



**In the name of His Highness Sheikh Tamim bin Hamad Al Thani,  
Emir of the State of Qatar**

**Neutral Citation: [2021] QIC (A) 5**  
**(On appeal from [2020] QIC (F) 12)**

**IN THE QATAR INTERNATIONAL COURT  
APPELLATE DIVISION**

**CASE No. CTAD0002/2020**

**20 June 2021**

**QATAR FINANCIAL CENTRE REGULATORY AUTHORITY**

**Appellant**

v

**HORIZON CRESCENT WEALTH LLC**

**Respondent**

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**JUDGMENT**

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**Before:**

**Lord Thomas of Cwmgiedd, President  
Justice Chelva Rajah SC  
Justice Hassan Al Sayed**

## **ORDER**

1. Permission to appeal granted. Judgment and Order of the First Instance Circuit of the Court to stand. No order as to costs.

## **JUDGMENT**

1. The sole issue in this appeal is whether the rate of interest payable if the sum due under a judgment is not paid in accordance with the order of the court should be set at a higher rate than that awarded by the court on a debt or other sum due before judgment. The background can be briefly set out

### **The background**

2. The Appellant (QFCRA), after conducting an investigation into the Respondent (Horizon), imposed by a Decision Notice dated 11 March 2019 a financial penalty on Horizon of QAR 30m (over US\$8m) for breach of QFC Regulations. The appeal by Horizon against that penalty to the Regulatory Tribunal of the QFC was dismissed on 9 March 2020. The Appellate Division refused permission to appeal from that decision on 9 June 2020 – see [2020] QIC (A) 2.
3. On 29 March 2020, the QFCRA applied to the First Instance Circuit of the Qatar International Court to enforce the financial penalty as a debt payable to and recoverable by the QFCRA under Article 59 of the Financial Services Regulations and for payment of interest on that penalty.
4. In a judgment dated 20 September 2020, the First Instance Circuit (Justice Frances Kirkham, Justice William Blair and Justice Rashid Al Anezi) held that (1) the Financial Penalty of QAR 30,000,000 in the Decision Notice dated 11 March 2019 issued to Horizon was a debt payable to and recoverable by the QFCRA and (2) interest should be paid at the rate of 5% on the judgment debt from the date of the judgment of the First Instance Circuit. However to protect the position of Horizon's creditors it ordered that the judgment should not be enforced without the permission of the court. The judgment

at paragraphs 19-26 set out a clear analysis of the law in relation to the award of interest on debts or other sums due that have not been paid before judgment. As we have set out in *Protech Solutions LLC v Qatar Islamic Bank QPSC* [2021] QIC (A) 6, we agree with that analysis.

5. The QFCRA had sought the payment of interest from 10 May 2019 (60 days after the date of the Decision Notice) to the date of the judgment debt at the rate of 5% per annum and from the date of the judgment until payment at the rate of 8%. It did not seek permission to appeal from the decision that interest should only run from the date of judgment, but sought permission to appeal on the rate of interest awarded on the basis that a higher rate should be payable on a judgment debt.
6. By an Order dated 27 January 2021 we directed that the application for permission be adjourned to an oral hearing at a date to be fixed, with the hearing of the appeal to follow immediately, if permission was granted. Horizon did not appear at the short oral hearing and made no submission in writing. Further submissions were helpfully made to us by the QFCRA after the conclusion of the oral hearing.

#### **The contentions of the QFCRA on the rate of interest payable after judgment**

7. The First Instance Circuit in declining to award interest at 8% said it would not order a higher rate of interest than 5%, as 5% reflected current interbank overnight interest rates and commercial lending rates in Qatar.
8. The QFCRA contended that the First Instance Circuit was wrong:
  - a. It was the practice in other jurisdictions to order a higher rate of interest on sums not paid in accordance with the order of the court in its judgment.

- b. The reason for so doing was to impose a penalty on debtors who did not comply with an order of the court by paying what was due under judgment at the time ordered by the court.
- c. In the present case there had been non-compliance with a financial penalty imposed by a regulatory authority; a higher rate of interest would help secure compliance with the strict enforcement policy of Regulations and integrity at the QFC and ensure that its reputation as a financial centre was maintained to the highest global standards.

### **The position in other jurisdictions**

- 9. We are grateful to Mr Ben Jaffey QC and Mr Geoffrey Hills for the materials which they put before the court on behalf of the QFCRA in support of their submission in relation to the practice in other jurisdictions. The principal jurisdictions on which they relied were:
  - a. England and Wales: UK Legislation enacted in 1838 set a fixed rate of interest after judgment. The legislation has since 1970 enabled a Minister to set the rate; it was last set in 1993 and currently provides for interest at 8% which is well above the rate currently awarded on sums due before judgment.
  - b. The Federal Courts of Australia: The law and practice of the Federal Courts in Australia is to award interest after judgment at 6% above the Reserve Bank rate as distinct from the rate before judgment of 4% above the Reserve Bank rate
  - c. Hong Kong: Under the legislative regime, the Chief Justice fixes the rate. Subject to discretion, a rate of 8% after judgment is currently fixed.
  - d. Singapore: The default rate applicable after judgment as fixed by the Chief Justice is based on the average prime lending rate of 10 leading banks. It is also

the general default rate pre-judgment. The position in Singapore is relied on by the QFCRA, as the rate has not been reduced in the light of the interest rates that are normally awarded for sums due before judgment.

- e. France: If a judgment is not paid within 2 months, the rate, subject to judicial discretion, is increased by 5%; in Spain the position is similar.
- f. In the Courts of the Dubai International Financial Centre and of the Abu Dhabi Global Market, Practice Directions fixed the rate after judgment at 9%, subject to judicial discretion. The Practice Directions of the Abu Dhabi Global Market Courts fixed a default rate of 9% on debts due before judgment.

10. The QFCRA helpfully referred the court to the different position in:

- a. New Zealand: There is a single rate both before and after judgment of the average of 6-month retail bank deposit rates + 0.15% with monthly compounding.
- b. The USA: The Federal Courts of the USA, where interest rates on sums before judgment are determined by the applicable state law or federal statute, the general judgment rate after judgment is equal to the weekly average 1-year constant maturity Treasury yield for the week preceding the judgment. Currently this is less than 1%. However under the special regimes applicable to disgorgement, the rate after judgment is 4%. The applicable state law is complex; for example in New York although different rates may be applicable before judgment dependent on the cause of action, the general rate both before and after judgment is 9%.
- c. Germany: There is no difference between rates before and after judgment.

11. It is clear there is no uniform position. Many states have higher rates of interest after judgment or when a judgment is not paid within the time ordered. Other states do not. There is no uniform practice; it is a question of policy.

## **The policy considerations**

12. It was submitted by the QFCRA that there were good policy reasons for an enhanced rate:
  - a. A higher rate of interest would encourage payment and assist in avoiding the costs of enforcing a judgment.
  - b. It would reflect the objective of promoting compliance with court orders.
  - c. In the courts of the Dubai International Financial Centre and of the Abu Dhabi Global Markets higher rates of interest were specified after judgment. The court of the QFC should not be in a less favourable position.
  - d. It was especially important that there be a real incentive for prompt payment of a financial penalty imposed by a regulatory authority in Qatar.
13. There are some states or governmental authorities which deliberately set high rates of interest before judgment to discourage late payment; a clear example is the European Union Directive 2011/7/EU under which an additional 8% above the rate set by the Central Bank is payable in commercial transactions where there is late payment of a debt. However in many states interest before judgment is awarded at a rate that is compensatory and therefore set by reference to short term or other appropriate lending rates. This is the policy of Qatar for the QFC; under Article 104 (2) of the QFC Contract Regulations 2005, the rate of interest is “the average bank short-term lending rate to prime borrowers prevailing in the State” unless under Article 104(3) greater harm can be proved.
14. In support of the QFCRA’s submission for a higher rate after judgment, we were referred to the justification for the statutory position in Hong Kong provided by the Final Court of Appeal in *Man Ping Nam v Man Fong Hang* (2007) 10 HKCFAR 140 where Ribeiro PJ, in giving the judgment of the Court, said that interest was:

“charged at a significantly higher rate than applies to commercial borrowings to give the judgment debtor an incentive promptly to satisfy the judgment debt.”

More detailed observations were made at First Instance by Ng J in *Lo Yuk Sui v Fubon Bank* (HCA 409/2005) at paragraphs 55-58.

15. We were also invited to infer that the rate of interest fixed under the UK legislation for sums due under a judgment was justified by similar considerations. For the period from 1838-1971 the rate remained at 4%. In the period 1971-1993, it was fixed at a higher rate during a period of high interest rates and reduced to its current 8% in 1993. No revisions have been made since then, despite the very considerable decline in interest rates. It could be inferred that a policy choice has been made to leave the rate high which was consistent with the policy set out in the EU Directive or with a policy to encourage the payment of sums due under a judgment. Or simply it could be due to inertia or to political reluctance by a Minister to make any change. No clear inference is possible.

## **Our conclusion**

16. Although Article 104 of the QFC Contract Regulations sets the rate to be applied for sums due before judgment, the Court has power to deal with failures to observe its Order and Judgments under Article 34.3 of the QFC Civil and Commercial Court Regulations and Procedural Rules which provides:

“The Court shall have the power to enforce its own judgments, decisions and orders, and to deal with contravention of its judgments, decisions and orders and matters relating to contempt:

...  
34.3.1 by the levy of fines; and/or  
34.3.2 by the making of any order that it considers necessary in the interests of justice...”

17. This provision gives, in our judgement, the Court power to impose a higher rate of interest than a rate that is purely compensatory if there are circumstances where this is necessary in the interests of justice to enforce its judgments or to deal with

contravention of its judgments. We see the force of the rationale set out in the judgment of the Final Court of Appeal of Hong Kong to which we have referred. In our view, it would be generally in the interests of justice and would assist in the enforcement of the judgments of this Court that a party to proceedings should be encouraged to pay a judgment debt within the time specified by the court and be penalised for a contravention of the Order. We therefore consider that the Qatar International Court has the power to order that interest be paid on a sum due under a judgment, if it is not paid in accordance with the Order of the court, at a higher rate than a rate that reflects the compensatory principle set out in Article 104 of the QFC Contract Regulations or the rate applicable under the proper law of the contract.

18. We do not think that the payment of a penalty imposed by a regulatory authority is any different to any other judgment debt. However, it is in the interests of adherence to the rule of law and to the general wellbeing of a state that court orders are complied with in accordance with their terms. Generally the court should consider imposing a sanction to encourage such compliance with the Order, as reflecting the public interest. After judgment, there can be no dispute, subject to an appeal, that the sum is due and the court has ordered payment. The public interest is not simply that of compensating the judgment creditor, but in encouraging compliance with the orders of the court.
19. When making an order for the payment of a sum found due on a judgment, a court should therefore specify a proportionate time within which payment should be made of the sum found due (including interest where payable). The Court should then consider whether the interests of justice requires that an order should be made for the payment of an enhanced rate of interest and if so whether it should commence from the time at which there has been a failure to comply with the order or at some other time. If the court exercises its discretion to order an enhanced rate, the court should then order interest at the enhanced rate of interest from a specified date, if the judgment has not been paid by that date. Guidance will be provided by a Practice Direction on (1) the circumstances that a court may wish to take into account in determining whether to make such an order and (2), if the discretion is exercised to make such an order, the rate at which the enhanced rate should be set.

20. We therefore consider that the QFCRA is correct on the issue of principle. However, although the court has power to impose a higher rate and there are good policy reasons for so doing in cases such as this, it would not be in the interests of justice to make an order in the present case as Horizon would not have known that an increased rate would be payable if it failed to pay in accordance with the terms of the Order. This judgment makes clear the power to order a higher rate of interest. For the future, persons ordered to pay a sum due under a judgment will know that this Court can impose a higher rate of interest if they fail to pay a judgment in accordance with its terms.

By the Court,



Lord Thomas of Cwmgiedd

President

Representation:

The Appellant was represented by Mr. Ben Jaffey QC, Blackstone Chambers, London, UK.

The Respondent did not appear and was not represented.