



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: [2024] QIC (F) 42

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

Date: 26 September 2024

CASE NO: CTFIC0035/2024

DEVISERS ADVISORY SERVICES LLC

Claimant

V

FARWIN FAROOK MUHAMMED

Defendant

JUDGMENT

Before:

Justice George Arestis

Justice Fritz Brand

Justice Dr Yongjian Zhang

Order

1. The Claimant's claims are dismissed.

2. The Counterclaim is upheld to the extent that the Claimant is ordered to pay to the Defendant:
 - i. The sum of QAR 32,500 together with interest on the said amount calculated at the rate of 5% from 11 March 2023 until the date of payment, within 7 days of the date of this judgment.

 - ii. The reasonable costs incurred by the Defendant in opposing the Claimant's claim and in pursuing his Counterclaim, to be assessed by the Registrar if not agreed.

Judgment

1. The Claimant, Devisers Advisory Services LLC ('**Devisers**'), is an entity established in the Qatar Financial Centre ('**QFC**') where it is licensed to advise and assist applicants for visas, inter alia, to the United Kingdom. The Defendant is Mr Farwin Farook Muhammed, a citizen of Sri Lanka who resides with his wife, Ms Fatima Farouk Muhammed, in the State of Qatar. This Court has jurisdiction to determine the dispute between the parties by virtue of article 9.1.3 of its Regulations and Procedural Rules since it arises from a contract involving an entity established in the QFC.

2. Because of the sum and the nature of the 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**'). After the claim was served on the Defendant, he filed opposing papers and a Counterclaim which was followed by the Claimant's Reply (and subsequent documents following a further submission from the Defendant). It appears from the papers that there is a clear factual dispute between the parties. Nonetheless, we consider that where cases have been allocated to the Small Claims Track, it is important that such cases be determined as quickly and efficiently as possible.

Accordingly, we have decided to determine the case on the basis of the written material before us and without hearing oral evidence or argument.

3. On 17 January 2022, the parties entered into a written agreement (the ‘**Agreement**’). In terms of the Agreement, the Claimant undertook to advise and assist the Defendant’s wife in obtaining entry to the United Kingdom by means of what is referred to as an Innovation Business Visa against payment of an amount of QAR 37,500 (the ‘**Agreement Sum**’). In accordance with the terms of the Agreement, the Agreement Sum was paid by the Defendant to the Claimant on the same day.
4. Ex facie the Statement of Claim, the Claimant’s claim is for an order declaring that the Defendant is bound by the Agreement, but what it effectively seeks is to retain the payment of QAR 37,500, despite the Defendant’s instructions not to proceed with the visa application. While not denying that he is bound by the Agreement, the Defendant’s Counterclaim is for repayment of the Agreement Sum. The dispute between the parties turns on clauses 5, 6 and 7 of the Agreement. They provide:

5. If the client revokes the agreement or changes his/her mind... Devisers shall nevertheless be deemed to have performed its service satisfactorily.

6. If the visa application is refused due to any error by the applicant-like but not limited to- any false/incorrect information provided by the applicant for the application purposes OR if the immigration authorities make an enquiry to any authority about the applicant and the authority does not reply ...OR if the applicant fails to give a correct reply to questions in the official interview related to the visa application. In all these cases applicant will not be refunded any charges paid to us.

7. ... If the application remains unsuccessful without falling under clause no. 6 of the agreement, any payment received will be repaid in 2 weeks.

5. It is common ground that an English language or IELTS Certificate is an essential requirement for the Innovation Visa. Likewise, it is not in dispute that the Claimant’s wife had failed to obtain this Certificate, despite having sat the qualifying examination several times. The Defendant’s case is that in these circumstances, the application has failed for reasons other than those contemplated in clause 6. In consequence, so the Defendant contends, the Agreement Sum became repayable under clause 7 within 2 weeks after he had notified the Claimant on 11 March 2023 that he no longer wished to persist in the visa application.

6. The Claimant's counterargument is that the Defendant's wife had failed to attend any training courses available that would have enabled her to pass the IELTS examinations, thereby failing to fulfil the Defendant's obligation under the Agreement. In fact, so the Claimant contends in its Reply, it is still open to the Defendant's wife to attend the training courses and to sit the examination, but instead the Defendant decided to withdraw the application which triggered the provisions of clause 5 of the Agreement.
7. The Defendant, as we have said, does not deny that he is bound by the terms of the Agreement. Moreover, he has tendered that the Claimant may retain an amount of QAR 5,000 of the Agreement Sum as compensation for the work it has done in execution of the Agreement. What he denies, however, is that the Claimant is entitled to retain the full Agreement Sum of QAR 37,500. The Claimant's case is, on the other hand, is that it is indeed entitled to the full Agreement Sum by virtue of clause 5 of the Agreement.
8. As we see it, however, it is not necessary to determine the dispute thus arising. We say that because we find that the matter can be decided on the assumption that the Defendant has indeed breached the Agreement and that the Claimant is thus entitled to invoke the provisions of clause 5 of the agreement. This finding is squarely based on the decision of the Appellate Division of this Court in *Manan Jain v Devisers Advisory Services LLC* [2024] QIC (A) 2.
9. On the facts, *Jain* is indistinguishable from this case in that the same Claimant relied on the identically worded clause 5 of the same Agreement in circumstances where Mr Jain was held to have acted in breach of the Agreement. What the Appellate Division essentially held was that in these circumstances the provisions of article 107 of the QFC Contract Regulations 2005 serve to alleviate the harsh consequences of clause 5. Article 107 reads as follows:

(1) Where the contract provides that a party who does not perform is to pay a specified sum to the aggrieved party for such non-performance the aggrieved party is entitled to that sum irrespective of the contractual harm,

(2) However, notwithstanding any agreement to the contrary the specified sum may be reduced to a reasonable amount when it is grossly excessive in

relation to the harm resulting from the non-performance and the other circumstances

10. Applying article 107, the Appellate Division in *Jain* reduced the contract sum retained by the Claimant (Devisers) in that case to QAR 5,000 as compensation for the work it has done in execution of that agreement. We can find no reason why the same approach should not be adopted in this case. On the contrary, the Defendant made an open tender of QAR 5,000 before the commencement of litigation. If the Claimant regarded that sum as insufficient compensation for the work it has done, it had the opportunity to motivate an increase of the amount awarded in *Jain*. But, the Claimant persisted in its claim to retain the full amount of the Agreement Sum which was effectively held by the Appellate Division to be grossly unreasonable. If the Claimant therefore incurred expenses of more than QAR 5,000 in performing its obligations under the Agreement in this case, it has only itself to blame.

11. We therefore find that the Defendant is entitled to payment in an amount of QAR 37,500 minus QAR 5,000, that is QAR 32,500. In addition, we find that the Defendant is entitled to interest on the amount owing him at the rate of 5% from the date of demand, which was 11 March 2023, to the date of payment.

12. Although the Defendant was not legally represented, he is in our view also entitled to any costs that he may have incurred in opposing the claim and in pursuing his Counterclaim. These are the reasons for the order we propose to make.

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.