



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 (C) 1

IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE

28 February 2021

CASE No: 8 of 2019

(1) OBAYASHI QATAR LLC
(2) HBK CONTRACTING CO. WLL

Claimants

v

QATAR FIRST BANK LLC (PUBLIC)

Defendant

COSTS ASSESSMENT

Before:

Mr Christopher Grout, Registrar

JUDGMENT

Introduction

1. On 31 May 2020 the First Instance Circuit of the Court (Justices Hamilton, Brand, and Malek QC) delivered judgment in this case. The judgment is reported at [2020] QIC (F) 5. Subject to what follows later in this Assessment, it is unnecessary to recite the facts of the case in any great detail; they are apparent from the judgment of the Court. Suffice it to say, the Claimants' application for summary judgment in respect of a Performance Bond was successful, the Court finding that the Defendant was liable to satisfy the demand for payment in the sum of QAR 19,800,000.00. The Claimants' application for summary judgment in respect of an Advance Payment Guarantee was partially successful, the Court finding that the Defendant was liable to satisfy the demand for payment in the sum of QAR 5,419,250.12. In addition, the Court awarded the Claimants QAR 1,452,006.96 in interest. The Defendant's counterclaim was struck out. The parties were required to try and resolve any issues relating to costs but were ultimately unable to do so. This resulted in a further Order of the Court, dated 13 October 2020, which granted the Claimants their reasonable costs, to be assessed by the Registrar if not agreed.
2. The parties were unable to agree the costs. The Claimants filed written submissions on 17 November 2020. These were responded to by the Defendant on 1 December 2020. Further submissions in reply were filed by the Claimants on 20 December 2020.
3. As is customary in cases before the Court, I have, in my capacity as Registrar, been involved with the case since its inception. In addition to having read and considered the parties submissions on costs, I have read all the papers in the case and was present throughout the course of the various hearings. I am, therefore, acutely aware of the issues raised by the parties, how the case was conducted and how various matters were resolved.

The Need for a Hearing

4. 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, neither party sought an oral hearing and so the matter has been considered and determined on the basis of the written submissions filed and served.

The Principles to be Applied

5. 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 of my Costs Assessment, dated 5 March 2017, 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:

¹ *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (F) 1, 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, reported at [2017] QIC (A) 2.

- (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.*

6. Those principles were, upon review by the First Instance Circuit of the Court, approved.² In the present case, neither party sought to suggest in their written submissions that those principles should not be applied here.

The Submissions of the Parties

The Claimants' Submissions

- 7. The Claimants seek an order for costs of QAR 1,607,932.60.
- 8. An appendix annexed to the Claimants' written submissions provides the names and levels of the various fee earners engaged, their respective hourly rates, as well as the number of hours spent throughout various stages of the litigation. There is also a claim for disbursements which relates to the instruction of counsel, and miscellaneous costs such as postage, printing, and translation. In addition, the Claimants' seek to recover 'internal fees' relating to time spent by the Claimants' employees working on the case.
- 9. It is to be noted that, throughout the proceedings, the Claimants instructed two separate law firms: Rashed Al Marri Law Office and Simmons & Simmons. The reason for this is set out at paragraph 4.13 of the Claimants' written submissions:

² *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (F) 1, 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, reported at [2017] QIC (A) 2.

“The Claimants submit that in light of the value of this claim, the importance to the Claimants’ business of recovering the sums sought, the issues crossing both Qatar law and QFC law, intricate jurisdictional issues, the international financial doctrines involved, the requirement to prepare for and attend two substantive oral hearings, and the other reasons set out above, it was reasonable and proportionate to instruct two law firms.”

The Claimants stress that there was “no, or very limited, duplication of work carried out by the two firms”.

10. In relation to the instruction of counsel, the Claimants explain that this was for the purposes of carrying out advocacy at the hearing.
11. As to the internal costs claimed, the Claimants argue that there appears to be no prohibition on the recovery of such costs. Indeed, they place reliance on my decision in *Horizon Crescent Wealth LLC v Qatar Financial Centre Regulatory Authority* [2020] QIC (C) 1, where I allowed the Regulatory Authority to recover its in house preparatory costs.
12. The Claimants’ written submissions make a number of additional points. They submit that they have been successful in recovering the full amount of the sum claimed under the Performance Bond and a significant proportion of the sum claimed under the Advance Payment Guarantee, and that the Defence and Counterclaim relied upon by the Defendant proved to be baseless. They argue that these proceedings were complex and involved a substantial amount of money. In addition, they submit that they were required to consider issues of governing law and jurisdiction, as well as allegations of fraud levelled towards them by the Defendant. They argue that the conduct of the Defendant throughout these proceedings was “no more than a thinly veiled attempt to delay complying with its legal and contractual obligations”.

The Defendant's Submissions

13. The Defendant submits that the costs claimed by the Claimants are unreasonable and disproportionate, taking into account, in particular, the value and complexity of the case. The Defendant criticises the instruction of two law firms as well as external counsel. It refers to the judgment of the Court in *Khaled Abusleibah v Qatar Financial Centre Authority* [2016] QIC (F) 1 where, at paragraph 15, the Court observed that,

“Whereas a party is entitled to be represented by advocates of its choice, including Counsel based abroad, in a straightforward matter such as the present this should not be at the expense of the unsuccessful individual.”

14. In addition, the Defendant argues that the Claimants' annexed schedule of costs is insufficiently particularised especially insofar as it fails to explain how work was divided up between the two instructed law firms. It says that the total number of hours spent on the case (excluding those of counsel and the internal costs), amounting to 1,286.3 hours, is excessive. Insofar as the internal costs are concerned, the Defendant submits that they should be rejected in their entirety on the basis that the claim is not supported by evidence and, in any event, the Claimants had already engaged the services of numerous legal professionals to undertake the work on their behalf.

The Claimants Reply

15. The Claimants filed a reply to the points raised by the Defendant which I have read and taken into account. There is no need, however, to set out the details of the reply here which, in the main, reiterated the points made in the Claimants' original submissions.

Discussion

16. It is perhaps helpful to start by addressing some of the general points made by the parties in this case. First, I have no hesitation in agreeing with the Claimants that this case involved a significant amount of money and was of substantial importance to the Claimants. The judgment of the Court was a carefully considered one which addressed a number of issues. However, at its core, this was not, or at least should not have been,

a particularly complicated case. It was a claim for summary judgment under two bonds. The issues that needed to be determined can not be characterised as particularly novel. Moreover, whilst it is true that the Defendant chose to raise a jurisdictional objection which was ultimately rejected, the argument deployed by the Claimants in their written submissions that this required consideration of “complex issues regarding the remit of the QFC Court” appears to me to rather overstate things. The jurisdiction of the Court is clearly set out in the QFC Law and could not, or should not, have taken particularly long to research and draft submissions on. There can be no doubt that the Claimants were the successful parties to the proceedings; that is why they were awarded their costs. But, it should not be overlooked that the claim, as initially pleaded, was for QAR 29,700,000.00 plus interest. In relation to the Advanced Payment Guarantee, they were awarded QAR 4,880,741.88 less than what they were seeking. That is a significant amount and a not irrelevant consideration, bearing in mind the points listed at paragraph 5 above.

The instruction of two law firms

17. As to the instruction of two law firms, I can certainly understand why the Defendant takes objection. Although the Claimants submit that there was no, or very little, duplication of work, it is not possible to discern that from the schedule of costs annexed to the Claimants’ written submissions. Moreover, the argument advanced by the Claimants as to why two law firms were required strikes me as a little tenuous. I agree that the substantive laws of Qatar, as well as those of the QFC, were in play in this case, as was the consideration of wider international jurisprudence, but that is true in many cases. It does not justify instructing two law firms for the duration of the case. The jurisdiction issues raised were not, as the Claimants suggest, “intricate”; on the contrary, they were straightforward. The fact that there were two attended hearings is neither here nor there. It seems to me that this is a case which could very easily have been managed by one law firm; the involvement of two throughout the whole of the case does not seem to me to be reasonable or proportionate to the issues that needed to be determined.

18. That having been said, it does not follow that one law firm’s set of fees will simply be deemed unrecoverable. The rates that are set out in the schedule of costs do not appear to me to be extravagant or markedly out of line with professional rates claimed in other

cases I have dealt with. I will, when looking at what is recoverable, simply determine what was reasonable overall in respect of each head of claim.

The instruction of counsel

19. As to the instruction of counsel, the Defendant's reliance on the observations made in *Abusleibah* (see paragraph 13 above) are not apropos in the present case. Whilst I do not consider that the case here was as complicated as the Claimants suggest, it was a very different type of case to *Abusleibah* and, in my view, warranted the attendance of counsel. His involvement was limited to the hearing and no additional costs of attendance (such as a result of travelling to Qatar from the UK) arose, as counsel appeared remotely through the eCourt system. I am satisfied that his instruction was reasonable and will return to the issue of his fees below.

The internal costs

20. In *Pinsent Masons LLP (QFC Branch) v Al Qamra Holding Group* [2018] QIC (C) 1, I determined that a self-represented law firm was entitled to recover at its professional rates, providing those rates were reasonable. Similarly, in *Horizon Crescent Wealth LLC v Qatar Financial Centre Regulatory Authority* [2020] QIC (C) 1, I allowed the Regulatory Authority to recover certain in-house preparatory costs incurred by its in-house legal and enforcement team. It is to be noted, however, that in neither of these cases did the parties instruct external law firms to manage the day-to-day litigation for them; instead they each used their in-house legal expertise (albeit that the Regulatory Authority did instruct external counsel for the purposes of the hearing).

21. The position in the present case is very different. The internal costs sought relate, it is said, to the time spent by various employees of the Claimants providing instructions, commenting on the pleadings, and so on. By way of example, QAR 26,648.95 is claimed in relation to,

“work undertaken by the Claimants' employees in supporting the claim. This includes providing factual input on jurisdiction challenge, reviewing and commenting on submissions relating to the challenge, and responding to queries raised by legal representatives.”

22. It seems to me that in circumstances where a party has instructed multiple law firms, as well as external counsel, it is not reasonable to then seek to recover costs associated with internal employees who are in some way said to have inputted into the claim, whether by providing instructions or in some other way. Even if I am wrong about that as a matter of principle, the claim in the present case is not sufficiently particularised in order to properly ascertain whether such costs were reasonably incurred. For example, there is a QAR 100,000.00 claim for “translation and printing costs”. No further detail is given, nor is any evidence filed in support. In the circumstances, I do not consider that the Claimants have satisfied me that the internal costs claimed are recoverable as a matter of principle but, even if they had, they have not satisfied me that the costs claimed were reasonably incurred or reasonable in amount. Accordingly, the internal costs are not recoverable.

The Costs Awarded

The two law firms

23. In relation to the costs claimed by the respective law firms, I have set out in the table below details of what is claimed and what I have awarded:

Nature of Work	Total amount claimed	Total amount awarded	Observations
Part 1: Issuing Claim (March 2019 – 26 June 2019) Work includes pre-action correspondence, and drafting the claim.	QAR 149, 558.00	QAR 90,000.00	The time spent by two law firms in preparing and filing the claim is not reasonable. The sum awarded reflects the reasonable work required for issuing the claim.

<p>Part 2: Reply (10 July 2019 to 1 August 2019). Reviewing the Defence and Advising on/drafting the Reply.</p>	<p>QAR 66,216.50</p>	<p>QAR 66,216.50</p>	<p>The time spent reviewing the Defence and advising on the Reply appears to me to be reasonable, as is the sum claimed.</p>
<p>Part 3: Jurisdiction Challenge (1 August 2019 to 26 November 2019). Responding to the jurisdiction challenge, including attendance at the hearing.</p>	<p>QAR 196,290.00</p>	<p>QAR 85,000.00</p>	<p>The time spent and amount claimed is wholly unreasonable given the nature of the challenge and what was reasonably required in order to respond to it. In recognition of the fact that there was a hearing, I have awarded the Claimants more than I otherwise would have.</p>
<p>Part 4: Amended Reply (4 December 2019 to 27 January 2020). Relates to reviewing the Amended Defence and Rejoinder, and preparing the Amended Reply.</p>	<p>QAR 120, 180.00</p>	<p>QAR 75,000.00</p>	<p>The amount awarded reflects a reasonable sum in light of the work reasonably required to be undertaken.</p>

<p>Part 5: Application for Summary Judgment and Strike Out (27 January 2020 to 31 May 2020). Work includes preparation for the hearing and attendance (excluding the attendance of counsel) as well as work undertaken post hearing up to 31 May 2020.</p>	<p>QAR 435,784.00</p>	<p>QAR 250,000.00</p>	<p>This aspect of the claim is lacking in particularity. It is a substantial sum and it is not clear how much of it relates to work undertaken in advance of the hearing and how much of it relates to the attendance of lawyers at the hearing, other than counsel (which is claimed separately). I do not consider it reasonable to claim for the attendance of multiple lawyers at the hearing, in addition to counsel. Doing the best I can on the available material, the sum awarded presents as reasonable.</p>
<p>Part 6: Enforcement of Judgment and Costs Application (1 June 2020 to 12 November 2020).</p>	<p>QAR 188,177.00</p>	<p>QAR 60,000.00</p>	<p>The hours spent and sums claimed across two law firms are not reasonable. Although a (simple) enforcement application was</p>

			filed, the judgment debt was ultimately paid without any enforcement hearing.
Part 7: Case Management (throughout the proceedings).	QAR 66,936.00	QAR 30,000.00	The amount awarded reflects a reasonable sum for dealing with miscellaneous case management issues.
Part 8: General Advice (throughout the proceedings).	QAR 79,620.00	QAR 30,000.00	The amount claimed is not sufficiently particularised. The amount awarded reflects a reasonable sum for providing general advice throughout the proceedings.
Part 9: Disbursements (postal fees, printing and translation). (Counsel's fees are dealt with separately below.)	QAR 4,224.40	QAR 4,224.40	Although not evidenced, the sum claimed appears reasonable.
TOTAL	QAR 1,306,985.90	QAR 690,440.90	

24. Accordingly, the amount awarded in respect of the fees and disbursements of the two law firms (excluding counsel's fees) is **QAR 690,440.90**.

Counsel's fees

25. I have already determined that the instruction of counsel in this case was reasonable. Counsel's fees amount to QAR 68,387.00. They are not particularised. However, they do strike me as reasonable in respect of preparation for, and attendance at, a two-day hearing in regard to this case.

26. Accordingly, the amount awarded in respect of counsel's fees is **QAR 68,387.00**.

Internal costs

27. I have already determined, at paragraph 22 above, that these are not recoverable. The amount claimed is QAR 232,559.70. The amount awarded is **nil**.

Conclusion

28. The outcome of the above exercise is that I have determined that **QAR 758,827.90** of the costs claimed are reasonable. I have considered whether, standing back, that sum is a reasonable one in all the circumstances and have concluded that it is.

29. Accordingly, the Defendant shall pay to the Claimants the sum of **QAR 758,827.90**.

By the Court,



Mr Christopher Grout

Registrar



Representation:

For the Claimant: Rashed Al Marri Law Office, Doha, Qatar.

For the Defendant: John & Wiedeman LLC, Qatar Financial Centre, Doha, Qatar.