



محاكمة 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

IN THE CIVIL AND COMMERCIAL COURT

OF THE QATAR FINANCIAL CENTRE

FIRST INSTANCE CIRCUIT

12 August 2018

CASE No: 02/2018

NETWORKS ELECTRICAL AND MECHANICAL CONTRACTING COMPANY

Claimant

v

TAKAFUL INTERNATIONAL COMPANY (QATAR BRANCH)

Defendant

JUDGMENT

Members of the Court:

Justice Robertson

Justice Arestis

Justice Blair

ORDER

1. The Defendant will pay forthwith to the Claimant QAR 102,800 being the total sum of the workers' compensation insurance policy entitlement under policy no 15111GAWC000100. We are satisfied that the Claimant has already paid QAR 100,000 to its employee. The employee must receive the balance of his entitlement (being QAR 2,800) immediately;
2. The Defendant will pay forthwith to the Claimant QAR 81,146 being the sum it offered in full and final settlement of all outstanding claims under Contractors All Risk (CAR) policy no 1411ECAR000819;
3. The Claimant will pay forthwith to the Defendant QAR 111,752 being the acknowledged amount of outstanding premiums due and owing for insurance cover;
4. The Claimants' claim for QAR 3,000,000 against the Defendant relating to the failure to renew the CAR policy is dismissed;
5. In respect of the claim for QAR 102,800, relating to the workers' compensation insurance policy entitlement, the Defendant is to pay the Claimant its reasonable costs, such costs to be agreed between the Parties or, if they are unable to reach agreement, to be determined by the Registrar;
6. In respect of the claim for QAR 3,000,000 against the Defendant relating to the failure to renew the CAR policy, the Claimant is to pay the Defendant its reasonable costs, such costs to be agreed between the Parties or, if they are unable to reach agreement, to be determined by the Registrar; and
7. In respect of the other claims, there will be no order as to costs.

JUDGMENT

1. The Claimant, Networks Electrical and Mechanical Contracting Co, is a company incorporated and operating in the State of Qatar. The Defendant, Takaful International Company (Qatar Branch) is a company incorporated in Bahrain, and authorised by the Qatar Financial Centre Regulatory Authority (QFCRA) among other things to effect and carry out contracts of insurance. At the beginning of 2017, the Defendant notified the QFCRA that it was ceasing to conduct Qatar branch operations. Its Qatar business is presently in run-off.
2. The claim is said to arise out of an insurance policy or policies issued by the Defendant to the Claimant of which there were a considerable number, and in particular a workers' compensation insurance policy no 15111GAWC000100, and a Contractors All Risk (CAR) policy no 1411ECAR000819.
3. The background (as described further below) is that the Claimant is party to a major contract with Qatar General Electricity & Water Corporation (KAHRAMAA). It claims damages for what it contends was the Defendant's wrongful failure to renew the CAR policy, and for the amount of an unpaid claim under the workers' compensation insurance policy which it says that it has been obliged to meet itself. The Defendant denies liability and counterclaims for what it says are unpaid premiums in respect of various policies.

Procedural Background

4. By way of a Claim Form issued by the Registry on behalf of the Court on 25 March 2018, the Claimant commenced proceedings against the Defendant essentially claiming three things:
 - (a) QAR 102,800 pursuant to what the Claimant alleges is a contractual entitlement under the workers' compensation insurance policy;

(b) QAR 3,000,000 as what the Claimant describes as ‘compensation’ for breach of contract in relation to the CAR policy; and

(c) The costs associated with bringing these proceedings.

5. The Claim Form was served by registered post on 26 March 2018. The address to which the Claimant served the Claim Form was that of the Defendant’s principal place of business. That address was the address held by the Companies Registration Office of the QFC (‘the CRO’) as well as the address which was (and at the time of this judgment still is) the address which is displayed on the QFC Public Register. Service was therefore effected in accordance with Article 18.3.3 of the Regulations and Procedural Rules of the Court (‘the Rules’).
6. No Defence was filed by, or on behalf of, the Defendant. This led to the Claimant filing an Application for Summary Judgment on 22 May 2018 which it served on the Defendant, again by registered post to the address identified in paragraph 5 above, on the 28 May 2018.
7. The Court issued Directions on 14 June 2018. Those Directions required the Claimant to further particularise its claim and afforded the Defendant an opportunity to respond. At the same time, the matter was listed for a one day hearing on Sunday 29 July 2018.
8. The Registrar sent a copy of the Directions to the Defendant’s principal place of business. However, the court officer charged with delivering the Directions was unable to deliver it because, having attended the address, it became apparent that the Defendant was no longer operating from there. The Registrar contacted the CRO which, after further investigation, discovered that the Defendant had moved to different premises, still within Qatar, but without, it seems, notifying the CRO. Accordingly, the Registrar sent a copy of the Directions, as well as a copy of the Claim Form and Application for Summary Judgment, to the Defendant’s ‘new’ premises on the 26 June 2018. The Defendant acknowledged receipt of those documents and indicated its intention to file a response and to attend the hearing.

9. It is a cause for concern that without the intervention of the court officers this matter would have proceeded to hearing and disposition without the Defendant's participation. Once the Defendant knew of the case it participated fully, responsibly and vigorously in it. This demonstrates the absolute need for any change of address (in this case by an insurance company) to be immediately referred to the relevant public authorities.
10. In accordance with the Directions of the Court, on 8 July 2018 the Claimant filed and served further particulars of its claim. This introduced what is in effect a third claim for unpaid sums under various policies in the sum of QAR 81,146. There is no objection to the introduction of this claim, which as appears below is admitted by the Defendant.
11. The Defendant filed and served a Defence and Counterclaim on 22 July 2018. The submissions were in Arabic but the supporting documentation was in English. The Registrar obtained an English translation of the submissions which was provided to the Court and to the Parties.
12. On the morning of the hearing, the Claimant filed a response. There was no objection on the part of the Defendant. The response initially repeated issues about communications between the Parties in 2017, and also introduced a new approach to the compensation claim (see below). It annexed a document which was said to show the state of the account between parties.

Brief Outline of the Claim

13. As indicated above, the substance of the claim falls into two distinct parts – a claim for QAR 102,800 and a claim for QAR 3,000,000, and a third claim introduced later for QAR 81,146.

The QAR 102,800 Claim

14. This part of the claim relates to the allegation that the Defendant is in breach of the workers' compensation insurance policy identified above. In short, the Claimant

states that one of its employees, Mr Vinod Das Jago Das, was involved in a workplace injury on 2 November 2016 in which he lost his left eye. That injury, says the Claimant, was covered by the terms of the insurance policy. Although the Claimant submitted a claim, it says that the Defendant declined to make payment. This eventually led to the injured worker filing a complaint with the Indian embassy. The embassy took the matter seriously and raised the issue with the Claimant by letter of 18 February 2018. This led to the Claimant depositing at the embassy a cheque dated 19 March 2018 payable to Mr Vinod Das Jago Das in the sum of QAR 100,000 even though the Claimant had not received any sums from the Defendant.

15. Accordingly, the Claimant alleges that the Defendant remains liable for the sum it ought to have paid to the Claimant pursuant to the terms of the policy, namely QAR 102,800.
16. The Defendant appeared to accept liability in relation to this part of the claim and, as evidence of the same, drew attention to a credit note dated 20 May 2018 in this sum. The reason the Defendant gives for withholding the payment is because, it says, it is owed money for unpaid insurance premiums on various different policies (as to which see below). Until these outstanding insurance premiums are paid, it would not release the funds in relation to the workers' compensation claim.

The QAR 81,146 claim

17. Although not part of the formal pleadings, as explained above there also emerged a question of the Claimant's entitlement to unpaid claims in the sum of QAR 81,146. This sum was offered by the Defendant on 27 December 2017 in full and final settlement of all claims under the CAR policy.

The QAR 3,000,000 Claim

18. This part of the claim is less straightforward. In its further particulars of claim, the Claimant explains that it is involved in the contract with Qatar General Electricity & Water Corporation (KAHRAMAA), the value of the contract being QAR

251,229,000. It is said that, in relation to this, the employer required among other things that a CAR insurance policy was taken out by the Claimant with the Defendant and maintained for the period of the contract.

19. The Claimant says that the policy expired on 19 August 2017 and that Defendant suddenly and without prior notification refused to renew it with the result that the contract the Claimant entered into with KAHRAMAA is no longer covered by a CAR insurance policy. This, says the Claimant, puts it in breach of its contractual agreement with KAHRAMAA which requires this cover. The Claimant says that this breach creates a risk that the contract with KAHRAMAA could be terminated, although it does not suggest that this risk has, to date, materialised.
20. The Claimant claims compensation in the sum of QAR 3,000,000 from the Defendant on the basis that it was not entitled to refuse to renew the agreement in the way that it did. The sum is said to be calculated by reference to a percentage of the insurance policy price (QAR 88,000,000 at 3.4%) or a percentage of the contract price with KAHRAMAA (QAR 251,229,000 at 1.1%).
21. In a further Memorandum filed at the hearing the basis of this compensation claim was restated as follows:

Claimant not claiming Defendant basis on this suitcase to renew the insurance policy, Claimant claiming for a compensation as a result to Defendant's negligence, omission and mistake in accordance to:

- *Ignoring of policy renewal requests that sent by Claimant without any valid or legal excuse.*
- *It is legally incumbent upon Defendant once he decided suspend his activity and close his branch in Qatar on January, 4, 2017, to notify immediately Claimant regarding his decision so that Claimant avoids any legal risks as a result, but Defendant instead simply ignore that and ignore Claimant's requests.*

Brief Outline of the Defence and Counterclaim

22. In its Defence to the QAR 3,000,000 claim, the Defendant accepts that a CAR insurance policy was taken out by the Claimant in relation to the KAHRAMAA contract. The insurance policy, the Defendant says, was issued on 20 August 2014 and ended on 19 August 2017. It included a 'looking after period' of 400 days from 20 August 2017 until 23 September 2018 (neither party suggests that this period is relevant to the issues before the Court).
23. The Defendant states that on 10 September 2017, i.e. after the insurance policy had expired, the Claimant asked it to extend the policy as the KAHRAMAA project had not been completed within the expected timeframe. The Defendant informed the Claimant that it was unable to do so because the Defendant had ceased its operations in Qatar from the beginning of the year.
24. Accordingly, the Defendant's case is that insofar as it concerns the insurance policy relating to the KAHRAMAA project, the policy had come to an end and the Defendant was not obliged to renew it. Indeed, it could not renew it because of the decision that had been taken in relation to it ceasing business in Qatar.
25. Moreover, the Defendant states that it is the Claimant that is in breach because it has failed to pay its insurance premiums. It says that, to date, the Claimant is in arrears in the sum of QAR 111,752 on various policies, and it makes a claim for this sum as well as for the costs incurred in defending these proceedings and bringing the counterclaim.

The Hearing

26. The hearing took place on 29 July 2017, both parties being legally represented. As the papers filed were far from clear as to the precise nature of the dispute between the Parties, we commenced the hearing by entering into direct dialogue with the Parties and their representatives. We are grateful for the assistance which they gave to the Court.

27. As a result, the position with regard to the workers' compensation claim and associated matters eventually emerged and was non contentious.
28. As to the workers' compensation claim, the Defendant insurance company accepted liability.
29. However the matter did not end there, because as indicated above, the position on the evidence was that the Claimant had deposited a cheque dated 19 March 2018 payable to Mr Vinod Das Jago Das in the sum of QAR 100,000 at the Indian embassy. There was no evidence that amount of the cheque had actually been received by Mr Das. Although the Claimant assured the Court that Mr Das had been paid, the Court wished to be satisfied in that regard. The Court permitted the Claimant to produce evidence of payment, which it did on 30 July 2018 by producing an account statement showing that the cheque had been paid, and a Statement from Mr Das to the effect that he had received the money. The Defendant must now pay the Claimant's claim for QAR 102,800 and the Claimant must ensure that Mr Das receives the balance of QAR 2,800.
30. The Defendant also accepts that it must pay the Claimant the sum of QAR 81,146 in settlement of all claims under the CAR policy, and the Claimant accepts that this is the correct sum.
31. As regards the arrears in the sum of QAR 111,752 on various policies claimed by the Defendant, the Claimant produced a schedule on the morning of the hearing which put forward different figures for the state of the accounts between the parties. However, it was acknowledged on behalf of the Claimant at the hearing that the sum of QAR 111,752 was in fact due. When the Claimant produced evidence of payment to the insured worker on 30 July 2018, it sought to reopen this issue. The Defendant agreed to produce further documents substantiating its figure, and the Court's understanding is that this has been done by way of documents sent on 30 July 2018.
32. Accordingly, the following orders will be made on this part of the case:

- (a) The Defendant will pay forthwith to the Claimant QAR 102,800 being the total sum of the workers' compensation entitlement. We are satisfied that the Claimant has already paid QAR 100,000 to its employee. The employee must receive the balance of his entitlement immediately;
- (b) The Defendant will pay forthwith to the Claimant QAR 81,146 being the sum it offered in full and final settlement of all outstanding claims under the CAR policy; and
- (c) The Claimant will pay forthwith to the Defendant QAR 111,752 being the acknowledged amount of outstanding premiums due and owing for insurance cover.

33. At the hearing, and very responsibly, Mr Ahmad Osman, counsel for the Claimant, did not pursue the claim for QAR 3,000,000 which had been put forward on the basis that no renewal was granted on the CAR policy. That claim was unarguable, because the period of the policy was between 20 August 2014 and 19 August 2017. In fact, no request for renewal was made during the currency of the policy, but even if it had been, the policy expressly provides that, "Any extensions of the period of insurance are subject to the prior written consent of the Insurers". The Insurers did not consent because they were ceasing operations in Qatar, and they were under no obligation to renew or extend the policy.

34. However, the Claimant sought to argue that it should be entitled to some compensation payment for the Defendant's failure to notify the Claimant in advance of its intention to withdraw from the market so it could arrange alternative insurance cover on the very large project on which it was working.

35. There was a subsidiary argument that because of the Defendant's failure to provide a letter of 'no outstanding claims' it was impossible for the Claimant to go to other insurance companies for alternative cover. What was meant by such a letter was the subject of some divergence of opinion. The Defendant took the view that what the Claimant was asking for was a letter indicating 'no claims', even though there

had been a substantial number of claims made. The Claimant's position, however, was that it wanted confirmation that there were no outstanding issues between the parties. Whether this was merely semantic or there were serious differences between them, it became somewhat academic because of the stand-off which developed between them over outstanding premiums and unpaid claims which prevented any sensible dialogue occurring.

36. It was argued in response by the Defendant that because from the beginning of 2017 various other insurance policies between the Parties were not being renewed, the Claimant was well aware (even if it was only informally and tangentially) that the Defendant was ceasing to carry on business in Qatar.
37. The suggestion that the Claimant already knew that the Defendant was ceasing to carry on business was not raised by the Defendant before the hearing and was denied by the Claimant. However, it is not necessary for us to reach a concluded view on the point because as already noted the insurance contract between the Parties was for a specified period of three years, and the Defendant did not consent to an extension, and was under no obligation to do so.
38. As to timing, the first request by the Claimant for an extension was not made until 30 August 2017 by which stage the contract had expired. There was a difference of view as to whether the Defendant responded to that request though an email with a letter attached dated 9 September 2017 seemed clearly to show that it did. When a second request was made by the Claimant on 10 October 2017, the information about the closure of the Defendant's business was repeated in an immediate response.
39. There are other insuperable difficulties in respect of this claim besides the lack of a legal basis. There was no evidence placed before the Court that the Claimant has been unable to obtain substitute insurance by reason of non-renewal or lack of advance notice of the fact that the policy was not going to be renewed. Further, no factual basis has been put forward to justify the figure of QAR 3,000,000, or any other quantification of loss.

40. In our judgment, this part of the Claimant's case had no legal or practical reality. The Defendant is entitled to judgment dismissing this claim.

Conclusion

41. It accordingly follows that judgment will be entered for each Party in terms of paragraphs 32 and 40 above.
42. In respect of the claim for QAR 102,800 relating to the workers' compensation entitlement, the Claimant is to have its reasonable legal costs of this claim paid by the Defendant. The amount of such costs will be as agreed between the Parties or, if they are unable to reach agreement, as determined by the Registrar. We make this order because in our view the rights of the injured worker to his compensation should never have been placed in jeopardy by reason of the dispute which the Defendant had with the Claimant.
43. In respect of the claim for QAR 3,000,000, the Defendant is to have its reasonable legal costs of this claim paid by the Claimant. The amount of such costs will be as agreed between the Parties or, if they are unable to reach agreement, as determined by the Registrar. We make this order on the basis that costs should follow the event.
44. In respect of the other claims, costs should lie where they fall, and there will be no order as to costs.

By the Court,

William Blair

Justice William Blair



Representation:

The Claimant was represented by Mr Ahmad Osman
The Defendant was represented by Mr Majid Nasser Al Badr and Mr Ahmed Rabah