



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] OIC (F) 11

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

9 May 2021

CASE No. CTFIC0006/2021

BETWEEN:

BUSINESSBOX CONSULTANCY LLC

Claimant

v

ABDULLA AL DARWISH FAKHRO

Defendant

JUDGMENT ON JURISDICTION

Before:

Justice Bruce Robertson

Justice Rashid Al Anezi

Justice Fritz Brand

ORDER

1. The Court holds that it has the jurisdiction to entertain this claim.

JUDGMENT

1. The Claimant in the present proceedings is an entity established in the Qatar Financial Centre ('the QFC'), with a commercial register entry (QFC-00545), which was licensed from 25 July 2018 to carry out certain professional services, including relating to the provision of advisory and consulting services.
2. The Defendant is an individual resident in the State of Qatar, although outside the QFC.
3. It is the Claimant's case that the Defendant had engaged it to perform a feasibility study for a copper factory, in respect of which the Defendant was intending to obtain finance from Qatar Development Bank ('QDB'). The total cost for undertaking the feasibility study is said to be in the sum of QAR 70,000, QAR 35,000 of which was to be paid upon acceptance of the agreement, QAR 15,000 upon submitting the draft report, and QAR 20,000 to be paid upon submitting the final feasibility report.
4. The two parties agreed, and the Claimant ultimately received QAR 50,000 from the Defendant.
5. It appears that on 4 May 2020 the first draft of the report was handed to the Defendant who later submitted it to QDB for its feedback.
6. Feedback having been obtained from QDB, the Claimant considered the same and concluded that the project was not feasible.

7. The Claimant says that the Defendant refused to settle the last payment (of QAR 20,000) which is the subject matter of the claim in this case. The Defendant in turn filed a case before the national courts of Qatar (Case No. 4875/2020 Civil Partial Circuit/13) seeking to recover the QAR 50,000 it had paid to the Claimant along with compensation.

8. The Claimant (who was the defendant before the national court) objected to the jurisdiction of the national court on the basis that the agreement between the parties gave jurisdiction to the QFC Court. The provision in the agreement reads as follows:

“This Engagement Letter including these Terms and Conditions shall be governed by and construed in accordance with the laws of Qatar Financial Center (QFC) and any dispute arising out of this engagement or these terms shall be subject to the exclusive jurisdiction of the QFCA Courts to which both parties hereby agree to submit for these purposes.”

9. The national court accepted that it had no jurisdiction to entertain the claim because of the above “arbitration clause” (as the national court referred to it).

10. The Claimant accordingly filed the present claim before this Court on 22 February 2021 seeking the following remedies:

- “- Settlement of the final invoice amounting to QAR 20,000;
- Reimbursement of all expenses paid to our legal advisor amounting to QAR 6,000 in addition to an amount of 475 riyals paid for the translation of the contract submitted before the civil court;
- Reimbursement of all expenses (if any) related to the outcome of the current case risen by the defendant in the civil court;
- Obliging the defendant to pay the plaintiff an amount of 30,000 Qatari riyals (thirty thousand Qatari riyals) in compensation for the time spent in the case filed by the defendant without resorting to your justice according to the jurisdiction at a rate of

1,200 riyals per hour for a full 25 hours (Charge out rates are shown in the agreement page 10);

- Compensation for misuse of litigation and defamation of the plaintiff as the court deems fair based on previous cases; and
- Obliging the defendant not to harm the plaintiff in the future or any of its employees.”

11. The Defendant objected to the jurisdiction of this Court on the basis of the “invalidity of the contract concluded with the Plaintiff Company and the arbitration clause contained therein, due to lack of legal capacity and fraud by the Plaintiff, and the consequent financial implications, especially recovery of an amount of QR 50,000 (fifty thousand Qatari Riyals) which was delivered to the Defendant”.

12. It is appropriate that the Court first address the issue of its jurisdiction. It has taken the view that that issue would most expeditiously and effectively be addressed by consideration of the documents filed by the parties, without the need for an oral hearing.

13. The Regulations and Procedural Rules of this Court (“the Rules”) were made under powers provided by the QFC Law, that is, the Qatar Financial Centre Law. The scope of this Court’s jurisdiction is set out in Article 8 of the QFC Law and replicated by Article 9 of the Rules. The Court lacks jurisdiction or power to act only if the claim falls beyond that scope (and jurisdiction is not otherwise provided for by any other law or regulation).

14. According to Article 9.1 of the Rules:

“The Court has jurisdiction, as provided by Article 8.3(c) of the QFC Law, in relation to:

...

9.1.4. Civil and commercial disputes arising from transactions, contracts or arrangements taking place between entities established within the QFC and

residents of the State, or entities established in the State but outside the QFC, unless the parties agree otherwise.”

15. It is clear from the documents in the present case that this is a civil dispute arising from a contract between an entity established within the QFC and a resident of the State on or about 30 December 2019. It is also clear that the parties did not agree otherwise, as contemplated by the Article. Further, although not strictly necessary, the two parties specifically agreed to choose the QFC Court to be the forum to settle any dispute regarding this transaction. It is therefore a straightforward application of Article 9.1.4. of the Rules.

16. Nevertheless, the Defendant pleaded that the agreement between the parties, and hence the governing law clause, are invalid because the Claimant lacked the capacity to enter into this agreement and thus it is null and void. The Defendant relied upon many articles of the Qatar Civil Law to prove that lack of capacity renders a contract invalid, including the governing law provision which confers jurisdiction on the QFC Court. The Defendant claims that,

“The Plaintiff Company has no legal entity under a document of commercial registration data obtained from the Commercial Registration and Licensing Department, which indicates the date of expiry of the Plaintiff Company’s commercial registration on 06 June 2019. It also indicates that the Plaintiff Company’s status is "written off" at request, meaning that the Plaintiff Company is in violation of the law and has no valid legal entity. Thus, the contract concluded between the Defendant and the Plaintiff Company is null and all effects arising therefrom are ineffective”.

The Defendant goes on to quote a number of articles of the Qatar Arbitration Law in order to demonstrate that a void contract does not give an arbitration tribunal, such as that of that QFC Court, jurisdiction to entertain the claim.

17. This defence is based on a wrong premise which naturally leads to a wrong conclusion. The Defendant's assumption is that the QFC Court is "an arbitration tribunal" and that its jurisdiction is thus dependent on an arbitration agreement. This is incorrect. The QFC Civil and Commercial Court is a proper court of law not "an arbitration tribunal". As Article 3.2 of the Rules provides, "It is recognised that the Court is a court of Qatar". The jurisdiction of the Court is not based on the will of the litigants but properly stipulated in the QFC Law, and by the Rules of the Court.
18. It is clear from the QFC public register that the Claimant is a registered company under the QFC Law and regulations and was so long before the agreement between the two parties was entered into. In accordance with Article 8(3)(c)(c/4) of the QFC Law (as replicated by Article 9.1.4 of the Rules) it is clear that the Court has jurisdiction to hear this claim and so the Defendant's jurisdictional challenge is dismissed.

By the Court,

Justice Rashid Al Anezi

