



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: [2025] QIC (A) 1

IN THE QATAR FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT
APPELLATE DIVISION

[On appeal from [2024] QIC (F) 37]

Date: 13 January 2025

CASE NO: CTFIC0052/2023

COMSEC SERVICES AND COMMUNICATIONS COMPANY WLL

Claimant/Applicant

v

BUSE DENISE CALLI

1st Defendant/ 1st Respondent

AND

ROYAL EMPIRE MARBLE AND STONES TRADING QFZ LLC

2nd Defendant/ 2nd Respondent

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Ali Malek KC

Justice Dr Muna Al-Marzouqi

Order

1. Application for permission to appeal is refused.

Judgment

1. The Applicant ('COMSEC') seeks permission to appeal from the judgment of the First Instance Circuit (Justices George Arestis, Fritz Brand, and Dr Yongjian Zhang) [2024] QIC (F) 37 given on 8 August 2024 in which it struck out the claim COMSEC had brought against the Respondents for monies said to be due under a contract for services. It made no order as to costs.

Factual Background

2. In September 2023, COMSEC brought a claim for QAR 333,528 due under a contract in early 2022 said to have been made with the Respondents under which it was appointed to finalise the customs clearance of a quantity of marble and stone; COMSEC also claimed a further QAR 200,000 as damages for non-payment. In November 2023, COMSEC's legal representatives sought summary judgment. The Respondents, in their Defence served in January 2024, denied that a contract had been made with either of them; they contended that the contract was in fact made with Qatar Foundation and Redco Construction.
3. The First Instance Circuit determined that the claim should proceed to trial and fixed that trial for 19 May 2024, issuing directions. As is set out in its judgment [2024] QIC (F) 37 at paragraphs 5 to 10, the First Instance Circuit issued a number of further directions. The Registrar also wrote to the parties telling them that they must comply with the directions, again setting out where guidance on the Court's procedure was to be found, and referring them to the Maroon Book, which is published on the Court's website in English and Arabic.

4. The parties did not comply with the directions as to the service of witness statements, as to the agreement of a bundle and as to the provision of written submissions. For example, as is set out in paragraph 8 of the judgment of the First Instance Circuit, the document served on 25 April 2024 by COMSEC as the purported witness statement of Sonja Freigassner simply set out personal details and stated that she was “*familiar with every shipment-air sea, clearance, delivery*” and with the “*invoice, packing list COO, Bill of Lading QF7*”. It gave no other information.
5. The First Instance Circuit on 16 May 2024 vacated the trial date of 19 May 2024. The Registrar on 19 May 2024 carefully explained to the parties their failure to comply with the directions. The First Instance Circuit then gave further directions on 27 May 2024 with a view to a trial in July 2024. The Registrar wrote to the parties again to explain the procedures of the Court and offering to help. Apart from the provision of a fresh Defence, neither party complied with the directions.
6. On 18 July 2024 the First Instance Circuit ordered the parties to file submissions as to why the claims and counterclaims should not be struck out for non-compliance with the Orders of the Court. Each party filed a submission which set out the respective submissions of each party in a manner the First Instance Circuit rightly described as consisting of (paragraph 19):

.... vague and general arguments. In fact, they repeated to a large extent (i) the allegations of fact in the statements of claim and of defence, and (ii) the legal bases upon which their cases were founded. They also contained arguments seeking to persuade the Court why they should be the successful litigant as if they were addressing the Court at the end of the hearing of the case.

7. Neither party explained the reasons for their failure to comply with the Court’s directions.

Judgment of the First Instance Circuit

8. In its written judgment the First Instance Circuit concluded that it had no difficulty in reaching “*the conclusion that none of the parties has persuaded the Court that they had any good reason for their dismal failure to comply.*”

9. The Court then referred to its discretion under article 31.1 of the Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules (the ‘**Rules**’). It then applied the principles on which the discretion should be exercised as set out in *Mohamed Al-Emadi v Horizon Crescent Wealth LLC* [2021] QIC (F) 12 (‘**Mohamed Al-Emadi**’). It struck out the claim and the defence, as both parties had flagrantly failed to comply with the directions of the Court.

The application for permission to appeal

10. On 6 October 2024, COMSEC made an application for permission to appeal supported by a memorandum setting out its grounds of appeal:

- i. Misapplication and misinterpretation of the law.
 - a. It is contended that the First Instance Circuit had not applied Articles 235 and 231 of the Civil and Commercial Procedures (Law No. 13 of 1990) as COMSEC had shown the principal document upon which the Respondents had relied was a forgery.
 - b. It is also contended that the Respondents had failed to comply with the Order for disclosure.
 - c. The First Instance Circuit failed to have regard to the witness statement that COMSEC had submitted on 23 May 2024. The document filed on 25 April 2024 as a witness statement (to which we have referred at paragraph 4 above) was submitted with the Notice of Appeal.
- ii. COMSEC had put forward the necessary evidence to establish that the contract had been entered into with the Respondents.

Our conclusion

Article 31

11. The First Instance Circuit were right to determine the issue before them under article 31 of the Rules which provides:

31.1 Where a party has, without reasonable excuse, failed to comply with a direction or order of the Court or a provision of these Regulations and Procedural Rules, the Court may:

31.1.1 make a costs order against that party in accordance with article 33 below;

31.1.2 where that party is the claimant or applicant, dismiss the claim or application wholly or in part;

31.1.3 where that party is the defendant or respondent, strike out the whole or part of the defence or response to the application and, where appropriate, direct that the defendant be debarred from contesting the proceedings or application.

31.2 The court shall make no order under this section without giving the party in question notice affording that party an opportunity to make representations against the making of such an order.

31.3 Any irregularity resulting from any failure to comply with any provision of these Regulations and Procedural Rules or any direction of the Court before the Court has issued its decision shall not affect the validity of the proceedings or of any decision made by the Court.

12. The power conferred under this article is discretionary and must be exercised in accordance with the Overriding Objective established in article 4 which provides as follows:

4.1. The overriding objective of the Court is to deal with all cases justly.

4.2. The Court must seek to give effect to the overriding objective when it exercises its functions and powers given by the QFC Law, including under these Regulations and Procedural Rules and under QFC Regulations.

4.3. Dealing with all cases justly includes, so far as practicable:

4.3.1. ensuring that litigation before the Court takes place expeditiously and effectively, using appropriately no more resources of the Court and the parties than is necessary;

4.3.2. ensuring that the parties are on an equal footing;

4.3.3. dealing with the case in ways which are proportionate to the amount of money involved, to the importance of the case, to the complexity of the issues, facts and arguments, and to the financial position of each party;

4.3.4. making appropriate use of information technology.

4.4. It is the duty of the Court to deal with all cases in accordance with the overriding objective.

4.5. It is the duty of the parties to any case before the Court to assist the Court in determining that case in accordance with the overriding objective.

13. The Court's approach in exercising the discretionary power under article 31 is best understood through the principles derived from articles 31 and article 4 of the Rules.

14. These principles can be distilled into the following questions:

- i. Stage 1: Has there been a failure to comply with the Rules or directions? If so, how serious is that failure?
- ii. Stage 2: Was there a reasonable excuse for the failure to comply?
- iii. Stage 3: Would the Court, despite the failure to comply, be able to deal with the case justly in conformity with the Overriding Objective? particularly having regard to the need for:
 - a. the effective and expeditious conduct of the litigation with the appropriate use of the resources of the Court; and
 - b. Proportionality.

15. This approach based on principles derived from the Rules and summarised in the preceding questions aligns with international best practice. It is similar to the approach of the Court of Appeal of England and Wales as set out in the judgments of Lord Dyson MR in *Andrew Mitchell MP v News Group Newspapers Ltd* [2013] EWCA Civ. 1537 and *Denton & Ors v TH White Ltd & Ors* [2014] EWCA Civ. 906 and to the observations of Lord Clarke of Stone-cum-Ebony in the Supreme Court of the United Kingdom in *Shaun Summers v Fairclough Homes Ltd* [2012] UKSC 26 (at paragraph 61).

16. The Rules of this Court share with the Civil Procedure Rules in England and Wales the modern approach to civil procedure envisaged by Lord Woolf of Barnes, as it was he who expounded the Rules in this jurisdiction and was the first President of this Court.

17. However, the approach adopted in this Court is influenced but not identical to that in England and Wales:

- i. First, the wording of the Rules is different. For example, the wording of the Overriding Objective is different with greater emphasis in this Court of ensuring that cases are dealt with a manner that is just, expeditious and cost effective. This emphasis on expedition reflects the role of the Court in an international and commercial context. The Rules in this jurisdiction have the benefit of much greater clarity and simplicity (Sir Stephen Richards, ‘Civil Litigation: Should the rules be simpler’ (Gray’s Inn, London, June 2015)).
- ii. Second, the provisions in England and Wales have subsequently been modified to reflect changes necessary in that jurisdiction such as those arising out of the reforms suggested by Jackson LJ (see J Dyson, ‘The application of the amendments to the Civil Procedure Rules’ (2014) 33(2) *Civil Justice Quarterly* 124 and J Sorabji, *A Model Civil Procedure Code for England and Wales* (Oxford, Oxford University Press, 2024)).
- iii. Third, as has been pointed out by this Court in *Chedid & Associates Qatar LLC v Said Bou Ayasg* [2015] QIC (A) 2 (at paragraph 18) and in *Mohamed Al-Emadi* (at paragraph 9), it is necessary to take into account the specific circumstances of each jurisdiction and the manner in which the law has evolved in this Court.

18. Another decision of the First Instance Circuit, *Mohamed Al-Emadi*, guided the First Instance Circuit in the present case and had guided the decision in *Boom General Contractors WLL v Sharq Insurance LLC* [2024] QIC (F) 29. In our judgment on the application for permission to appeal in *Boom General Contractors WLL* [2024] QIC (A) 1, we declined to elaborate further on that decision (see paragraph 24).

19. Given the importance of article 31 of the Rules to case management in this Court, we consider it necessary to express our views on its proper interpretation, even though this issue was not fully argued before us. While ordinarily we would have invited further

submissions on such a significant matter, the circumstances of this application for permission to appeal, including the need for expeditious resolution and the clear principles already established in the Rules, made it appropriate to proceed without additional argument.

20. In *Mohamed Al-Emadi*, the Court had considered that the material question the Court should consider in relation to the striking out of a defence was whether “*it would have been fair and just in the circumstances of the case to strike out the defence either in whole or in part*”. The Court had been referred to two first instance decisions in England and Wales (the decision of Teare J in *Towler v Wills* [2010] EWHC 1209 (Comm) (at paragraphs 16-21) and of Fancourt J in *Byers v Samba Financial Group* [2020] EWHC 853 (Ch) (at paragraphs 119-123). Although the question posed in reliance on these English cases is similar to the third stage question we have set out above, we consider that in this jurisdiction it is desirable to proceed by way of the principles as expounded by Lord Woolf and as clearly and simply set out in the Rules of this Court. This approach ensures consistency with our procedural framework as envisaged by Lord Woolf for this Court in Qatar without the need to engage with the additional layers of complex analysis that have been thought necessary in England and Wales for rules that have to cater for a wide range of civil proceedings, costs regimes and litigation funding mechanisms.

21. We therefore turn to the questions which we have listed under the three stages.

Stage 1: Was there a failure to comply with the Rules or Directions and how serious was that failure?

22. We have carefully considered the papers placed before the First Instances Circuit. We are satisfied that there was a complete failure to comply with the directions made on 27 May 2024. No disclosure was made. No witness statements were served. No e-Bundles were produced. No written submissions were made.

23. The failure was very serious as without any compliance with the directions, it was very difficult to see how the case could be tried.

Stage 2: Was there a reasonable excuse for the failure to comply?

24. There was no reasonable excuse for the failure to comply and none has been suggested by the parties. The Registrar's email of 19 May 2024 was clear as to what was required. He referred them to the Court's procedural guide which explained the procedure before this Court. He offered to help them, but neither party availed themselves of this offer. The First Instance Circuit gave the parties the opportunity to explain their failure but neither did. They simply made submissions on the merits.

Stage 3: Was the Court able to deal with the case justly having regard to the Overriding Objective?

25. This question requires us to assess whether despite the failures, the Court would be able to deal with the case justly in accordance with the Overriding Objective.

26. We are satisfied that the First Instance Circuit was right to conclude that it could not deal with the case justly in accordance with the Overriding Objective. Its decision to strike out the Claim and the Defence reflected the Court's obligation to ensure the effective and expeditious conduct of the litigation with the appropriate use of the resources of the Court. The Court offered every possible assistance to the parties, but each failed to avail itself of the offer. The Court cannot be expected to do more than it did, having regard to the need to use the Court's resources effectively. The decision was also proportionate as, despite being given a second chance, the parties failed to take the fundamental steps that would have enabled the Court to determine the dispute; this was particularly regrettable for COMSEC as it failed to provide any material evidence in support of its case.

27. That is sufficient to dispose of the application. However, the specific further contentions advanced in the application for permission to appeal do not in any way assist COMSEC:

- i. As to COMSEC's contention that the First Instance Circuit failed to have regard to the statement submitted on 23 May 2024, the First Instance Circuit was correct in paying no heed to that document. What was filed on 23 May 2023

was the document that had been filed as part of the summary judgment application. It was not a statement of a witness for the trial.

- ii. COMSEC did not even provide to the Court the contract it claimed to have entered into with the Respondents.
- iii. There was no evidence that the document on which COMSEC relied was a forgery.
- iv. We accept that there was a failure by the Respondents to make disclosure. However, COMSEC failed to put forward the evidence needed to establish its claim. The Respondents failure was therefore of no relevance in these circumstances.

28. The First Instance Court and the Registrar made every effort to assist the parties throughout these proceedings. However, it is a matter of significant concern to this Court that the parties did not comply with the Court's directions. As regards COMSEC, its inability to establish its claim was entirely the result of its own failure to take advantage of the assistance offered in relation to the proper presentation of claims before this Court.

By the Court,



[signed]

Lord Thomas of Cwmgiedd, President

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

Representation

The Applicant was represented by Mr Ahmed Mena of the Abdullah Mubarak Khamis Al-Khulaifi Law Firm, Doha, Qatar.

The Respondents did not appear and were not represented.