet. It follows that at least those defences at which the request for information and documents was aimed have to be struck out. However, on reflection, it is clear to us that, because of the way in which the statement of defence was formulated, it is not possible to distinguish between defences which are affected and those which are not affected by the information requested. The result is, in our view, that the statement of defence is bound to be struck out as a whole. In consequence that is the order we propose to make.

13. This raises the further question whether we should give the additional order sought by the Claimant, to the effect that the Defendant is debarred from contesting the claim and

consequently that judgment may be entered. Although this Court is afforded the power to give that order in addition to striking the defence when appropriate to do so by the express wording of Article 31.1.2, it introduces the antecedent question: What is the difference between (a) striking out the defence, on the one hand, and (b) debarring the defendant from contesting the claim at all, on the other? Although Article 31.1.2 does not suggest an answer to this question, its wording plainly suggests that there must be a difference. The answer to the antecedent question contended for by the Claimant's counsel is that in the case of (a), the Claimant still has to prove the merits of his claim while in the case of (b), the Claimant's claim on liability and quantum must be taken as having been established (not having been contested), and consequently that the Claimant may have judgment entered for him, and only has to satisfy the Court on consequential matters, such as the due calculation of interest. In the case of (a) the Defendant would therefore still be able to raise the challenge that the Claimant has failed to establish a case in the sense of putting him to proof of the facts and law he puts forward – albeit not being able to advance a positive alternative case on the facts; and, perhaps more importantly in the present context, the Court would still be enjoined to scrutinise the merits of the claim although, of course, it would have to do so without any pertinent defence being raised. In the case of (b), on the other hand, so counsel for the Claimant submitted, the Claimant would be entitled to judgment in the amount he has claimed. The Defendant would not be able to argue that even on the Claimant's own case it should not succeed and the Court would have no right to scrutinise the claim.

14. With regard to the effect of an order debarring a defendant from contesting the claim, counsel's argument seems to derive support, at least in the context of English law, from the judgment of Fancourt J in *Mark Byers and Others v Samba Financial Group* [2020] EWHC 1006 (Ch). (It may be noted that the phraseology used by the Claimant in *Byers* reflects the language used by the High Court of England and Wales. While Article 31.1.3 of the Rules empowers the Court to direct that “the Defendant be debarred from contesting the *proceedings*”, the reference in the English Civil Procedure Rules is to “the claim”. But for present purposes we assume, without deciding, that despite the difference in language, the effect of the two is the same.) In this matter Fancourt J handed down a previous judgment on 8 April 2020, reported as *Byers and others v*

Samba Financial Group [2020] EWHC 853 (Ch), in which he struck out the defence and debarred the defendant (the bank) from defending the claims against it, save for five identified issues (the live issues) which were to proceed to trial. Before the trial the question then arose as to the consequences of the debarring order, in particular, what (if anything) the claimants would have to prove at the trial in relation to any dispute other than the live issues. The claimants' case was that they were entitled to judgment, subject only to the outcome of the live issues. The bank's case on the other hand was that despite the debarring order, the claimants still had to prove their claim. In deciding this dispute in favour of the claimants, Fancourt J *inter alia* said the following:

“9. It would therefore in my judgment be inappropriate in this type of case for the court simply to say that the Bank's defence is struck out and so the onus now rests on the claimants to prove their claim. To require the Claimants, without disclosure of all relevant documents, to prove various issues in this claim ... would be to continue the injustice that flows from the absence of the Bank's disclosure. It would allow the bank to benefit from its serious and culpable breaches of the Court's orders as I found them to be.

...

26. Accordingly, in my judgment, although no judgment is sought to be entered at this stage in view of the Live Issues that have to be tried, subject only to the outcome of the Live Issues the Claimants will in principle be entitled to enter judgment on their claim for the amount that is determined at trial. Obviously, the judgment will go in the opposite direction in the event that the Bank succeeds at trial in establishing a defence on the basis of any of the Live Issues.

27. My decision means that the parties only have to prepare for a trial of the Live Issues and the Claimants do not have to adduce evidence in support

of their case or in any other issue. It was necessary to determine it at this stage so that the Claimants would know what evidence they have to prepare for trial.”

15. At paragraphs 122-123, Fancourt J reviewed a number of other authorities and concluded that they did not establish that under the Civil Procedure Rules of England and Wales an order striking out the whole of a claim or defence as the case may be was the standard or expected order in the case of a serious breach of a court’s order. In many cases of serious breach, such an order may be the only effective remedy, but the judge concluded that the court must have regard to the circumstances of the individual case and do what is necessary and proportionate to mark the seriousness of the breach of its order in a way that is consistent with the interests of justice and the overriding objective. He said:

“The seriousness of the breach, the extent if at all to which it is excusable and the consequences of the breach will be very important factors, but the overriding criterion is the requirement for the sanction to be proportionate and just”.

He then continued to decide whether, in the circumstances of that case, the just remedy was to “strike out the Defence and debar the Bank entirely from defending the claim, or to strike out and debar save as regard those issues that can fairly be tried without disclosure by the Bank”. He concluded (at paragraph 131) that the just order on those facts was to debar the Bank from defending all issues, apart from those where it was clear that the claimants could not be prejudiced by the Bank’s default, which ‘must extend’ to preventing the Bank from seeking to participate in a challenge to the factual case of the claimants or the legal conclusions reached on the basis of their evidence. On the facts of that case, he held that a sanction which only prevented the Bank from advancing its own case but permitted it to continue to contest the claimant’s case would not be sufficient to punish its serious and culpable breach. However – and we regard this as an important aspect of the reasoning in that case – Fancourt J also held that:

“if there are issues that can be fairly tried notwithstanding the absence of disclosure from the Bank, and such issues would – if determined in the Bank’s favour – enable it to establish a defence, in whole or in part, to the claim, those issues should in principle be tried”.

16. We were not referred to any direct authority on the issue in this jurisdiction. Nor are we aware of any. Yet we believe that the reasoning of Fancourt J and the conclusion he arrived at regarding the effect of a debarring order should also find application in this jurisdiction. It is not difficult to think of instances where the failure of the defendant to provide further information or make proper disclosure would have a detrimental effect on the claimant’s ability to prove its case. In those instances, it would follow that, if the claimant were still required to prove its case the offending defendant would inevitably be allowed to benefit from its own default. Merely striking out the defence in those circumstances would therefore still leave the claimant prejudiced. In that type of case, it would therefore be appropriate to afford the claimant a remedy that would eliminate that prejudice. If the same meaning is attributed to a debarring order in this jurisdiction as in English law, then preventing the Defendant from participating further in the proceedings at all would constitute that remedy.

17. It follows that in determining whether or not it is appropriate to grant a debarring order in addition to striking the defence in a particular case, the deciding question must be: Would the Claimant, absent the information or disclosure sought, be prejudiced, not only in responding to the defence pleaded or in facing a challenge to its factual case or the legal conclusions reached on the basis of that evidence, but also in proving its own case? If and to the extent that it would, then a debarring order ought to be granted. If and to the extent that it would not, it should not.

18. Applying that test to the facts of this case, we do not believe that we can be satisfied that the Defendant’s failure to provide the disclosure required by the Order of 23 December 2020, and the strike out of its defence inevitably mean that there are no issues which can be fairly tried notwithstanding the absence of disclosure from the Defendant and notwithstanding that the consequence of the strike-out is that the Defendant may

not rely upon issues contained in its defence. We say that because we can find no reason and none has been suggested as to why the Claimant would be prejudiced in proving his own case by the Defendant's failure to provide the information and documents sought. He bears the burden of proving the facts and law upon which he relies. We have found that it would not be just to require the Claimant to respond to the defences pleaded without the information and the documents sought and not provided despite the order by this Court. That is why we find that the defence raised in the statement of defence should be struck out and the Defendant should not be permitted to advance the counterfactual case within it supported by positive evidence. But we are not satisfied that to grant a complete debaring order preventing the Defendant from participating in the proceedings at all would in the circumstances not be unjust to the Defendant because it may enable the Claimant to achieve a windfall without satisfying the Court of the merits of his case. It may be further noted that the defendant's failure in *Byers* was in non-compliance with its (English) common law obligation of disclosure. Compliance with that obligation by a defendant may in some cases be of importance for proof by the claimant of its own case, where relevant material is in the hands of the defendant (see para 32 of the earlier *Byers* judgment). That consideration does not arise here.

19. On the face of it, the Claimant's case is not unanswerable and we say nothing further in this regard. But to allow him to seek judgment without more in these circumstances could result in allowing him a windfall for which there is no justification: he would be in a stronger position than he would have been if the Defendant entered no appearance or filed no statement of defence at all. From the Defendant's perspective it could result in punishment which is disproportionate to its failure. For these reasons we conclude that an order debaring the Defendant from contesting the claim at all would not be appropriate. Since the Rules of this Court do not provide for default judgment, the Claimant would, as matters now stand, be entitled to apply for summary judgment under Rule 22.6. This would in the normal course entitle the Defendant to challenge the claim on its merits, albeit in the absence of any pertinent defence being raised.
20. This brings us to the Claimant's alternative application that the Defendant should be directed to pay an amount of QAR 500,000.00 into Court, failing which, it will be

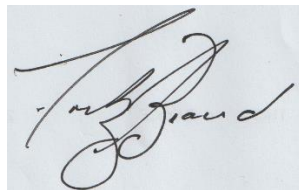
debarred from defending the claim and judgment may be entered against it. Authority for such relief was sought by the Claimant's counsel almost exclusively in the judgment of Knowles J in *Komcept Solutions Ltd v Prestige Group UK Ltd* [2018] EWHC 1550 (Comm). In fact, the amount of QAR 500,000.00 proposed is completely arbitrary in that it bears no relation to the facts of this case. Indeed, it was indicated by the Claimant's counsel that the amount proposed is a direct conversion from the £100,000.00 ordered by Knowles J in *Komcept* into Qatari Riyal.

21. We have already cautioned against the direct transplant of foreign judgments on this jurisdiction. For obvious reasons the dangers of this approach are exacerbated when the foreign judgment relied upon turns almost exclusively on its own facts. From the judgment in *Komcept* it is not clear why £100,000.00 was stipulated. In this case the equivalent of Qatari Riyal makes no sense. As matters stand at the moment, the Claimant might apply for summary judgment. If it did so successfully the costs incurred by him would probably be no more than a fraction of the amount proposed. In short it will constitute nothing other than a punishment in the form of a fine for the Defendant's conduct. As such it would not only be disproportionate but inappropriate in civil proceedings. The even more disproportionate result of the order sought would be that it would in all probability act, in effect, as a debarring order. One of the crucial considerations in *Komcept*, as appears from paragraph 10 of the judgment, was that "*there is no evidence that the money sum acquired of the defendant would stifle the defence*".
22. The Claimant's argument was that there is no evidence that the result would not be the same in this case. We disagree. In the previous interlocutory application, the very basis upon which the Claimant was seeking security for both costs and capital was in the main that the Defendant was in financial distress; that there is good reason to believe that it is insolvent; that it is no longer a trading company; that the funds in its bank account had been frozen; and that it is facing financial exposure in other proceedings before this Court which may result in additional liabilities. Added to that at this stage is the fact that we have been told by the Defendant's counsel that due to lack of funds he could not be briefed by the Defendant to oppose the application. On these facts we

believe that the probabilities are that the defence would indeed be stifled by the order sought. In these circumstances we do not think that it is an appropriate case to order security for costs by way of a payment into Court or otherwise. Hence the alternative relief sought is refused.

23. As to further procedure, the parties are each afforded 21 days within which to file and serve their respective proposals. These may also address any matters which may arise consequential on the striking out order.
24. The Claimant has been substantially successful in his application. He is entitled to payment by the Defendant of his reasonable costs, to be assessed by the Registrar if not agreed.

By the Court,



Justice Fritz Brand



Representation:

The Claimant was represented by Mr Thomas Williams, Mr Umang Singh and Mr Ahmed Durrani of Sultan Al-Abdulla & Partners, Doha, Qatar.

The Defendant was (at least initially) represented by Mr Sami Abdullah Abu Shaika of Sami Abushaikha Law Office, Doha, Qatar.