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 (C) 2

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

Date: 10 January 2024

CASE NO: CTFIC0029/2023
CASE NO: CTFIC0030/2023
CASE NO: CTFIC0031/2023
CASE NO: CTFIC0032/2023
CASE NO: CTFIC0035/2023

AEGIS SERVICES LLC

Claimant

v

EMOBILITY CERTIFICATION SERVICES

1st Defendant

MUHAMMAD NAWAB

2nd Defendant

MOHITH MOHAN

3rd Defendant

MARILYN BIARES

4th Defendant

JUDGMENT ON COSTS

Before:

Mr Umar Azmeh, Registrar

Order

1. The Claimant is to pay the 1st Defendant the sum of **QAR 20,250** within 7 days of the date of this judgment by way of the reasonable costs incurred in defending the proceedings on its behalf, and on behalf of the 2nd – 4th Defendants.

Judgment

Background

1. On 29 May 2023, the Registry issued a Claim Form in respect of case number CTFIC0032/2023, in which the Claimant brought claims against the four Defendants that are the subject of this judgment. CTFIC0032/2023 was the consolidated case in respect of cases filed against each individual Defendant: CTFIC0029/2023, CTFIC0030/2023, and CTFIC0031/2023.

2. The case concerned, broadly, allegations that the 2nd to 4th Defendants – former employees of the Claimant – were in breach of various restrictive covenants of their former employment contracts and that they were engaged in these breaches whilst in the employment of their new employer, the 1st Defendant, a competitor company.

3. On 30 May 2023, as a result of the claims made by the Claimant, the Court issued an ex parte interim injunction which, inter alia, prohibited the 2nd – 4th Defendants from breaching the restrictive covenants in their former employment contracts, and directed that any ongoing breaches were ceased. Those orders were made with immediate effect. The Court also set the matter down for an urgent hearing on 5 June 2023. Upon the application of the Defendants, this hearing was re-fixed for 4 July 2023.

4. On 2 July 2023, the Claimant filed a further case, issued under case number CTFIC0035/2023, which sought third-party disclosure relating to an alleged breach by the Defendants of the interim injunction granted on 30 May 2023.

5. On 4 July 2023, a remote hearing was held to determine whether or not the Court ought to extend the interim injunction it granted on 30 May 2023 until a final hearing of the consolidated matters.

6. On 30 July 2023, the Court handed down its judgment in case number CTFIC0032/2023 in which it set aside the interim injunction of 30 May 2023, declined to order a fresh interim injunction, and set the matter down for a full trial on 8 and 9 October 2023 ([2023] QIC (F) 33).

7. On 1 August 2023, the Claimant communicated to the Court and to the Defendants that it wished to withdraw all of the cases involving the Defendants, including the application for third party disclosure.

8. Following submissions from both parties, the Court handed down a further judgment on 14 August 2023 ([2023] QIC (F) 37) in which it declined to disapply the usual rule contained within article 33.2 of the Court's Regulations and Procedural Rules and directed that the Claimant is liable for the reasonable costs incurred by the Defendants in resisting all of the claims against them, to be assessed by me if not agreed.

Conduct of the parties

9. Between the handing down of the second judgment on 14 August 2023 and 12 December 2023, the day upon which the final costs submission was received from the Defendants, there was – in addition to the formal submissions – an exhaustive dialogue between the parties via email. I was copied into all of that correspondence.

10. Evidently, the parties were unable to agree on the quantum of costs to which the Defendants were entitled pursuant to the Court's order of 14 August 2023. That resulted in the back-and-forth between the two parties. This was an utterly unhelpful exercise, containing as it did unsubstantiated allegations, counter-allegations, and then further allegations. It has also resulted in me, when assessing these costs, reviewing a file

containing hundreds of pages of documentation. As I will detail below, the parties have – through their collective efforts – rendered this a much more difficult exercise than it ought to have been.

11. In reality, these cases were commenced on 29 May 2023 and concluded with their withdrawal on 1 August 2023. This is a little over two months. There was only one hearing, and few submissions to the Court were in fact made. However, instead, up to 12 December 2023, this assessment process became a standing invitation – largely from the Claimant itself – for me to enter into the arena in numerous matters of satellite litigation (I make it clear that I make no criticism of the Claimant's legal representatives who only came on the record later in the day to draft the formal costs submissions).

12. I will leave a note of caution for future cases and for the edification of the parties in this case: parties have a duty to assist the Court, and this explicitly includes to assist the Court in determining matters before it in accordance with the overriding objective, namely to deal with all cases justly. Article 4.5 of the Court's Regulations and Procedural Rules notes as follows:

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

13. Obfuscation, prolix correspondence to the Courts, and rafts of allegations do not assist the Court in furthering the overriding objective. This conduct is to be deprecated.

Approach to costs assessment

14. Article 33 of the Court's Regulations and Procedural Rules reads as follows:

> *33.1 The Court shall make such order as it thinks fit in relation to the parties' costs of the proceedings.*
>
> *33.2 The general rule shall be that the unsuccessful party pays the costs of the successful party. However, the Court can make a different order if it considers that the circumstances are appropriate.*
>
> *33.3 In particular, in making any order as to costs the Court may take account of any reasonable settlement offers made by either party.*
>
> *33.4 Where the Court has incurred the costs of an expert or assessor, or other costs in relation to the proceedings, it may make such order in relation to the payment of those costs as it thinks fit.*

33.5 In the event that the Court makes an order for the payment by one party to another of costs to be assessed if not agreed, and the parties are unable to reach agreement as to the appropriate assessment, the necessary assessment will be made by the Registrar, subject to review if necessary by the Judge.

15. In *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (C) 1, the Registrar noted that the "… *list of factors which will ordinarily fall to be considered*" to assess whether costs are reasonably incurred and reasonable in amount will be (at paragraph 11 of that judgment):

    i. Proportionality.

    ii. The conduct of the parties (both before and during the proceedings).

    iii. Efforts made to try and resolve the dispute without recourse to litigation.

    iv. Whether any reasonable settlement offers were made and rejected.

    v. The extent to which the party seeking to recover costs has been successful.

16. *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* noted as follows in relation to proportionality, again as non-exhaustive factors to consider (at paragraph 12 of that judgment):

    i. In monetary … claims, the amount or value involved.

    ii. The importance of the matter(s) raised to the parties.

    iii. The complexity of the matters(s).

    iv. The difficulty or novelty of any particular point(s) raised.

    v. The time spent on the case.

    vi. The manner in which the work was undertaken.

    vii. The appropriate use of resources by the parties including, where appropriate, the use of available information and communications technology.

17. One of the core principles (elucidated at paragraph 10 of *Hammad Shawabkeh v Daman Health Insurance Qatar LLC*) is that "*in order to be reasonable costs must be both reasonably incurred and reasonable in amount*."

Submissions of the parties

18. In addition to the lengthy correspondence, I have received the following from the parties:

    i. Submission from the Defendants dated 30 September 2023 (which seeks to incorporate all the submissions that it made during the correspondence phase of this costs assessment).

    ii. Response by the Claimant prepared by K&L Gates LLP dated 28 October 2023 (along with annexes). I must note that the document from K&L Gates LLP was a structured and helpful document.

    iii. Reply from the Defendants dated 12 November 2023.

19. A further document was provided by the Defendants at the request of the Court – an engagement letter dated 6 June 2023 – in relation to which the Claimant responded on 4 December 2023, with the Defendants' reply received on 12 December 2023.

20. I have also had the opportunity to review all of the documentation that all parties filed and served from the start of this litigation to date.

The Defendants' position

21. In their submission dated 30 September 2023, the Defendants have claimed a total of QAR 665,000, comprising legal fees of QAR 378,000, business losses in respect of the 1st Defendant of QAR 251,000 and loss of earnings in respect of the 3rd Defendant of QAR 36,000.

22. The legal fees are in respect of a company called Fidedigno Advisory Services WLL ('**FAS**'), who, in their engagement letter of 6 June 2023, note that they "*arrange*" the services of (two named) advocates who represented the Defendants at the hearing on 4 July 2023.

23. The breakdown of the legal fees are: QAR 218,000 in respect of the 1st Defendant, QAR 60,000 each for the 2nd and 3rd Defendants, and QAR 40,000 for the 4th Defendant.

24. The Defendants have submitted that they opted for a global fixed-fee arrangement due to cost constraints. The submission also notes as follows:

> *So, as the Agreement specifies a fixed fee, we are not supposed to maintain detailed timekeeping or invoicing, and hence unable to produce detailed breakdown of costs.*

25. These fees have been accrued pursuant to two engagement letters with FAS dated 6 June 2023 and 16 July 2023, respectively.

26. The 6 June 2023 engagement letter is addressed to the 1st Defendant and confirms that FAS is to arrange the two advocates who appeared at the 4 July 2023 hearing to take conduct of the litigation in all of the cases save for the third-party disclosure case (CTFIC0035/2023). The total fee quoted is QAR 100,000 with an advance payment of QAR 50,000 required upon execution of the engagement letter, and with the balance to be "*paid at the conclusion of the 4 cases*". This document was produced at the request of the Court after the Defendants' reply submission dated 12 November 2023. There is no specific scope of work set out, but the letter notes that assistance will be provided in relation to the conduct of the litigation.

27. The Defendants also produced two "Cash/Cheque Receipt" vouchers in the sum of QAR 50,000 each, and dated 10 June 2023 and 18 July 2023, respectively.

28. The 16 July 2023 engagement letter notes that the advocates had, at the date of the letter, "*reconfirmed their continued commitment*" to assisting the Defendants in their litigation, this time including the third-party disclosure case. A more detailed scope of work is included in this letter and this comprises (i) reviewing the petitions relating to the cases, (ii) drafting replies and other legal documents, and (iii) preparing for and representing the Defendants at hearings. This letter notes that the total fees will be QAR 378,000, an advance payment of QAR 100,000 is payable upon execution of the letter, and that a guarantee cheque in the sum of QAR 278,000 is required (it appears that the QAR 100,000 already paid, presumably under the 6 June 2023 engagement letter, was set off against the total fees).

The Claimant's position

29. The Claimant has embarked on what I would describe as a root and branch attack on the costs claim made by the Defendants. The Claimant has put its case on three bases:

    i. The Claimant's primary case is that I should decline to award the Defendants any of the costs that they claim on the grounds that unless an entity has a licence from the Qatar Financial Centre Authority to carry out Permitted Activities (i.e. legal services), (i) any activities that the entity performs are unlawful as they are not approved, authorized or licenced, and (ii) any activities it carries out do not constitute legal services as defined in the QFC Law (Law No. 7 of 2005). FAS is not licenced or otherwise authorized by the QFC Authority, which means that the QFC Law does not recognize anything done by it in this litigation as consisting of legal services. Their purported provision of legal services was therefore unlawful. An award of costs in the Defendants' favour in these circumstances would be incompatible with the Court's overriding objective, and would also be incompatible with public policy and/or public order in the State of Qatar.

    ii. The Claimant's secondary case is that the Defendants' costs should be wholly disallowed as they did not notify the Claimant of the existence of their legal representation properly in accordance with the rule established in *Fadi Sabsabi v Devisers Advisory Services LLC* [2022] QIC (C) 1 and [2023] QIC (F) 4. The lack of notice to the Claimant regarding the engagement of FAS, along with the fact that the advocates only appeared at the hearing on 4 July 2023 and at all other times the Defendants held themselves out as self-represented, along with the "*irregularity*" of an engagement letter dated 16 July 2023 outlining a fee liability of QAR 378,000 and the failure of the Defendants to notify the Claimant as to the nature of FAS's engagement and the basis of remuneration, leads to the conclusion that no costs should be awarded.

iii. The Claimant's tertiary case is that the costs claimed are wholly disproportionate, unreasonably claimed and not properly evidenced. Applying pro-rating to the costs – taking account of the fact that the lawyers only appeared for the Defendants at the 4 July 2023 hearing – QAR 2,050 should be awarded to the Defendants.

30. The Claimant has also – in its letter of 6 December 2023 containing comments on the 6 June 2023 engagement letter – made it clear that it neither accepts that the letter is authentic, nor accepts that the arrangements noted therein are genuine.

31. The Claimant also claims a total of QAR 44,750 for the preparation of its own costs submissions, comprising QAR 37,500 for the submission dated 28 October 2023 and QAR 6,750 for the letter dated 6 December 2023.

Analysis

Preliminary matters

32. There are two preliminary matters that can be dealt with swiftly. I can only assess the costs incurred by the Defendants in defending the various legal cases. These do not include any loss of profit or loss of income (see paragraph 21, above). I can make no such awards, and should the Defendants wish to pursue these sums, they must do so in a different forum.

33. There has also not been any costs order made in favour of the Claimant and therefore I cannot and do not make any award in relation to the preparation of its costs submissions as claimed in the sum of QAR 44,750 (see paragraph 31, above).

The Claimant's Primary Case

34. The Claimant's analysis of the provisions of the QFC Law (Law No. 7 of 2005) and the QFC Authority Regulations 2023 (the '**Regulations**') is broadly as follows:

i. The only activities that may be conducted within the QFC are Permitted Activities under article 10(1) of the QFC Law.

ii. Paragraph 13 of Schedule 3 to the QFC Law notes that the provision of legal services is a Permitted Activity.

iii. Article 11(1) of the QFC Law stipulates that the QFC Authority has the exclusive authority to, inter alia, "*approve, authorise or licence corporations and other entities to … carry on Permitted Activities in or from the QFC…*"

iv. Under article 17(1) of the Regulations, "*no activities may be conducted in or from the QFC unless they fall within the general categories of Permitted Activities*".

35. Taking account of the provisions noted above, so the Claimant avers, FAS has not been authorized, licenced or approved to conduct legal services – a Permitted Activity – in or from the QFC, and FAS is not an entity incorporated or established in the QFC (indeed, FAS is under the authority of the Ministry of Commerce and Industry of the State of Qatar).

36. Therefore, the argument goes, the purported provision of legal services by FAS during the course of these cases was unlawful as it is unapproved by the QFC Authority. In those circumstances, no costs should be awarded.

37. I do not find myself in disagreement with the Claimant's submissions at paragraphs 34 and 35. That analysis is clearly sound. However, where I find myself in disagreement is its application of the QFC Law and the Regulations to FAS, per se. That analysis, in my view, turns on the phrase "*in or from*" the QFC which appears in articles 10(1), 10(2), 11(1) of the QFC Law, and in article 17(2) of the Regulations.

38. My view is that the provisions of the QFC Law and the Regulations cited in support of this submission apply to firms that hold a licence with the QFC (i.e. Licenced Firms, defined in the Regulations at page 25 as: "*a body corporate, partnership or unincorporated association which has been granted and continues to hold a Licence granted by the QFC Authority*"). So, in other words, a Licenced Firm that holds a Licence from the QFC Authority to carry on a specific Permitted Activity, may not

carry on another Permitted Activity that is not covered by its Licence at that time, and may also not carry on another activity which falls outside of the category of Permitted Activities. These provisions, therefore, do not apply to FAS, which is not a Licenced Firm.

39. By way of example, article 5(2) of the QFC Law states as follows:

> *[The objectives of the QFC Authority shall be the following:]*
>
> *... to participate ... in the establishment and maintenance of an appropriate legal and regulatory regime to govern the QFC and activities lawfully conducted within it or conducted outside it by persons, companies or entities established within it.* [emphasis added]

40. When delineating the QFC Authority's responsibilities in that article, the statute covers activities "*conducted within it*", "it" being the QFC, followed by activities conducted outside it by "*persons, companies or entities established within it*". The lack of a comma after "*within it*" suggests that "… established within it" at the end of the sentence applies to both activities within and without the QFC i.e. the QFC Authority governs entities established within it in relation to both activities conducted inside and out of the QFC by those entities. In other words, if a company is not established within the QFC – for example FAS – the legal and regulatory regime does not apply.

41. Article 6(5) of the QFC Law states, inter alia, as follows:

> *[In order to realise its objectives, the QFC Authority shall have the following powers:]*
>
> *... to approve, authorise and licence persons, companies and other entities which may be authorized purauant to this Law that wish to conduct their business at the QFC (whether by establishing a branch or other business in the QFC or by incorporating or establishing a new company or entity therein) ...* [emphasis added]

42. This provision in my view supports the interpretation that the provisions of QFC Law and the Regulations that apply in relation to Permitted Activities apply only to Licenced Firms i.e. firms "*that wish to conduct their business at the QFC*". In other words, under article 6(5) of the QFC Law, the QFC Authority shall have the power to grant licences

to firms that wish to conduct business at the QFC which are then subject to the provisions of the QFC Law and the Regulations.

43. Article 7(1) of the QFC Law notes, inter alia as follows:

> *The QFC Companies Registration Office is hereby established for the purposes of performing such duties and functions to companies and other entities which may be incorporated or established to carry on business in the QFC*... [emphasis added]

44. This provision makes clear that this core QFC institution only has responsibilities in relation to Licenced Firms, or in other words QFC entities. This in my view lends supports to the view that the provisions of this law along with the Regulations made with its authority only apply to Licenced Firms or entities established within the QFC.

45. Article 11(3) of the QFC Law is as follows:

> *Unless specified to the contrary by this Law, the setting up and regulation of businesses and the incorporation of companies or other entities in the QFC and the conduct of such businesses in or from the QFC shall be governed exclusively by the provisions of and be regulated as provided by and pursuant to this Law and Regulations.* [emphasis added]

46. This provision in my view makes it clear that the establishment and regulation of businesses in the QFC, and the conduct of those businesses – "*in or from the QFC*" – is regulated by Law No. 7 of 2005 and other regulations. In other words, the phrase "*in or from the QFC*" only relates to those entities set up or incorporated in the QFC, not those not so set up or incorporated.

47. Article 7(E) of the Regulations is, inter alia, as follows in relation to the powers of the QFC Authority:

> *… to approve, authorise and license persons, companies and other entities which may be authorized pursuant to this Law that wish to conduct their business at the QFC (whether by establishing a branch or other business in the QFC or by incorporating or establishing a new company or Entity therein) …* [emphasis added]

48. This provision makes it clear that the QFC Authority has the power to provide licenses to entities that wish to conduct their business at the QFC – either by establishing a branch in the QFC or incorporating or establishing a new company in the QFC – in other words authority over entities that are or are to be Licensed Firms; not firms that are not conducting business or not planning to conduct business as QFC firms/Licensed Firms.

49. Therefore, whereas articles 17(1) and (3) of the Regulations note that:

> *… no activities may be conducted in of from the QFC unless they fall within the general categories of Permitted Activities;* (article 17(1))
>
> *… Permitted Activities shall only be conducted in and from the QFC to the extent that they conduct of such activities is approved, authorized or licensed;* (article 17(3)),

my conclusion is that "*in and from the QFC*" relates to QFC entities or Licensed Firms, who must only conduct Permitted Activities and must be licensed to do so.

50. Thus, the scheme within the QFC Law and the Regulations does not apply to non-QFC entities or non-QFC Licensed Firms such as FAS. I thus reject the Claimant's Primary Case.

The Claimant's Secondary Case

51. The Claimant's Secondary Case is that the Defendants' costs must be wholly disallowed under the rule on notification established in *Fadi Sabsabi v Devisers Advisory Services LLC* [2022] QIC (C) 1 and [2023] QIC (F) 4, in short that in order successfully to obtain costs from an unsuccessful party, the unsuccessful party must be notified that the successful party has engaged lawyers. The policy behind this rule is clear: parties to litigation may not know their potential costs liability, and therefore may only be able to devise an incomplete litigation strategy, if they are unaware that the other party has engaged lawyers whose costs they will claim back if successful.

52. I am bound by the First Instance Circuit decision in *Fadi Sabsabi v Devisers Advisory Services LLC*, and specifically on the core principle emanating from that case: prior to the point at which Party B discloses to Party A that it has engaged lawyers, Party A is

entitled to assume that Party B is unrepresented; therefore, up to the point of disclosure, Party B – if successful in the litigation – is precluded from claiming its lawyers' fees from Party A. However, it was not just silence in this case: there were various positive assertions of self-representation from the Defendants (see, for example, paragraphs 53(iv) and 62, below) The key passage of the First Instance Circuit decision in *Fadi Sabsabi v Devisers Advisory Services LLC* is as follows (at paragraph 23):

> *We also conclude that it would generally be contrary to the overriding objective of this Court … to require a party in Deviers' position to pay the legal costs incurred by the opposing party when that opposing party had given the impression that it was not legally represented.*

53. I make the following findings of fact:

i. The Claim Forms in cases CTFIC0029/2023, CTFIC0030/2023, and CTFIC0031/2023 were issued on 29 May 2023.

ii. The claims in (i), above, were sent to the Defendants on 30 May 2023 via email and also by Qatar Post.

iii. On 31 May 2023, the Court received email communication from the Defendants who, in response to being asked by the Court to provide the details of their representatives for the hearing fixed for 5 June 2023, provided their own details, save for the 1st Defendant who stated that it was being represented by the 3rd and 4th Defendants (the 1st Defendant also responded on behalf of the 4th Defendant to state that she was representing herself at the hearing).

iv. On 1 June 2023, the Court received emails from each of the four Defendants which all had a broadly similar content, namely that they wanted the hearing to be postponed as they were unrepresented, that they wished to have some more time to seek legal representation, and more time to prepare their defences (I make it clear to the Defendants who, in a recent communication, set store by this date, that this is not the operative date. This was certainly the date that all Defendants made it

clear that they were seeking representation, but not confirmation of representation).

v. On 1 June 2023 itself, the Court granted the extensions of time sought and the hearing was re-fixed for 4 July 2023.

vi. On 22 June 2023, the Claimant formally notified the Court that it would be represented at the hearing by lawyers.

vii. On 25 June 2023, the 1st Defendant contacted the Court and asked for its "Legal Advisors" to be included in the remote hearing, and provided the email addresses and telephone numbers for those legal advisors. This was open communication, copied to all Defendants and the Claimant, but was only signed by the 1st Defendant. It noted, inter alia, as follows (emphasis added):

> *... I hope this email finds you in good health. Emobility Certification Services would like to formally request the inclusion of our company's Chief Operating Officer (COO) and Legal Advisors as invitees to the upcoming virtual hearing on 4th July 2023 at the Qatar International Court. We believe that their presence and expertise will greatly contribute to the proceedings and provide valuable insights from our organization's perspective. By including our COO and Legal Advisors, we aim to ensure a comprehensive representation of our company's interests during the hearing. Please find the contact information for our COO and Legal Advisors below ...*

viii. On 2 July 2023, in response to an email from the Court on 25 June 2023 to the Defendants asking for confirmation of details of their representation for the hearing on 4 July 2023, the 4th Defendant responded with the details of the 2nd to 4th Defendants i.e. stating that they would be self-represented.

ix. Later on the same day, 2 July 2023, the 4th Defendant again wrote to the Court by way of notification that, "… *Emobility COO, Mr. Ritesh Pandit*

and legal advisors will also be present in the hearing to represent us on our behalf…"

54. Therefore, the Claimant was first put on notice that the 1st Defendant would be represented by lawyers on 25 June 2023, and on 2 July 2023 in respect of the 2nd to 4th Defendants. Therefore, on the principle in *Fadi Sabsabi v Devisers Advisory Services LLC*, the 1st Defendant cannot claim any lawyers' fees for the period prior to 25 June 2023, and the 2nd to 4th Defendants cannot claim any lawyers' fees for the period prior to 2 July 2023.

Arrangements with FAS

55. The Claimant's case is that the late notification, coupled with the "*irregularity*" of an engagement letter dated 16 July 2023 – postdating the hearing – coupled with the failure of the Defendants to disclose the nature of the engagement with FAS, along with the intended basis of remuneration, should lead to an award of no costs.

56. As noted above, there are two engagement letters: 6 June 2023 and 16 July 2023, the former only being produced on 28 November 2023 (i.e. after the Claimant's submission dated 28 October 2023, although the Claimant was given an opportunity to make submissions on this letter and did so on by way of a letter dated 4 December 2023). The Claimant's position on the 6 June 2023 engagement letter is that it is not transparent (i.e. it asserts that FAS is not offering the services of external and independent advocates, rather it is offering the services of its own manager and his wife), that the reason the Defendants did not disclose the 6 June 2023 engagement letter until late in the day is because the 16 July 2023 letter is an, "*illegitimate attempt to make up a claim for costs*" worth QAR 378,000 rather than QAR 100,000, and that it is not an authentic letter that properly represents the arrangements at the time.

57. The Defendants' position is that both letters are genuine and that they represent the funding arrangements that have been entered into with FAS for the purposes of this litigation.

58. The Claimant has also raised a plethora of further points regarding the arrangements with FAS and the Defendants' conduct in a document submitted on 28 October 2023

entitled "*Appendix A – Aegis Tertiary Case*" (35 typed pages with 22 exhibits), including the following:

i. I should decline the Defendants' request to incorporate the prior email correspondence on costs referred to above into its formal costs submissions.

ii. The extraordinarily wide range of documentation requested by the Claimant during the costs correspondence (including tax and ledger records) is essential to determine the reasonableness of the costs claimed by the Defendants, because: (i) the burden of proof is on the Defendants to prove that costs have actually been incurred and that burden has not been discharged, and (ii) the professional details of the lawyers engaged by the Defendants are relevant to this calculus (including the allegation that the advocates representing the Defendant are not qualified lawyers, made more than once in the correspondence and formal submissions).

iii. There are discrepancies in the documentation submitted by the Defendants, including that (i) all filings indicate that the Defendants were self-represented, (ii) the timing of the letter of engagement of 16 July 2023 and advance payments made of QAR 100,000 is suspicious and suggests that these transactions lack integrity, (iii) cash payments purportedly made to FAS are suspicious, (iv) the numbering on the vouchers in relation to the QAR 100,000 payments are suspicious, (v) the Court noting that the Defendants were represented by advocates from India is not correct as they are in face based in Doha with FAS, and (vi) the invoices provided by the Defendants are contradictory as a "*service charge*" of QAR 10,000 is included in the invoice dated 16 July 2023 provided by the Defendants which is not mentioned anywhere else in the documentation.

iv. Without a detailed breakdown of the invoices an assessment is not possible.

v. The irregular arrangements between the Defendants and FAS means that any costs claim on their part is untenable.

59. It appears that, whilst this was submitted at the same time as the formal submission made by K&L Gates LLP, this was drafted by the Claimant itself. I found this document particularly unhelpful. Most of the arguments are based on assertion and speculation. For example, the argument that the numbering of the voucher receipts for the QAR 50,000 payments casts doubt on their authenticity takes my analysis precisely nowhere. By way of further example, the argument that cash payments are suspicious also takes the analysis no further. By way of yet another example, the suggestion that the fees sought by the Defendants are unaffordable for them per se, also takes the analysis nowhere. Its length and detail has expended an enormous amount of judicial time and resource, and required a response from the Defendants given the allegations and assertions made therein. Much of this document was mud-slinging on the part of the Claimant. Given the gravity of some of the allegations, this required a response, and therefore I award the Defendants 2.5 hours of response time at the litigant-in-person rate in respect of this document for a total of QAR 250.

60. It is completely impractical to rule in detail on each and every point made in the document, but I have taken account of every submission made, and where I agree with the Claimant's argument(s), I will highlight that agreement.

Conclusion on the Claimant's Secondary Case

61. The real difficulty here for the Defendants is the notification point. The Defendants have not met this point head on in their submissions on costs. The first time the Claimant became aware that the 1st Defendant was actually represented was 25 June 2023, with the corresponding date in respect of the 2nd to 4th Defendants being 2 July 2023 (on a proper reading of the email of 25 June 2023, it is clear that is applied only to the 1st Defendant).

62. Despite the Claimant's approach, it has not persuaded me that the fee arrangements of the Defendant are a sham; the Claimant has simply not provided me with anything other than suspicions and supposition which would require far too great a leap. I therefore have concluded that the 6 June 2023 engagement letter is a genuine arrangement which

created a fee liability for the Defendants, a fee liability that was indeed discharged to a certain extent (see next paragraph). The Claimant makes the point that the Defendants – after 6 June 2023 (the date of the original engagement letter) represented that they were representing themselves (by way of example, the formal notices of defences dated 11 June 2023, and 21 June 2023, respectively, all explicitly note that each Defendant is self-represented), and that this should cast doubt on the integrity of the costs claims. Only the Defendants are in a position to confirm why the arrangements were made in this fashion, but it is not unheard of for advocates to be instructed only for hearings and have no involvement in pleadings or written submissions. However, what this notification does for the Defendants is limit the fees that it can recover to what is reasonable for representation at the hearing (including preparation, and potentially some post-hearing advice). It is evident that some of the arrangements made by the Defendants with FAS appear on their face to be quite unusual, but I express no further view. What we can be sure of, though, is that the Defendants were jointly represented at the hearing on 4 July 2023 by two advocates.

63. However, despite my view that the Defendants have indeed incurred some fee liability, and that they indeed paid for those fees in tranches of QAR 50,000 (10 June 2023), QAR 50,000 (18 July 2023), and QAR 110,000 (10 October 2023), the total fees claimed – QAR 378,000 – are not in my view reasonable for the period 25 June 2023/2 July 2023 to 1 August 2023, bearing in mind that after the hearing on 4 July 2023 there would have been very little, if any, advice to provide to the Defendants until judgment was issued on 31 July 2023. The cases were withdrawn the very next day.

64. So, the question for me is: what would a reasonable fee have been for the advocates to prepare for and represent the Defendants at the hearing from the dates of notification to the 1 August 2023? This would include preparation for and attendance at the hearing, and potentially some minimal further advice post-hearing/post-judgment i.e. necessary work ancillary to representation at the hearing.

65. I take account of the fact that the lawyers were representing four Defendants, although the case was really one consolidated case with the same arguments being made for the 2nd to 4th Defendants, and a modified argument on the part of the 1st Defendant. There would therefore have been a significant measure of duplication. I also take account of

the fact that there were two advocates instructed. I am not of the view that it would be reasonable to order the Claimant to reimburse the Defendants for the presence of a second advocate at the hearing where one would clearly have been sufficient, although I will make some allowance for preparation by two lawyers as is often the case.

66. In coming to my conclusion, I take particular account of the fees agreed in the 6 June 2023 engagement letter, which quoted a "*total fee*" of QAR 100,000. It also notes that, "*the balance amount shall be paid at the conclusion of the 4 cases*". At this time all parties knew of the hearing on 4 July 2023 and could have estimated the volume of work required. It would clearly have been known to the lawyers and all parties that this case could have had further hearings, including a trial with witness evidence, so I am prepared to accept that a second engagement letter – updating the first one post-4 July 2023 – may have been contemplated and necessary, as a "*total fee*" of QAR 100,000 for a number of cases, representing four Defendants including pleadings, witness statements, disclosure, submissions, and a trial, may have been inadequate. It is indeed curious that the Defendants, without knowing the result of the hearing of 4 July 2023 (which ultimately resulted in the cases coming to an end), exposed themselves in advance to significant fee liability but I do not need to make any findings in relation to that point.

67. Importantly, the balance of QAR 50,000 was paid on 18 July 2023. This was after a hearing and during a period in which there would have been negligible to no work to carry out on the case given that judgment was awaited.

68. Returning to the question at paragraph 64: what would a reasonable fee have been for the preparation in relation to and representation at the hearing (limited to this given that this is what was disclosed to the Claimant), apportioned to the post-notification periods? My view is that this figure is QAR 20,000. I make clear that work will undoubtedly have been done prior in relation to preparation for the hearing prior to the notification dates but that we are necessarily limited in time to post-notification by *Fadi Sabsabi v Devisers Advisory Services LLC.* According to the initial engagement letter dated 6 June 2023, there should also have been other work done in relation to the conduct of the litigation but as the notification explicitly limited the roles of the advocates to representation at the hearing, this cannot be claimed even post-notification (although it

is unlikely that there was anything other than preparation for the hearing post-notification in any event).

69. I ought to add for the sake of completeness that QAR 378,000 for all of the cases that this judgment is concerned with, with multiple hearings and a full trial with witnesses may have been reasonable in the final analysis. However, this is not what happened. The cases were withdrawn on 1 August 2023, and therefore even if the Defendants had incurred a fee liability to FAS of QAR 378,000, it would simply be unreasonable and unjust for the Claimant to meet this full fee.

The Claimant's Tertiary Case

70. The Claimant's case here is that, should I be against the Claimant on its Primary and Secondary Cases, I should award costs in the sum of QAR 2,050. This figure is adumbrated in the Appendix A document covered in paragraph 58, above.

71. The Claimant has calculated the figure of QAR 2,050 on the basis of an hourly rate of QAR 100, citing *Mieczyslaw Dominik Werinkowski v CHM Global LLC* [2023] QIC (C) 1, with an estimate of 18 hours by way of drafting replies to the claims, and then has applied a rate of QAR 50/hour for preparation for and attendance at the hearing (5 hours in total).

72. I have set out my view above in directing a payment of QAR 20,000. I am of the view that the preparation hours proffered by the Claimant are a gross underestimate of the hours that would have been required in the preparation and presentation of the case from 6 June 2023 onwards. I also reject that the hourly rate for the lawyers should be capped at QAR 100 because, as is abundantly clear from the judgment cited, that is the hourly rate for litigants-in-person, not for lawyers. The screenshots from the Economic Research Institute "*demonstrating*" that the hourly rate for Indian lawyers should be QAR 50 is particularly unhelpful and does not assist at all other than to obscure the analysis that I have to perform.

73. That said, the comments on the Tertiary Case have simply been included for the sake of completeness given the findings that I have made in the previous section.

Final comments

74. This case underscores the necessity for parties to be transparent with their opponents about their arrangements with their lawyers as early as possible. A clear paper trail, whilst not a condition-precedent, is also of great to assistance in this assessment process.

75. The facts of this case – despite all the obfuscation and dissembling – are very clear. The Claimant brought several cases against the Defendants. It was unsuccessful at obtaining an interim injunction after a hearing on 4 July 2023. As a result, it withdrew the cases on 1 August 2023.

76. The Defendants were entitled to their reasonable costs in full. Indeed, there was a further judgment which underscored the costs liability of the Claimant to the Defendants. The Defendants entered into an arrangement as early as 6 June 2023. It is unclear why their legal representation was not disclosed at this stage. Had it been, the clock for the fees they are able to recover would have started much earlier and they would by extension, given what I have found, have recovered a much higher figure. The Defendants may well feel hard done by at this result, but as noted above it underscores the importance of being familiar with the rules and practices of this Court, and in particular when it comes to costs and litigation strategy, *Fadi Sabsabi v Devisers Advisory Services LLC*.

By the Court,

[signed]

Mr Umar Azmeh, Registrar

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

Representation

The Claimant was represented by Mr Amar Gupta, Mr Pranav Tanwar and Mr Akshay Shankar of M/s J Sagar Associates (New Delhi, India).

The Defendants were represented by Ms Sheeja Anis and Mr Anis Karim of Fidedigno Advisory Services WLL (New Delhi, India).