



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: [2023] QIC (F) 7

IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT

Date: 8 March 2023

CASE NO: CTFIC0024/2022

BANK AUDI COMPANY LLC

Claimant

v

BIN OMRAN TRADING & CONTRACTING COMPANY WLL

1st Defendant

KH HOLDING

2nd Defendant

JUDGMENT

Before:

Justice Lord Arthur Hamilton

Justice Fritz Brand

Justice Ali Malek KC

Order

1. The claims for summary judgment in respect of the Direct Facility and the Indirect Facilities succeed.
2. As to the Direct Facility, the Court orders that the First and Second Defendants are jointly liable for:
 - i. the outstanding capital as at 16 February 2023, including previously capitalised interest, amounting to QAR 19,988,460.00;
 - ii. accumulated interest up to 16 February 2023, not previously capitalised, amounting to QAR 57,578.08;
 - iii. interest at the rate of 6.5% per annum from 16 February 2023 until the date of payment; and
 - iv. management fees of QAR 175,000.00, continuing on an annual basis.
3. As to the Indirect Facilities, the Court orders that within 14 days of this judgment, the First Defendant shall provide cash collateral to cover the Guarantees along with interest and commissions as specified as follows:
 - i. QAR 13,491,522.00 (being the total principal amount of the performance bond and the retention bond); in addition to,
 - ii. the TF commissions to be due for the year 2023 (the date the Indirect Facilities are supposed to expire), at a rate of 1.7% per annum.
4. The sums paid by way of collateral shall be paid into a blocked account at the Claimant Bank as security to guarantee the Indirect Facilities unless the Guarantees are formally released by the beneficiary, Public Works Authority –Ashghal.
5. If it transpires that there is in fact no liability under the Guarantees, any collateral paid under paragraph 3 of this Order should be returned to the First Claimant.

6. In event that that First Defendant fails to comply with paragraph 3 above, the Second Defendant is required under the 2015 Guarantee to provide the cash collateral above within 21 days of the date of this judgment.
7. The Court awards the Bank its reasonable costs of these proceedings against the First and Second Defendants jointly and severally. These costs will be assessed (if not agreed) by the Registrar.

Judgment

Background

1. The Claimant, Bank Audi Company LLC (the “**Bank**”) is a company established in accordance with the laws of the Qatar Financial Centre and registered in the Commercial Register under number 00027. It brings this claim against the First Defendant, Bin Omran & Contracting Company WLL (“**Bin Omran**”), and against the Second Defendant, KH Holding (a corporate entity with legal personality), represented by its manager Sheikh Khalid Hamad Al-Thani.
2. The Bank seeks summary judgment pursuant to article 22.6 of the Court’s Regulations and Procedural Rules (the “**Rules**”) and Practice Direction 2/2019-Summary Judgment.
3. Although Bin Omran and KH Holding have been properly served with the proceedings and this application, they have not participated in the proceedings whether orally or in writing. They have not sought to defend the proceedings.
4. On 16 February 2023, an oral hearing of the application for summary judgment took place. The hearing was remote. Ms Dib helpfully made oral submissions on behalf of the Bank. Following the hearing, and at the request of the Court, a draft form of order was provided.

The Contracts

5. The background to the claim can be shortly stated. By virtue of an offer letter dated 14 September 2015 (the “**Offer Letter**”), which Bin Omran accepted, the Claimant

granted Bin Omran banking facilities amounting to QAR 46,200,000.00. This was broken into 2 parts. There was a direct facility drawn to the extent of QAR 18,638,941.00 (the “**Direct Facility**”). There were also indirect facilities which related to a performance bond and a retention bond (together the “**Guarantees**”; the “**Indirect Facilities**”). The total of the Indirect Facilities granted by the Bank was QAR 13,491,522.00.

6. The distinction between the Direct Facility and the Indirect Facilities is that direct facilities are in essence monies lent by overdraft. The Indirect Facilities are concerned with financing a project envelope. They relate to counter-guarantees issued by the Bank to Doha Bank, as the beneficiary (referred to below) only accepted guarantees operating under the Qatar Central Bank.
7. The claim in respect of the Indirect Facilities is for Bin Omran to provide cash collateral for the Bank’s liabilities under the Guarantees. These liabilities remain contingent prior to any demand for payment under the Guarantees.
8. The terms of the Offer Letter were expressly subject to an earlier agreement dated 4 February 2015 between the Bank and Bin Omran (the “**Debtor Agreement**”). This was a detailed agreement that set out various terms agreed by the Bank and Bin Omran. Article 14 of the Debtor Agreement concerned “*letters of guarantee and guarantees*”.
9. By article 14(3) of the Debtor Agreement, Bin Omran agreed “*upon demand irrevocably and unconditionally*” to:

perform and execute and cause to be done, performed and executed any act, deed matter or thing which the Bank may require for further security and for indemnifying the Bank against the consequence of the said guarantee and in particular without prejudice to the generality of the foregoing, to deposit with the Bank, within three (3) Business Days of demand by the Bank, cash or other collateral security satisfactory to the Bank and of sufficient amount to cover the total liability and obligation under the said transaction.

10. The commercial purpose of this provision is clear. The Bank required collateral from Bin Omran in order to offset its exposure in the event that a valid claim or claims were made under the Guarantees by the Public Works Authority – Ashgal (“**Ashgal**”), the beneficiary thereunder.
11. The Offer Letter set out contractual formulas concerning interest and commission. It also included a yearly management fee of QAR 35,000.00. The last management fee was paid in 2018 and the subsequent years remain unpaid (2019, 2020, 2021 and 2022).
12. The security under the Offer Letter was twofold. First, the Bank and Bin Omran on 5 February 2015 entered into an agreement entitled “*Contract of Assignment of Receivables*”. Under this agreement Bin Omran assigned irrevocably in favour of the Bank’s receivables resulting from contracts between Bin Omran and Ashgal.
13. Secondly, KH Holding gave a corporate guarantee dated 4 October 2015 (the “**2015 Guarantee**”) that covered 100% of the facilities granted under the Offer Letter. This was stated in the Offer Letter to be QAR 46,200,000.00. By clause 1 of the 2015 Guarantee, the Guarantee covers Bin Omran’s obligations to the Bank that are “*due or may be due to the Bank, directly or indirectly, as a result of all transactions to the Bank which are of whatever nature...*” This language is very broad and clearly covers Bin Omran’s liabilities under the Offer Letter. It is unnecessary to set out the detailed terms of the 2015 Guarantee, other than to note that that the Bank is not required to bring proceedings against Bin Omran before claiming under the 2015 Guarantee.

The Claims

14. The Bank’s Claim Form sets out details of the Bank’s claims against Bin Omran and KH Holding.
15. The Claim Form sets out the Direct Facility and Indirect Facilities and refers to the completion of the project which is their subject. It states the Guarantees are renewed as they mature and there is a high possibility that they will be called by Ashghal.
16. The details of the sums claimed against Bin Omran (and guaranteed by KH Holding) are set out the Bank’s memorandum and supporting documents. It is supported by a statement of truth from Aurore Dib of the Bank’s lawyers in this matter, D&C Legal

Services LLC. On 12 February 2023, the Bank provided a further memorandum which addressed certain issues identified by the Court.

17. On 10 February 2020, the Bank sent a letter to Bin Omran (copied to KH Holding) requesting settlement of the amounts due and asserting that unless payment was made proceedings would be brought.
18. On 1 March 2020, Bin Omran replied and apologised for not meeting its commitments, indicating that it needed 6-9 months to settle the overdraft balance as they expected to be paid monies by Ashghal before the end of the year.
19. After the commencement of these proceedings, on 25 August 2022, Bin Omran asked the Bank about the outstanding amount. The Bank replied on 27 September 2022 giving details of the outstanding indebtedness.

Decision

20. Since no defence has been identified by Bin Omran or KH Holding, it is enough to say that the Court has not been referred to any material which might suggest that a defence exists. The Court makes brief observations about the claims.
21. First, the Direct Facility claim is a claim for monies due and owing from Bin Omran. The Bank has given Bin Omran time to pay but the Bank is under no obligation to give any time.
22. Secondly, the claim for Indirect Facilities is a claim for collateral to support the contingent liabilities under guarantees which have been extended on numerous occasions. It is clear that the Bank has a right to seek payment of the monies claimed. The Bank has indicated that any monies paid will be placed into a blocked account and it accepts that the monies will be returned to Bin Omran if there is in fact no claim under the Guarantees.
23. The Court considers that the form of order should reflect that if there in fact no liability under the Guarantees, any collateral should be returned to Bin Omran.
24. Finally, the claim under the 2015 Guarantee. The terms of the 2015 Guarantee are broad and cover claims in respect of the Direct Facility and Indirect Facilities.

25. The Court is satisfied that the Bank is entitled to summary judgment for the sums claimed. The sums claimed have been properly verified by the Bank and are not disputed.
26. The Defendants have no prospect of successfully defending the Bank's claims. In addition, there is no other compelling reason why this case should be disposed of at a trial.
27. At the hearing on 16 February 2023, the Court requested up to date details of the indebtedness claimed by the Bank and a precise formulation of the relief claimed. This information was provided on 21 February 2023.

Relief

28. The Court is satisfied that the Bank is entitled to the following relief.
29. As to the Direct Facility, the Court orders that the First and Second Defendants are jointly liable for:
 - i. the outstanding capital as at 16 February 2023, including previously capitalised interest amounting to QAR 19,988,460.00;
 - ii. accumulated interest up to February 16, 2023, not previously capitalised, amounting to QAR 57,578.08;
 - iii. interest at the rate of 6.5% per annum from 16 February 2023 until payment; and
 - iv. management fees of QAR 175,000.00 (calculated on the basis of QAR 35,000.00 per annum and due since 2019 until 2023), continuing on an annual basis.
30. As to the Indirect Facilities, the Court orders that within 14 days of this judgment, the First Defendant shall provide cash collateral to cover the Guarantees along with interest and commissions as specified as follows:
 - i. QAR 13,491,522.00 (being the total principal amount of the performance bond and the retention bond); in addition to,

- ii. the TF commissions to be due for the year 2023 (the date the Indirect Facilities are supposed to expire), at a rate of 1.7% per year (which is the sum of 1.5% (commission for Doha Bank + 0.2% commission of the Bank).

It is further directed that the sums paid by way of collateral shall be paid into a blocked account at the Bank as security to guarantee the Indirect Facilities unless the Guarantees are formally released by the beneficiary, Ashghal.

31. In event that that First Defendant fails to comply with paragraph 30 above, the Second Defendant is required under the 2015 Guarantee to provide the cash collateral above within 21 days of the date of this judgment.
32. The Court also awards the Bank its reasonable costs of these proceedings against Bin Omran and KH Holding jointly and severally. These costs will be assessed (if not agreed) by the Registrar.

By the Court,



[signed]

Justice Ali Malek KC

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

Representation

The Claimant was represented by D&C Legal Services LLC (Doha, Qatar).

The Defendant was not represented.