



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 (A) 4

IN THE QATAR FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT
APPELLATE DIVISION

[On appeal from [2023] QIC (F) 45]

Date: 7 March 2024

CASE NO: CTFIC0014/2021

AMBERBERG LIMITED

Applicant

PRIME FINANCIAL SOLUTIONS LLC

2nd Claimant

v

THOMAS FEWTRELL

1st Respondent

NIGEL PERERA

2nd Respondent

LOUISE KIDD

3rd Respondent

CHRISTOPHER IVINSON

4th Defendant

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Her Honour Frances Kirkham CBE

Justice Sir Bruce Robertson

Order

1. Permission to appeal refused.
2. The Applicant is to pay the Respondents' costs incurred on the application for permission to appeal, to be assessed by the Registrar if not agreed.

Judgment

1. The Applicant seeks permission by an application dated 4 January 2024 to appeal from part of the judgment of the First Instance Circuit (Justices Lord Hamilton, Fritz Brand and Helen Mountfield KC) given on 9 November 2023.

The factual background and earlier proceedings

2. Amberberg Limited (**'Amberberg'**) is a company incorporated in the British Virgin Islands and beneficially owned by Mr Rudolfs Veiss. It purchased from the First, Second and Third Respondents, Thomas Fewtrell, Nigel Perera and Louise Kidd, the share capital of the Second Claimant (then known as International Financial Services Qatar LLC, but subsequently renamed Prime Financial Solutions LLC), a Qatar Financial Centre (**'QFC'**) company. We shall refer to this company as Prime. The purchase was made on the terms of a Sale and Purchase Agreement dated 28 November 2019 (**'SPA'**) for £1. Amberberg Limited put three tranches of capital into Prime in November and December 2019.

3. In May 2021, Amberberg and Prime brought a claim against the Respondents for breach of warranty under the warranties in the SPA in respect of a claim by Ms Aycan Richards who had earlier agreed to buy Prime, lent some money to it, but then did not go through with the purchase and sued Prime. The claim was also brought against Mr Peter Ivinson on the basis that he was also one of the sellers under the SPA.

Hearing on the jurisdiction

4. The Respondents challenged the jurisdiction in respect of the claim by Amberberg, but not Prime. The First Instance Circuit held that it had jurisdiction in a judgment given on 7 March 2022 ([2022] QIF (F) 3), but reserved the issue of costs of the proceedings.

Hearing for the determination of liability

5. The First Instance Circuit then gave directions that it would first determine the merits of the claim and thereafter determine the amount of any damages to be awarded.
6. The trial on the merits was heard in October 2022. On 28 December 2022, the First Instance Circuit determined that:
 - i. Mr Fewtrell, Mr Perera and Ms Kidd were liable to Amberberg for breach of warranty under clause 9.3.2 of the SPA (a warranty in relation to there being no claims against Prime other than those disclosed and acknowledged in writing). There had been a claim by Ms Aycan Richards for QAR 392,500 for which this Court had given judgment in her favour on 14 December 2020: *Aycan Richards v (1) Nigel Thomas Howard Perera, and (2) International Financial Services Qatar LLC* [2020] QIC (F) 17. That claim had not been disclosed or acknowledged in writing.
 - ii. There had been a dispute as to whether the claim had been disclosed orally; the First Instance Circuit concluded as summarised in a subsequent judgment ([2023] QIC (F) 41 at paragraph 11):

However, having set out a series of inconsistencies in Mr Perera's evidence, we expressed the view that, had we needed to determine that issue for the purposes of establishing liability, we would have preferred

the evidence of Mr Veiss to the effect that he was not aware that the First Claimant itself had a liability to Ms Richards at the time when negotiations were happening, and when the First Claimant entered the SPA.

- iii. The claim by Amberberg and Prime against Mr Peter Ivinson failed as he had not been a party to the SPA.
 - iv. Prime's claim failed; it could not rely on the warranties as it was not a party to the SPA, and it could not benefit as a third party; its claims against Mr Perera and Mr Fewtrell as directors were not sustainable.
 - v. Amberberg was entitled to its costs from Mr Fewtrell, Mr Perera and Ms Kidd.
 - vi. Prime was liable for Mr Fewtrell, Mr Perera and Ms Kidd's costs in defending the claim against Prime.
7. The Registrar proceeded to an assessment of costs holding that the reasonable costs of Amberberg which were to be paid by Mr Fewtrell, Mr Perera and Ms Kidd, were QAR 240,525. The reasonable costs of Mr Fewtrell, Mr Perera and Ms Kidd which were to be paid by Prime were QAR 124,455. When Amberberg sought to recover the costs, it was met by the answer that Mr Fewtrell, Mr Perera and Ms Kidd were unable to pay.

Application for a freezing order

8. An application was made by Amberberg on 4 June 2023 for a freezing order. The purpose of this was to try to prevent Prime from paying the costs awarded to it into the nominated accounts of Mr Fewtrell, Mr Perera and Ms Kidd in the UK and instead pay it into this Court pending the outcome of the damages claim. On 14 June 2023, Mr Fewtrell, Mr Perera and Ms Kidd informed Amberberg that the amounts had been paid into their nominated bank accounts in the UK. Amberberg nonetheless continued with the application until it was withdrawn without explanation on 23 July 2023.

Hearing for the determination of the damages

9. A hearing for the determination of the issues on the damages to which Amberberg was entitled was held on 2 August 2023 at which Mr Fewtrell, Mr Perera and Ms Kidd did

not appear or otherwise participate. Their position was that they had no assets against which any judgment could be enforced, and they could not afford legal representation.

10. On 7 September 2023, the First Instance Circuit gave judgment and concluded (at paragraphs 65 and 66):

65. Accordingly, and somewhat reluctantly given the unsatisfactory conduct of the First to Third Defendants in respect of this sale, we are not satisfied on the evidence led before us, written or oral, that a reasonable purchaser would have had sufficient confidence that the Second Claimant would in 2020 and the immediately succeeding years have absorbed the debt of £100,000 [the amount of the claim by Ms Aycan Richards] without going into deficit. It has not therefore been proved that the First Claimant sustained actual loss by the First to Third Defendants' breach of warranty. Its entitlement is only to nominal damages.

66. Accordingly, we are not satisfied on the evidence before us that the First Claimant had established any actual loss caused by the breach of warranty. But, as there had been a breach of contract, it is entitled to nominal damages in recognition of that breach. Those damages we assess at QAR 5.

11. There was no appeal from the judgment.

The judgment of the First Instance Circuit on costs

12. The final stage of the proceedings before the First Instance Circuit then took place – the determination of outstanding issues on costs. The First Instance Circuit in its judgment given on 9 November 2023 held ([2023] QIC (F) 45):

- i. Mr Fewtrell, Mr Perera and Ms Kidd should pay to Amberberg the costs of the challenge to the jurisdiction which was dismissed by the judgment dated 7 March 2022.
- ii. Amberberg should pay to Mr Fewtrell, Mr Perera and Ms Kidd the costs of the freezing application. It relied on a passage in the judgment of the First Instance Circuit in *Xavier Roig Costello v Match Hospitality Consultants* [2023] QIC (F) 30 at paragraph 9.
- iii. There should be no order as to the costs of the determination of the issues on damages. It said at paragraph 14 as follows:

As to the costs of the Quantum Proceedings, the decisive consideration is in our view that the First Claimant was found to have failed to establish that it had suffered any material loss resulting from the First to Third Defendants' breach of warranty and was accordingly held to be entitled to nominal damages only. The inevitable conclusion to be drawn from this is in our view that the First Claimant achieved no substantial success in its claim. Accordingly, we hold it appropriate that there should be no order as to the costs of these proceedings.

The grounds of appeal: our conclusions

13. Amberberg sought permission to appeal on four grounds which we set out below. We ordered a response from Mr Fewtrell, Mr Perera and Ms Kidd which was duly served by way of a written submission.

Our decision

14. We refuse permission to appeal.

Ground 1: There is a contractually binding agreement which provides for indemnification pursuant to which the Appellant is to be indemnified

15. Amberberg claimed that the terms of the SPA provided for the purchaser(s) to receive a broad indemnification in respect of all loss or damage, payments made, and costs and expenses incurred. It relied in particular on the terms of clause 10.3 of the SPA:

The purchasers shall use reasonable endeavours to mitigate the costs and damages resulting from such Claim, however, the Sellers shall remain jointly and severally liable to indemnify the purchasers for any Company costs or damages resulting from such Claim including the costs of defending such Claim.

16. It contended that the First Instance Circuit should have taken these provisions into account when making decisions on costs, but that it failed to do so.
17. We do not consider that this submission provides any basis for contending that the approach of the First Instance Circuit was wrong. The provisions of clause 10 relate to the costs of claims brought by third parties against Prime, not to costs incurred by Amberberg in enforcing the SPA. The First Instance Circuit in its judgment of 28 December 2022 decided that clause 10.1 applied to third-party claims; no appeal was made against that judgment. As a non-third party to the SPA, Amberberg could not therefore invoke clause 10.1 or 10.3. Moreover, the First Instance Circuit determined

that Prime had established no loss in its claims against Mr Fewtrell, Mr Perera and Ms Kidd. Such a claim by Prime rather than against Prime does not fall within the scope of clause 10.

18. That is sufficient reason to refuse permission. However, Mr Fewtrell, Mr Perera and Ms Kidd make a further point. They contend that the parties filed submissions on the question of who should bear the costs of (i) the jurisdictional challenge, (ii) the freezing order application, and (iii) the quantum proceedings; they submit that Amberberg did not raise in its submissions on costs the argument we have summarised above; it should not therefore be permitted to run the argument in this Court. Even if the point raised had merit, this was a point that should have been raised with the First Instance Circuit. No explanation has been given for the failure to raise it. We can therefore see no basis for permitting it to be raised on the appeal

Ground 2: The costs ordered in respect of the freezing application

19. Amberberg's grounds of appeal were framed as follows at paragraph 5(b) of the Notice of Appeal:

The Appellant acknowledges the principle of liability with respect to the costs of the freezing application but intends to challenge the quantum and reasonableness of the claimed costs.

20. However, it also appears to be contending that the costs of the freezing application should have been looked at in the round; the First Instance Circuit should not have relied on *Xavier Roig Castello v Match Hospitality Consultants LLC*; it should have been awarded the costs of the freezing injunction; or that no order should have been made for it to pay the costs.
21. Amberberg had told the First Instance Circuit that it had withdrawn the application without any admission that it had been wrong to seek a freezing injunction. It had done so because the payment had been made to Mr Fewtrell, Mr Perera and Ms Kidd, and there was no judgment debt outstanding against which the freezing injunction could have been enforced.

22. The decision on which party is to pay costs on an application such as this is pre-eminently a matter for the discretion of the First Instance Circuit. We can see no basis for contending that the discretion was wrongly exercised. As to the amount of the costs, that is a matter for assessment by the Registrar failing agreement.

Ground 3: The Court should have awarded to Amberberg the costs of the proceedings to determine damages

23. Amberberg contends that the First Instance Circuit was wrong in not following the basic principle that costs should generally be awarded to the successful party. Furthermore, the First Instance Circuit had failed to take into account the Defendants' failure to appear and the conduct of Amberberg in complying with the directions.

24. In its judgment of 9 November 2023, the Court explained why it awarded as it did. Article 33 of the Court's Regulations and Procedural Rules gives the Court the power to make a costs award which differs from the general rule that the unsuccessful party pay the costs of the successful party. The Court gave reasons for exercising its discretion to divert from that general rule. Amberberg has not demonstrated any ground on which to challenge that; the Court considered the outcome of the substantive issues and gave cogent reasons for its costs award.

Ground 4: The Court failed to act consistently or apply forensic standards, in particular by dealing with matters without a hearing

25. Amberberg submitted that there should have been an oral hearing and the issues should have received more careful consideration.

26. We can see no basis for a contention that there should have been a hearing or for the assertion that the First Instance Circuit did not properly analyse the issues. The First Instance Circuit obtained the submissions of the parties and it was for it to decide how best to proceed. Moreover, it is evident from its judgment that the issues were all carefully considered. Amberberg has not demonstrated that it has suffered any prejudice by not being offered a hearing.

27. In any event Mr Fewtrell, Mr Perera and Ms Kidd submit that Amberberg did not request a hearing. It provided written submissions. It appears not to have alerted the Court to the need for a hearing,

By the Court,



[signed]

Lord Thomas of Cwmgiedd, President

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

Representation

The First Claimant was represented by Eversheds Sutherland (International) LLP (Doha, Qatar).

The Second Claimant was not represented and did not appear.

The First to Third Defendants were represented by Francis, Wilks & Jones (London, United Kingdom).