



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: [2022] QIC (F) 3

**IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT**

7 March 2022

Case No. CTFIC 0014/2021

BETWEEN:

**(1) AMBERBERG LIMITED and
(2) PRIME FINANCIAL SOLUTIONS LLC (formerly INTERNATIONAL
FINANCIAL SERVICES (QATAR) LLC)**

Claimants

v

**(1) MR THOMAS FEWTRELL,
(2) MR NIGEL THOMAS HOWARD PERERA and
(3) MRS LOUISE JOAN KIDD**

Defendants

JUDGMENT ON JURISDICTIONAL ISSUES

Before:

Justice Arthur Hamilton

Justice Fritz Brand

Justice Helen Mountfield QC

ORDER

1. The Defendants' contestation of the jurisdiction of the Court to entertain and determine the First Claimant's claims against them is rejected.
2. The parties are each allowed a period of 21 days from the issue of this judgment to make any final adjustments to their respective pleadings on the substantive issues, if so advised.
3. Within 35 days of the issue of this judgment parties shall file their respective written proposals for further procedure in this case.
4. The costs arising from the above contestation, in so far as not already dealt with, are reserved.

JUDGMENT

1. The First Claimant is a company registered in the British Virgin Islands. The Second Claimant, which was formerly named International Financial Services (Qatar) LLC ("IFSQ"), is an entity established in the Qatar Financial Centre ("QFC"). Following upon the Share Sale and Purchase Agreement referred to below the First Claimant acquired the entire shareholding of the Second Claimant.
2. The Defendants are each individuals, the First and Third being resident in the United Kingdom and the Second in Qatar.
3. The Defendants were at one time, together with a further individual (Christopher Ivinson) and a corporate body (International Financial Services (s) PTE LTD (Singapore)), each with addresses in Singapore, collectively the sole shareholders in varying percentages of the share capital of IFSQ. As such they entered into the Share Sale and Purchase Agreement referred to above ("the SPA") with the First Claimant whereby they each agreed to sell and the First Claimant agreed to purchase their respective shareholdings. The SPA was, on its face, executed by the First Claimant and the Second Defendant on 12 January 2020 and by the other parties earlier on 12

December 2019. In the SPA the First Claimant is referred to as “the Purchaser” and the other parties jointly as “the Sellers”.

4. The SPA contained various provisions, including warranties by the Purchaser and by the Sellers. Clause 9 is headed “**SELLERS THE WARRANTIES**”. The clause opens

“The Purchaser (sic) warrants to the Sellers...”. It is accepted that these opening words include typographical errors. They should read: “The Sellers warrant to the Purchaser...”. There follow a number of specific warranties, including under the sub-heading “The Business and Company” the following:

“9.3.1 The Sellers warrant that the Audited Financial Statements and the draft Financial Statements for FY2018 attached in **Schedule 2** are true and accurate.....

“9.3.2 The Sellers warrant that the Company does not have pending financial, legal, regulatory claims or violations other than those disclosed to and acknowledged by the Purchaser in writing.”

5. Clause 10 of the SPA made certain provision in respect of Company Claims, including

“10.3the Sellers shall remain jointly and severally liable to indemnify the Purchaser for any Company costs or damages resulting from such Claim including the costs of defending such Claim.”

6. The SPA also provides:

“25.2 Any dispute, controversy or claim arising out of or in connection with this Agreement... shall be referred to and finally resolved by the competent Courts of the Qatar Financial Centre.”

7. In this action the First Claimant maintains that the First, Second and Third Defendants were each and all in breach of the above provisions and that it has sustained damage as a result. The remaining Sellers have not been joined in this action. Also included in the

action are certain claims made by the Second Claimant but, as these are not material for present purposes, it is unnecessary at this stage to set them out.

8. Nor is it necessary at this stage to set out in detail the factual circumstances upon which the First Claimant relies in support of the alleged breaches. Suffice it to say that they relate to certain dealings involving a Ms Richards who, prior to the SPA, had been interested in acquiring the capital of IFSQ and had advanced, by way of loan, a substantial sum to that company. The First Claimant's primary contention is that there was not due disclosure and acknowledgement of that debt.
9. The Defendants have filed Defences to the Claim Form filed by the Claimants. These include both Defences to the claims themselves and also a contention that this Court does not have jurisdiction to entertain the First Claimant's claims. The claims by the Second Claimant are not challenged on jurisdictional grounds.
10. The Court ordered that parties be heard orally but remotely on the jurisdictional issues. When that order was made all three Defendants were represented pro bono by the same lawyer. Subsequently that lawyer withdrew from acting but his place has, as regards the Second Defendant, recently been taken by Mr Islam Kassem of Al Sulaiti Law Firm. The Court is grateful to Mr Kassem for taking on this role in a pro bono capacity.
11. The hearing took place on 27 February 2022. Mr Kassem appeared for the Second Defendant. The other Defendants did not appear and were not legally represented. Mr Paul Fisher of Counsel appeared for the First Claimant.
12. The QFC Law provides by Article 8.1.c that this Court "shall have jurisdiction to hear the following disputes...". Originally, four classes of disputes were then identified (c/1, c/2, c/3 and c/4). Recently, the Law has been amended to add a further class (c/5). These provisions, both as originally enacted and as recently amended, are reproduced in Article 9.1 of this Court's Regulations and Procedural Rules ("the Rules"). Article 9 as a whole is headed "Jurisdiction of the Court". Article 9.1 opens: "The Court has jurisdiction, as provided by Article 8.3.c of the QFC Law, in relation to:...". There then follow the classes of disputes referred to above.

13. The classes referred to in Articles 9.1.1, 9.1.2, 9.1.4 and 9.1.5 of the Rules have no relevance for present purposes. Article 9.1.3 provides: “Civil and commercial disputes arising between entities established in the QFC and contractors therewith and employees thereof, unless the parties agree otherwise.”

14. Article 9 of the Rules continues:

“9.2 Consequently and in accordance with fundamental international principles and international best practice, the Court will take into account the expressed accord of the parties that the Court shall have jurisdiction.

....

9.4If the Court considers it desirable or appropriate, it may decline jurisdiction....”

15. Neither Article 9.2 nor Article 9.4 reproduces, in express terms, provisions in the QFC Law. However, the Rules, including these Articles, were enacted purportedly in furtherance of the power, conferred by Article 9 of the QFC Law, on the Minister of Economy and Finance to enact Regulations with the consent of the Council of Ministers. In *Nazim Omar and Another v Al Mal Bank LLC* [2011] QIC (A) 1 the appellants challenged as *ultra vires* the provision in the Rules which required that permission of the Court was required to appeal against a judgment or decision of the Court at first instance. The Appellate Circle of this Court rejected that challenge, noting that the Rules had been approved by the Council of Ministers. Article 9.2 is contained within the same rules, so approved. It was not contended by the Defendants in this case, either in written submissions or orally at the hearing, that Article 9.2 (or Article 9.4) was *ultra vires*. In the absence of any challenge of that kind we proceed on the well-established principle that a regulation made by a Minister under delegated powers is to be treated as validly made unless and until duly challenged and set aside.

16. The primary contention advanced by Mr Kassem on behalf of the Second Defendant was that the dispute between that Defendant and the First Claimant did not fall within any of the classes identified in Article 9.1 of the Rules. Although a dispute between these parties under or by virtue of the SPA might be a civil or commercial dispute, the

First Claimant was not an entity established in the QFC. Accordingly, Article 9.1.3 could not apply. This Court, the argument continued, had already held that it had no jurisdiction to entertain a claim by the First Claimant, a body established in the British Virgin Islands. Reference was made to *Amberberg Limited v Aycan Richards* [2021] QIC (F)1 and [2021] QIC (A) 3, at first instance and on appeal respectively. It was also, in response to the First Claimant's reliance on clause 25.2 of the SPA, contended that the dispute between it and the Second Defendant was not a dispute related to the Agreement and was accordingly not one to which that sub-clause applied.

17. Mr Fisher on behalf of the First Claimant maintained that the Court had jurisdiction to address and determine the dispute between it and the Defendants. The judgments cited by Mr Kassem were distinguishable. This dispute was one arising out of or in connection with the SPA and accordingly fell within the scope of clause 25.2, which was widely expressed. It was the expressed accord of the parties that this Court have jurisdiction. It was consistently and in accordance with fundamental international principles and international practice that the Court give effect to the parties' accord. By virtue of Article 9.2 of the Rules the Court was bound to take account of that accord and was obliged, or at least entitled, to exercise jurisdiction in this case. The ruling of this Court in *C and D* [2021] QIC (F) 8 was analogous. Further, the First Claimant, as 100% shareholder of the Second Claimant, was an entity established in the QFC. Reference was made to *Badri and Salim Elmeouchi LLP v Data Managers International LLP* [2020] QIC (F).

18. We note that the First Claimant has previously been a litigant before the Courts of the QFC. In *Amberberg Limited v Aycan Richards* (supra) it was held that these Courts did not have jurisdiction to entertain the claim there made by it. The grounds of judgment on appeal (para 10) were (1) that, as the applicant was not an entity established within the QFC, there was no jurisdiction under Article 9.1.4 of the Rules and (2) that, as the respondent was not a party to the share sale and purchase agreement there relied on, there could be no jurisdiction by virtue of that agreement. The First Claimant is not itself, nor has it ever been, an entity incorporated in the QFC (or with a branch there) or licensed by the QFC Authority, though an argument in the present case that it is nonetheless an entity "established in the QFC" will require to be mentioned (see para 27, below). So, subject to that argument, jurisdiction could not arise by virtue of Article

9.1.3. However, in the present case all the Defendants as well as the First Claimant were parties to the SPA, an agreement with a choice of court provision. So, jurisdiction on the basis of that provision requires to be addressed.

19. Article 9.2 of the Rules refers, in the context of a section on the jurisdiction of the Court, to “fundamental international principles and international best practice”. It is, and has long been, a feature of fundamental international principles and best practice that parties to a dispute or prospective dispute are, subject to certain restraints, at liberty mutually to choose the court or courts which will adjudicate on it. In some jurisdictions this is referred to as “prorogation of jurisdiction”, in others as “choice of court agreements”. The Hague Conference on Private International Law promulgated in 2005 a Convention on Choice of Court Agreements. Many States, as well as the European Union, are members of the Hague Conference. Although Qatar is not currently among them (so that the Convention is not directly applicable in this jurisdiction) the Convention reflects a fundamental international principle. It is concerned with civil and commercial matters, including disputes of the character of that between the First Claimant and the Defendants. Article 25 of Regulation (EU) No. 1215/2012 makes like provision for Member States of the European Union.

20. Article 9.2 of the Rules, in contrast to Article 9.1, does not identify classes of disputes over which the Court has jurisdiction. Rather, it provides that the Court “will take into account the expressed accord of the parties that the Court shall have jurisdiction”. The implication is that, if the Court having taken any such expressed accord into account considers that in the circumstances it should give effect to it, it is entitled to accept jurisdiction. If it considers that in the circumstances it should not give effect to such accord, it may decline jurisdiction. It is unnecessary for present purposes to go so far as to hold that the Court is obliged to accept jurisdiction.

21. In *Amberberg Limited v Aycan Richards* (supra) the Appeal Division rejected jurisdiction in part on the basis that the Respondent in that case was not a party to the share sale and purchase agreement relied on. It is consistent with that judgment that, had she been such a party, the Court would, or at least might, have had jurisdiction. In the present case, the First Claimant and all the Defendants were parties to the SPA. They all contractually expressed an accord that the competent courts of the QFC should

resolve any dispute arising out of or in connection with the SPA. Subject to the question as to whether the current dispute is of that character, we are satisfied that it is open to this Court to entertain and address it.

22. It is not disputed that this Court has jurisdiction to entertain and determine such claims as are made against the Defendants by the Second Claimant. The claims made by the First and Second Claimants, although distinct, are closely related. To reject jurisdiction to entertain the First Claimant's claims while entertaining those of the Second Claimant would, potentially, lead to multiple actions in different jurisdictions. Further, the SPA regulated the sale and purchase of the shares in IFSQ, an entity established in the QFC. Matters arising out of or in connection with it are thus closely related to this jurisdiction. It is accordingly proper that this Court accept jurisdiction to adjudicate on a dispute arising out of or in connection with the SPA. On these bases the Court holds that it has jurisdiction to entertain and decide the First Claimant's claims against the Defendants.
23. The First Claimant relied on the Note on Ruling issued by this Court in *C and D* (supra). In accepting jurisdiction to deal with an application for interim relief/precautionary measures, in a matter in which the parties had agreed that the seat of an arbitration be the Qatar International Court and Dispute Resolution Centre and the venue of the arbitration be Qatar, the Court there relied on Law No.2 of 2017 issuing the Law of Arbitration in Civil and Commercial Matters, legislation of the State of Qatar. We are not persuaded that that Ruling, which expressly turns on the application of that Law, assists in determining the current question of jurisdiction.
24. In *John and Wiedeman LLC v (1) Trimoo Parks and Others* [2021] QIC (F) 4 at paras 5-6 there was some discussion of the limits of this Court's jurisdiction, with particular reference to opting in and opting out. However, that discussion was concerned only with Article 9.1 of the Rules. It did not address Article 9.2. It is, accordingly, not inconsistent with the above interpretation of the latter Article.
25. The Defendants in a written submission contend that "the current dispute is not a dispute related to [the SPA]". This contention is elaborated by the statement: "The SPA is limited to shares related issues while the current litigation is related to a dispute between the parties with respect to management issues of IFSQ after the control of

100% of its shares by [the First Claimant]”. This contention is difficult to understand. Mr Kassem’s oral submissions did not assist in elucidating it.

26. Prior to the acquisition by the First Claimant of the entire shareholding of IFSQ, the Second Defendant not only held certain of those shares but also was employed by IFSQ in an executive capacity. After that acquisition he continued for some time to be employed by IFSQ with executive functions. There may be a dispute on management issues between the Second Defendant as employee and the First Claimant as owner during that latter period, touching on how IFSQ sought to address the claim made against it by Ms Richards. That dispute may, or may not, be relevant to the claims which, by this action, the First Claimant brings against the Defendants as Sellers of their shares. However, the existence of any relevant dispute of that character does not have the result that the First Claimant’s claims do not fall within the scope of clause 25.2. Based as they are on alleged breaches by the Defendants of their obligations as Sellers under the SPA, they clearly do so fall. This contention is without substance. Whether there were any such breaches and, if there were, whether the First Claimant is disabled, by waiver or otherwise, from relying on them are matters of the substantive merits, not of jurisdiction.

27. The First Claimant contends that, it being at the time of institution of the present proceedings the owner of the entire shareholding of the Second Claimant, it was itself an “entity established in the QFC” and that this Court has accordingly jurisdiction under Article 9.1.3 of the Rules by virtue of the Defendants being “contractors with it” under the SPA. As we have held on other grounds (supra) that the Court has jurisdiction, it is unnecessary to discuss this contention in detail. Suffice it to say that we would have rejected it. The holding of shares, whether 100% or less, in a QFC entity does not translate the shareholder itself into an entity established in the QFC. Although the First Claimant was a “controller” of the Second Claimant for the purposes of QFC Regulations that status, and the responsibilities which go with it, do not have the effect of such translation. The Regulations unsurprisingly provide for supervision over persons, whether foreign or domestic, who acquire or seek to acquire effective control over entities established in the QFC. Such persons have rights and duties but are not, even where the shareholding is 100%, themselves entities established in the QFC within the meaning of Article 9.1 of the Rules. *Badri and Salim Elmeouchi LLP v Data*

Managers LLP (supra) does not assist the First Claimant’s contention. That decision recognises that being licensed by the QFCA and having a presence in the QFC (in that case by having an office there) is enough to make a body an “entity established in the QFC”, even if that body is also established elsewhere. It does not, directly or by analogy, support the proposition that a body not itself so licensed and carrying on business in the QFC is an entity established in the QFC merely because it owns shares in an entity which is. Nor does the circumstance that a person, whether a natural person or a corporate body, is a member of an entity established in the QFC warrant such a person being recognised as, himself or itself, an entity so established.

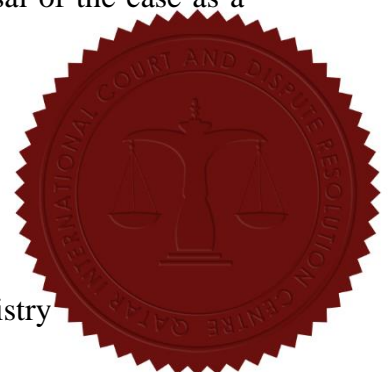
28. A number of other issues were raised in written and oral submissions by the parties. However, as they are concerned with the substantive merits, including causation of damage, it is inappropriate to discuss these when dealing with a challenge to the jurisdiction of the Court.
29. For the reasons given above, the Court is satisfied that it has jurisdiction and that the Defendants’ challenge to that jurisdiction must be rejected. The case must now proceed to address the substantive issues between the parties. An Order to that effect is accordingly made.
30. Although the First Claimant has successfully resisted the challenge made to the Court’s jurisdiction, it has not succeeded in all the arguments presented by it. The argument on which it did succeed can properly be regarded as novel. The Second Defendant’s circumstances are such that he has been represented *pro bono*. The Defendants have already been found liable to the Claimants in their reasonable costs arising from the vacation of an earlier hearing fixed for 28 November 2021. In these circumstances we consider that the costs arising from the challenge should, in so far as not already dealt with, be reserved and decided in due course in light of the disposal of the case as a whole.

By the Court,

[signed]

Justice Arthur Hamilton

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



Representation:

The Claimants were represented by Mr. Paul Fisher of 4 New Square, London, UK.

The Second Defendant was represented under the QICDRC Pro Bono Service by Mr. Islam Kassem of Al Sulaiti Law Firm, Doha, Qatar.

The First and Third Defendants did not appear and were not represented.