



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: [2020] QIC (F) 4

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

10 May 2020

CASE No: 3 of 2020

NASCO QATAR LLC

Claimant

v

MISR INSURANCE (QATAR BRANCH)

Defendant

JUDGMENT
(Concerning jurisdiction)

Before:

Justice Bruce Robertson
Justice Arthur Hamilton
Justice Rashid Al Anezi

ORDER

1. The Court determines that it has jurisdiction in relation to the dispute between the parties.
2. The Defendant shall pay to the Claimant the latter's reasonable costs with respect to the jurisdictional issue, these costs to be agreed between the parties or, failing agreement, as may be assessed by the Registrar.
3. The Defendant is directed, if it intends to defend these proceedings on liability or on quantum or both, to file and serve a relevant defence within 14 days of the issue of this Order.

JUDGMENT

1. In these proceedings the Claimant, an insurance broker, sues the Defendant, an insurance company, for unpaid brokerage commission allegedly due under a contractual arrangement between them. A claim form having been served on it, the Defendant responded by challenging the jurisdiction of this Court. It has not, as yet, stated any defence on the merits.
2. In the claim form the Claimant describes itself as licensed and regulated by the Qatar Financial Centre under a specified registration number and as having its address in the Al Reem Tower, Doha. It relies for jurisdiction on Article 8.3(c)[more accurately, 8.3.c/3] of the QFC Law, under which this Court has jurisdiction to hear "civil and commercial disputes arising between entities established in the QFC and contractors therewith...". It does not suggest that the Defendant, although established in Qatar, is an entity within the

QFC. Rather, the Claimant maintains that it is an entity within the QFC and that the Defendant is subject to the jurisdiction of this Court by reason of being a contractor with the Claimant.

3. The Defendant's challenge to jurisdiction acknowledges Article 8.3(c) but states:

“2.2 However, article 2 [of the QFC Law] provided that “any entity established and operating in the State outside the location set pursuant to paragraph 2 [of Article 2] will, when so designated by the Minister [emphasis in the original], be deemed to be established and operating within the QFC provided that it is appropriately approved, authorized or licensed to do so and has provided an undertaking to the QFC Authority to move its operations into the QFC at the expiry of the designation.”

2.3. And whereas the claimant, despite that he has been licensed by the QFC, is not deemed that operating and established in the QFC since he is operating outside the location pursuant to the above-mentioned article.

2.4 Accordingly, the claim does not fall within the ambit of Article 8.3(c) of the QFC Law.”

With its response the Defendant attached a judgment of the Qatari (national) Court of First Instance in *Hassan Zakaria Hassan Mohammad v (1) Jomaa Abdulaziz Saiid and (2) Axa Insurance Gulf B.S.C*, issued on 28 April 2016, an English translation of which was obtained by the Court. In the course of further exchange of pleadings, the Defendant stated that the above decision of the Court of First Instance had been confirmed on appeal. This Court directed the Defendant to file a copy of the appeal judgment. It did so, the Arabic

original being filed. This Court then obtained a translation into English of that appeal judgment.

4. This Court also, for the purposes of clarifying certain pertinent factual issues, by Directions dated 14 April 2020 directed the parties to answer, in so far as they were able, the following questions:

“1. Was the Claimant (under whatever name) ever established and operating in Qatar outside the location of the QFC specified under Article 2 of the QFC Law?”

2. If so, how did it come to be established and operating (if it ever was) within that location?”

3. If not, when was it first established as an LLC within the location of the QFC and come to be licensed and regulated by the QFCA?”

The Claimant responded to these questions by asserting, among other things, that it had never been established in Qatar outside the QFC and that, since its incorporation on 8 August 2007, when it was first licensed by the QFCRA, it had always operated, and was still operating through premises which are licensed by the QFC. It exhibited documents vouching (1) its current QFC licence, (2) that it has been since January 2008 licensed as a QFC entity and (3) that since at least 2010 it had leased premises licensed by the QFC. The Defendant has not challenged any of these factual assertions. Nor has it identified any basis for its assertion (in para 2.3 of its response) that the Claimant “is operating outside the location pursuant to the above-mentioned article”.

5. The Court, having received full pleadings from parties and considered the other material filed, was satisfied that, due regard being had to the overriding objective set out in Article 4 of its Procedural Rules, the jurisdictional challenge could best be addressed and decided on the papers, without the need for an oral hearing.

6. Article 8.3.c/3 contains the proviso “..unless the parties agree otherwise”. There is no suggestion that the present parties have so agreed. Further, it is well settled in this jurisdiction that Article 8.3.c/3 of the QFC Law confers jurisdiction on this Court where one of the parties to a civil or commercial dispute is an entity established in the QFC and the other party is a contractor with it, even where that other party is established elsewhere, including in Qatar outside the QFC. *Daman Health Insurance Qatar LLC v Al Bawakir Company Ltd* [2017] QIC (F) 2 is illustrative of that settled law.

7. The Defendant relies on paragraph 3 of Article 2 of the QFC Law. In order better to understand the purpose and scope of Article 2 of that Law (which was first promulgated in 2005), it is appropriate to set out the full terms of the Article. It provides;

“1. A financial and business centre to be known as the “Qatar Financial Centre” may be referred to as “the Centre”) shall initially be located in Doha.

2. The Council of Ministers shall specify the location of the Centre, and may amend it from time to time, and may authorize the Minister [of Economy and Finance] to do that.

3. Any entity established and operating in the State outside the location set pursuant to paragraph 2 will, when so designated by the Minister, be deemed to be established and operating within the QFC, provided that it is appropriately approved, authorised or licensed to do so and has provided an

undertaking to the QFC Authority to move its operations into the QFC at the expiry of the designation. Such a designation shall be for a fixed period of six months from the date of designation. The designation shall be renewable on expiry for a further period not to exceed six months at the sole discretion of the Minister and upon his being satisfied that valid grounds exist for the granting of any such extension.”

The location of the Centre was in due course specified.

8. It is obvious that, when the QFC was first established, there may have been entities previously established in the State which might wish to translate their establishment and operation into the QFC, that is, to within the location specified by the Council of Ministers or by the Minister as authorised by it. Likewise, there may have been entities which, at some later date, were first established and operated in the State outside the location so specified but subsequently wished to translate their establishment and operation into the QFC. Article 2.3 of the Law lays down a mechanism for that. If that mechanism is followed, the entity in question would be deemed to be established and operating in the QFC, that is, it would be treated as so established and operating although it had not been incorporated or otherwise established under the ordinary QFC rules. But, that paragraph has no application to an entity which has never been established or operated in the State outside the specified location. In particular, it has no application to an entity which has only been established and operated within that location. In such a case there is no room for any designation by the Minister under Article 2.3.

9. It is for the Defendant, as the party advancing a jurisdictional challenge, to lay before the Court both the factual and the legal basis for it. The Defendant does not offer to prove that any of the factual assertions made by the Claimant in its response to the questions posed by this Court (as narrated in paragraph 4 above) are false. Nor does it offer to prove, as

regards the Claimant, any of the factual matters referred to in Article 2.3 of the Law. In particular, it does not offer any basis for proof that the Claimant was at any time an entity established and operating in the State outside the specified location of the QFC. Without proof that it was, paragraph 3 can have no application. So far as any legal basis for the challenge is concerned, the Defendant relies solely on the judgments of the Qatari (national) courts referred to above. To these we now turn.

10. The decisions of the Qatari (national) courts are not binding on this Court, though they will always be regarded with respect by it. However, it is clear that, on a proper analysis, the case relied on does not support the Defendant's contention.

11. The claimant in that case had suffered serious injuries in a road accident. Relying on an earlier criminal judgment, he brought civil proceedings for compensation before the Court of First Instance. Joined in that action were not only the guilty driver but also his insurer. The insurer, relying on Article 2 of the QFC Law, challenged the jurisdiction of that court to give judgment against it. The case was accordingly concerned with the jurisdiction of the national court, not with the jurisdiction of this Court. However, reliance was placed on Article 2 of the Law. The Court of First Instance held that the insurer's challenge to the jurisdiction of the court was unsound and that it was obliged to pay the adjudicated compensation. That decision was confirmed on appeal. It is the reasoning of the higher court (the Court of Appeal) to which attention should be given.

12. It appears from the reasoning of the Court of Appeal that it refused the insurer's appeal substantially on the ground that it had failed to establish various factual matters which the court regarded as required to support the plea to the jurisdiction. It is unnecessary to detail these factual matters, none of which is relevant to the present case.

13. What is significant for present purposes is that the Court of Appeal did not base its decision on any interpretation of Article 2.3 of the Law of a kind which could support the Defendant's contention in this case. In particular, there is no reliance by it on the absence of any designation by the Minister under Article 2.3. Accordingly, the judgments of the national courts are of no assistance in the resolution of the present jurisdictional issue.
14. For the reasons given above, the Defendant's jurisdictional challenge must be rejected. The Claimant is entitled to recover from the Defendant its reasonable costs incurred in resisting the Defendant's jurisdictional challenge.
15. Under Article 20.2 of this Court's Procedural Rules a Defendant who seeks to challenge the jurisdiction of the Court is not required to serve a defence until after a determination that the Court has jurisdiction. The Court has, by this judgment, determined that it has jurisdiction. The Defendant has not, to date, served any defence on the merits. If it intends to resist this claim it must do so now within the time scale given in the foregoing Order.

By the Court,



Justice Arthur Hamilton



Representation

The Claimant was represented by John and Wiedeman LLC, Doha, Qatar

The Defendant was represented by Law Office of Riad Rouhani, Doha, Qatar