



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 (F) 29

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

Date: 22 July 2024

CASE NO: CTFIC0002/2024

BOOM GENERAL CONTRACTORS WLL

Claimant

V

SHARQ INSURANCE LLC

Defendant

JUDGMENT

Before:

Justice George Arestis

Justice Fritz Brand

Justice Dr Yongjian Zhang

Order

1. The claims are dismissed.
2. The Defendant is awarded its reasonable costs against the Claimant on the indemnity basis, to be assessed by the Registrar if not agreed.

Judgment

1. The Claimant in this matter, Boom General Contractors WLL, is a company established in the State of Qatar where it operates in the field of building and general construction. The Defendant, Sharq Insurance LLC was formerly known as Doha Bank Insurance Company Ltd. It is established in the Qatar Financial Centre ('QFC') and licensed to conduct business as a long-term insurer within the QFC. Since the Claimant's claims arise from an insurance policy issued by the Defendant, a company established in the QFC, this Court has jurisdiction to determine the disputes arising by virtue of article 9.1.3 of our Regulations and Procedural Rules (the 'Rules'). This is an application by the Defendant, under article 31.1.2 of the Rules, for an order that the Claimant's claims against it are struck out for non-compliance with the procedural directions of this Court. The issues arising will be better understood in the light of the background that follows.
2. The policy relied upon by the Claimant for its claims was issued by the Defendant under its previous name on 25 January 2016. It is described as a "*Workman's Compensation Policy*", indemnifying the Claimant against specified claims brought against it by its employees under Qatari Labour Law during the 12-month period between 1 January 2016 and 31 December 2016. The provisions of the policy upon which the Claimant rests its claims are to be found in clause 1 under the rubric "*Conditions, Clauses/Warranties*" which reads in relevant part:

1 Transportation Cover as per Transport Clause

It is understood and agreed that this policy is extended to cover employees whilst being transported in proper passenger carrying vehicles between their residences and the work site. However, this extension will not replace any mandatory insurance requirement by the Traffic Department and the amount recoverable hereunder in such instance will only be the excess beyond the amount recoverable under such mandatory policy.

3. With reference to these provisions, the facts relied upon by the Claimant in support of its claims are broadly formulated in its Statement of Claim in the following way:
 - i. On 20 October 2016, a traffic accident occurred involving the Claimant's workers' transport vehicle resulting in the death of the Claimant's employee Mr Najindra Mandal. Mr Mandal was crossing the road to reach the pick-up point within the area where the Claimant's employees reside. Resulting from the death of Mr Mandal, the Claimant was ordered by another national court to pay an amount of QAR 200,000 to the dependants of the deceased by way of "*diyah*" (or, in the words of the Qatari Civil Court, compensation for the "*shedding of blood*") for which amount the Claimant claims an indemnity from the Defendant under the policy.
 - ii. On 24 November 2016, another traffic accident occurred involving a vehicle in which 24 of the Claimant's employees were transported to work. One of these employees, Mr Ghazi Miah Moin Al-Din, subsequently died as a result of his injuries. Arising from these facts, the Claimant was held liable by another national court to pay compensation to the dependants of Mr Al-Din in an amount of QAR 200,000, which amount the Claimant also seeks to recover from the Defendant under the policy.
4. In its Statement of Defence, the Defendant raised three different grounds of defence, namely:
 - i. That the insurance policy relied upon contains an arbitration clause which precludes court proceedings.
 - ii. That the claims have lapsed by virtue of article 800 of the Qatari Civil Code in that they were instituted more than three years after the third parties, i.e. the dependants of the deceased employees, had brought their claims against the Claimant.
 - iii. That the policy did not respond to the claims in that the Claimant's primary recourse for indemnification lies with the insurer who issued the mandatory

policy of insurance in respect of the vehicle involved in the accident. Hence, the amounts recoverable under the Defendant's policy were limited to the excess (if any) of the cover provided by the mandatory policies of insurance.

5. After the Claimant filed its Reply to the Statement of Defence, which does not contain any information of relevance for present purposes, the Court issued its directions for the further conduct of proceedings, which were dated 12 June 2024 (the trial was initially fixed but then vacated with new directions sent). These directions inter alia provided that:
 - i. The matter was set down to be heard remotely on 14 July 2024.
 - ii. Disclosure requests were to be made by 16.00 on 13 June 2024.
 - iii. Objections to requests for disclosure were to be made by 16.00 on 20 June 2024.
 - iv. The Court was to be provided with a list of outstanding objections by 16.00 on 25 June 2024.
 - v. Witness statements to be filed and served by 16.00 on 25 June 2024.
 - vi. Skeleton submissions to be filed and served by 16.00 on 7 July 2024.
6. On 13 June 2024, the Defendant formally requested documents from the Claimant pertaining to its third defence; included amongst the documents so requested were the insurance policies relating to the vehicles involved in the accidents and all correspondence between the Claimant and these insurance providers. The Claimant made no request for disclosure; more importantly, it also failed to respond to the Defendant's request in any way. It did not even tell the Defendant or the Court which of the documents it had or did not have in its possession or which of the documents in its possession it refused to disclose. It simply ignored the request.
7. On 25 June 2024, the Defendant's solicitors sought assistance from the Registrar to obtain disclosure of the documents requested who emailed the Claimant's lawyers

requesting a response to the demand for disclosure. Again, the Claimant simply ignored the request by the Registrar. This led to a formal application for disclosure to the Court which was granted and conveyed to the Claimant via the Registrar. But again, no response to the order was received from the Claimant. What is more, the Claimant simply failed to comply with many of the Court's other directions in that it filed no skeleton argument and so forth. Further attempts by the Defendant's solicitors to obtain the Claimant's cooperation, for instance in compiling the bundle of documents for the hearing, were flatly ignored.

8. This gave rise to an application on behalf of the Defendant which was conveyed by email to both the Registrar and the Claimant on 4 July 2024, that the Claimant's claim be struck out under article 31.1.2 of the Rules. The Claimant was invited to respond to this application in writing but again simply ignored the correspondence.
9. On 7 July 2024, the Defendant filed its written skeleton argument in accordance with the Court's directions, but the Claimant did not. Given the parlous state of preparation of the case resulting from the Claimant's complete lack of participation, the Court notified the parties on 9 July 2024 that the hearing on 14 July 2024 would be confined to (i) the Defendant's striking out application; and (ii) the defence of prescription which could be determined, so we believed, as a matter of law.
10. At the remote hearing on 14 July 2024, Mr Ahmed Nasar of the Kaldari Law Firm (Doha, Qatar) appeared for the Claimant, while the Defendant was represented by Mr Paul Fisher of Counsel (4 New Square, London, UK), instructed by Mr Alexander Whyatt (Eversheds Sutherland (International) LLP, Doha, Qatar). When the hearing commenced, Mr Nasar asked for an adjournment which was opposed by Mr Fisher. Since we concluded that no case whatsoever was made out for an adjournment, that application was refused. Mr Fisher thereupon confined his submissions to the striking out application based on article 31.1.2 of the Rules whereupon Mr Nasar did the same in reply. The other issue ringfenced for hearing was not addressed at all.
11. Article 31 appears under the rubric "*Failure to comply*". It provides in relevant part:

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 the party is the claimant or applicant, dismiss the claim or application wholly or in part.

12. The operative term “may” at the end of the introduction in article 31.1 of the Rules clearly bestows a discretion on the Court. Moreover, article 31.1.1 read with 31.1.2 plainly presents the Court with an option to visit non-compliance with the Rules with the lesser sanction of an adverse costs order rather than the more drastic remedy of dismissing the claim. Whether the Court decides to exercise its discretion one way or the other will clearly depend on the facts of every particular case. In *Mohamed Al-Emadi v Horizon Crescent Wealth LLC* [2021] QIC (F) 12 this Court held, however, that in principle (at paragraph 8):

Article 31.1 must be read subject to Article 4 which provides under the rubric ‘the overriding objective’ that:

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 power given by the QFC law, including under these Regulations and Procedural Rules and under QFC Regulations.” And, so the Court held, in applying Article 31.1 “the first question is therefore: would it be fair and just in the circumstances of this case, to strike out the Defendant’s defence either in whole or in part?

13. As a broad general approach, we think it can be accepted that, in deciding what is just and fair, the Court will weigh up the reasons for non-compliance with the prejudice thereby caused to the other side. A proper explanation for the non-compliance will usually persuade the Court to confine itself to an adverse costs order rather than a striking out of the defence or claim unless the prejudice caused to the other side is virtually irreparable. Conversely, the absence of any explanation for the non-compliance may lead to a striking out as a token of the Court’s disapproval, even when the prejudice caused to the other side is less severe.

14. With regard to the reasons for non-compliance, this case is somewhat exceptional in that no explanation or reasons were given at all as to why both the legitimate requests by the Defendant and the express directions of the Court were entirely ignored. Even at this late stage where the Claimant was given every opportunity to explain, it has completely and wholly failed to do so. Mr Nasar's only excuse, that he personally was unaware of these requests and directions, clearly amounts to no explanation at all.
15. In the same way as in the *Mohamed Al-Emadi* case, the Claimant therefore acted in direct breach of a Court direction following an application to compel compliance by the other side. Like in *Mohamed Al Emadi*, the Claimant thus acted in contempt of this Court's procedural direction. Measured on a scale from one to ten, the seriousness of the Claimant's failure can therefore in our view be said to approach ten. It follows that in performing the balancing exercise between the seriousness of the failure on the one hand, and the severity of prejudice thereby caused on the other, we believe that this flagrant non-compliance by the Claimant can only be overlooked by the Court if it resulted in no serious prejudice to the Defendant.
16. As to the degree of potential prejudice caused by the non – compliance to the other side that may lead to a striking order, some guidance can be derived from the reasoning in the *Mohamed Al-Emadi* case where the striking out of the defence was sought by the Claimant on the basis of the Defendant's failure to comply with the Court's order to respond to the Claimant's request for further particulars. In ordering the striking out, the Court inter alia held (at paragraph 12):

The inevitable conclusion is that it will not be fair and just if the claimant were constrained to present his case without knowing the defences he has to meet. It follows that at least those defences at which the request for information was aimed have to be struck out. However, on reflection it is clear to us that, because of the way in which the statement of defence was formulated, it is not possible to distinguish between defences which are affected and those which are not affected by the information requested. The result is in our view, that the statement of defence is bound to be struck out as a whole.

17. Transposing this approach to the present facts, the question is therefore whether it will be fair and just if the Defendant were constrained to present its defence without the documents that it sought from the Claimant. In this regard it is clear from the provisions of the policy relied upon by the Claimant that it provides a second level of cover for the

loss for which the Claimant is indemnified. The first level of cover is provided by the mandatory insurance required by traffic legislation. Accordingly, so the policy expressly states, *“the amount recoverable hereunder in such instance will only be the excess beyond the amount recoverable under the mandatory policy.”*

18. In this light it is plain that (i) the terms of the mandatory policies pertaining to the vehicles involved in the two fatal accidents, and (ii) the responses by the insurer under those policies to the dependants’ claims, are of vital importance to one of the defences relied upon by Defendant. Stated somewhat differently: without this information there is a gaping hole in the Claimant’s case which means that the Court can have no confidence that it is entitled to an indemnity from the Defendant under the policy. Hence, we find that it will not be fair and just if the Defendant were to present its defence without knowing the Claimant’s potential answer (if any) to that defence.

19. In the result we find that an appropriate order will be to dismiss the Claimant’s claims against the Defendant pursuant to article 31.1.3 of the Rules.

20. As to the question of costs, we find that the severity of the Claimant’s complete disregard for the directions of this Court warrants the punitive order of indemnity costs. Accordingly, that is the order we propose to make.

By the Court,



[signed]

Justice Fritz Brand

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

Representation

The Claimant was represented by the Fahad Kaldari Law Firm (Doha, Qatar).

The Defendant was represented by Mr Paul Fisher of Counsel (4 New Square, London, UK) and Eversheds Sutherland (International) LLP (Doha, Qatar).