



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: [2023] QIC (F) 27

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

Date: 11 June 2023

CASE NO: CTFIC0020/2023

MANAN JAIN

Claimant

v

DEVISERS ADVISORY SERVICES LLC

Defendant

JUDGMENT

Before:

Justice Dr Rashid Al-Anezi

Justice Fritz Brand

Justice Yongjian Zhang

Order

1. The Defendant is directed to pay the Claimant the sum of QAR 33,000 within 14 days of the date of this judgment.
2. There shall be no order as to costs.

Judgment

1. The Claimant, Mr Manan Jain, is an Indian national who resides with his wife in the State of Qatar. The Defendant, Devisers Advisory Services LLC, is an entity established in the Qatar Financial Centre ('QFC') where it conducts the business of assisting applicants for visas, inter alia, to the United Kingdom. It follows that this Court has jurisdiction to determine the dispute between the parties in terms of article 9.1.4 of the Regulations and Procedural Rules of the Court.
2. Because of the sum and issues involved, the claim was allocated by the Registrar to the Small Claims Track of this Court under Practice Direction No.1 of 2022 (the '**Practice Direction**'). In accordance with this Practice Direction, we conclude that it is appropriate to determine the issues in this case on the basis of the written material before us and without hearing oral evidence or argument.
3. On 24 March 2022, the parties entered into a written agreement. In terms of the agreement the Defendant undertook to assist the Claimant's wife in her application to obtain an Entrepreneur Visa to the UK against payment of an agreed fee of QAR 33,000. It is common ground that this fee was paid by the Claimant on the same day.
4. The Claimant's case is that shortly thereafter it transpired that his wife would be unable to go to the UK for medical reasons so that the visa applied for would mean nothing to them. In consequence, he informed the Defendant on 4 April 2022 that the visa was no longer required and demanded repayment of the amount of QAR 33,000. Relying on the terms of the written agreement, the Defendant refused to do so. This led to the Claimant's claim for repayment of the amount involved in these proceedings.

5. On the face of it, the Defendant's refusal to repay the QAR 33,000 paid by the Claimant is supported by the terms of the written agreement. First, there is recorded in paragraph 5 that:

If the client revokes this agreement on or changes his mind... after signing this Agreement, then Devisers shall nevertheless be deemed to have performed the service satisfactorily.

6. Then there is clause 1 under the Terms of Business which provides:

You are free to decline our offered services before your visa application is to the Immigration Authorities, but you will lose any fee you may have already paid to Devisers.

7. The Claimant's case as to why he can, despite these express provisions of the contract, claim repayment, relies in the main on article 33 of QFC Contract Regulations 2005 which provides for the avoidance of a contract on the ground of mistake "*which is an erroneous assumption relating to facts or law existing when the contract was concluded*".

8. With reference to the provisions of article 33(2)(A), it appears that one kind of mistake contemplated which would render the contract voidable is a mistake which relates to the possibility of performance under the contract. As we understand the Claimant's case, that is the mistake upon which he relies. When he concluded the contract, he says, he thought his wife would benefit from the visa for which he agreed to pay. That assumption proved to be a mistake in that, because of her medical condition, she could not emigrate to the UK, and therefore the visa would be of no use to her. Although the Defendant's performance in applying for the visa would still be theoretically possible, it was in real terms impossible because it would serve no realistic purpose. Hence, performance by the Defendant was practically impossible.

9. Another requirement for reliance by a party on his own unilateral mistake for avoiding a contract is as formulated in article 33(2)(C), is that (a) the mistake must have been induced by the other party; or (b) "*the other party had not at the time of avoidance acted in reliance on the contract*". The Claimant does not rely on any inducement of the mistake by the Defendant. His contention is that on 4 April 2022, when he sought to avoid the contract, the Defendant had not yet done anything in the execution of the contract as envisaged in (b). This is denied by the Defendant. But from the motivation

of the denial in its Statement of Defence, it appears that by 4 April 2022 the Defendant had done no more than to email the Claimant “*to request that he complete the documents in order for the defendant to file and submit the application*”. In our view this is insufficient to constitute an act in the execution of the contract which would preclude the Claimant from relying on mistake.

10. In answer to the Claimant’s reliance on mistake, the Defendant raises the defence provided for in article 33(3) of the QFC Contract Regulations 2005 which is to the effect that “*a party may not avoid the contract if it was grossly negligent in committing the mistake*”. But we do not believe this charge of gross negligence against the Claimant had been established. What appears from the medical reports annexed to the Claimant’s papers, is that, although the medical condition of the Claimant’s wife was known to him at the time of the contract, not even her doctors were aware of the seriousness thereof or, importantly, that it would preclude her from emigrating to the UK at the time of the contract in March 2022. That only became known to them on 4 April 2022 when the Claimant immediately tried to resile from the contract application. It follows that in our view the Claimant was entitled to terminate the contract between the parties as and when he purported to do so. This means, as a matter of law, that the provisions in the contract relied upon by Defendant for its refusal to repay the money paid by Claimant were no longer binding or enforceable against the Claimant.

11. Since it is not clear from the medical evidence when the medical condition which precluded the Claimant’s wife from emigrating arose, the possibility cannot be excluded that it only arose after the conclusion of the contract. In that event the defence of mistake could not prevail because there would be no “*mistake existing when the contract was concluded*” as required in article 33(1). But in that event the Claimant would in our view be assisted by article 94 of the QFC Contract Regulations 2005 on basis of force majeure.

12. In terms of article 94(1) force majeure is defined as:

circumstances which are not within the reasonable control of the party concerned and which that party could not reasonably expected to take into account at the time of the conclusion of the contract...

13. In our view the medical condition of the Claimant's wife which rendered the execution of the contract impossible meets the requirement of this definition
14. The consequence of force majeure in terms of article (94)(2) is that "*neither party shall be deemed to be in breach of a contract or otherwise liable to the other*" for performance which became impossible. The rider in article 94(3) is that a party would still be entitled to claim compensation for performance rendered by him before the impossibility arose. In the light of this provision, we considered whether the Defendant should be allowed to retain part of the contract price as compensation for what it had actually done before 4 April 2022. But on the papers the service actually rendered under the contract appears to be so negligible that it is incapable of translation into monetary terms.
15. In the result we hold that the Claimant's claim should succeed and that in consequence the Defendant should be directed to pay to the Claimant an amount of QAR 33,000.
16. As to the costs of the litigation, we do not think that, in the light of the express provisions of the contract, the Defendant was unreasonable to defend this claim. Accordingly, we hold that there shall be no order as to costs.

By the Court,



[signed]

Justice Fritz Brand

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

Representation

The Claimant was self-represented.

The Defendant was self-represented.