

**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**

20 April 2014

CASE NO: 02/2013

CHEDID & ASSOCIATES QATAR LLC

Claimant

v

MR SAID BOU AYASH

Defendant

JUDGMENT

Members of the Court:

Justice Cullen

Justice Robertson

Justice Al Sayed

ORDER

The Court **DETERMINES:**

That the following issues between the parties fall to be decided by reference to the QFC Law and the QFC Regulations, namely:

- (1) whether the contract of 1 April 2010 is void; and
- (2) whether the terms and conditions of Clause 5.2 of the contract of 1 April 2010 are in any event invalid.

JUDGMENT

INTRODUCTION

1. In this action the claimant, a company operating under the laws and regulations of the Qatar Financial Centre, claims that the defendant was in breach of terms and conditions of clause 5.2 of the contract of employment dated 1 April 2010 (“the contract of 1 April”), under which he was employed by it as Head of its Sales Unit. It claims that he was in breach of its restrictions on competition and solicitation for one year after the termination of his employment, which in the event was on 3 April 2013.

2. The defendant maintains that the contract of 1 April did not modify the terms of the claimant's offer of employment to him dated 17 March 2010 ("the offer") which did not contain a non-competition clause. According to his submissions dated 26 February 2014 the contract of 1 April should be considered void as his agreement to its terms and conditions was due to coercion or bad faith on the part of the claimant. The defendant maintains in any event that the terms and conditions of Clause 5.2 which are founded on by the claimant are invalid as an unlawful restraint on his freedom.
3. This judgment is concerned with the law which is applicable in the determination of these disputed matters.

THE PARTIES' SUBMISSIONS

4. The defendant accepts that the claimant is a QFC entity within the meaning of the QFC Employment Regulations. He submits that "it follows that prima facie the QFC Employment Regulations apply to the employment relationship between the claimant and the defendant". However, he founds on the fact that paragraph 19 of the offer stated: "The applicable law for this contract will be Qatari Labor Law". He refers to Article 8 of Schedule 6 to the QFC Law which provides that this Court is to apply the QFC Law and Regulations issued by virtue of the Law on the subject of the dispute "unless the parties have explicitly agreed to apply another law provided that such law is not inconsistent with the Public Order of the State". He also refers to provisions to a similar effect in Article 11 of the Regulations and Procedural Rules of this Court. Accordingly he maintains that the applicable law is Qatari Labor Law.
5. In his submissions dated 26 February 2014 the defendant maintains that it must then be determined whether, as a matter of "non-QFC Qatari law", the terms of the offer were modified by his signature of the contract of 1 April. As its terms were imposed on him by duress, he claims, it should be considered as void, in accordance with Article (137) of

Law No (22) of 2004 Regarding Promulgating the Civil Code. Alternatively, the imposition of such terms amounted to a breach of the requirement of good faith under Article (172) (1) of that Law.

6. In regard to his claim that the terms and conditions of Clause 5.2 are invalid the defendant maintained that they are in breach of public order and his human rights. In his submissions dated 26 February 2014 he stated that the Court should consider their legitimacy, appropriateness or reasonableness for the purposes of Qatari law or in relation to article 20 of the QFC Employment Regulations (which is concerned with restrictive covenants). His references to Qatari law included Article (43) of the Qatari Labor Law.
7. The claimant maintains that the law which is applicable in regard to the validity of Clause 5.2 is that contained in the QFC Employment Regulations, and in particular article 20. However, in case of ambiguity, insufficiency or lack of clarity in article 20, the Court “should be inspired by the local Qatari Employment Law”.

DISCUSSION

8. It is plain that the intention of the QFC Employment Regulations is not only that they should apply to the employment of persons by QFC entities, such as the claimant, but that they should do to the exclusion of non QFC law. Article 2(5) of the Regulations states: “No laws, rules and regulations of the State relating to employment shall apply to Employees whose employment is governed by these Regulations”.
9. It is instructive to consider the position in law at the time when the claimant was drawing up the offer. The conduct of the claimant’s business is governed by the QFC Law and QFC Regulations. It was therefore, in our view, not open to the claimant to include in the offer a stipulation that the applicable law was to be Qatar Labor Law. That was

contrary to the mandatory terms of the QFC Employment Regulations, and in particular Article 2(5). Thus from the start the employment of the defendant by the claimant was, in our view, governed exclusively by the QFC Employment Regulations.

10. As we have noted above, the defendant sought to deduce from the premise that the Qatari Labor Law applied that “non QFC Qatari law” should be applied in deciding whether the offer was not modified by the contract of 1 April. We do not accept the premise, let alone his deduction from that premise. We do not consider that the Qatari Civil Code applies in connection with his claim that the offer was not modified by the contract of 1 April. In the circumstances the defendant may wish to consider Article 36 of the QFC Contract Regulations.
11. If, contrary to the defendant’s submissions, the offer was modified by the terms and conditions of the contract of 1 April 2010, it is clear that the validity of the restrictions on competition and solicitation in Clause 5.2 falls to be determined by reference to the QFC Employment Regulations. In addition to what we have said as to the application of the QFC Employment Regulations from the outset, Clause 5.2 expressly refers to Article 20, and Clause 9.6 states that the interpretation, construction, effect and enforceability of the contract are to be governed by the QFC laws and Regulations.
12. As regards the claimant’s submission that there may be circumstances in which it might be appropriate to take account of local Qatari Employment Law, we do not find it necessary or appropriate to express any view at this stage of the case.

Representation:

For the Claimant: Mr. Walid Honein, Counsel (Badri and Salim Elmeouchi Law Firm)

For the Defendant: Mr. Ravinder Thukral, Counsel (Brown Rudnick LLP)

By the Court,



Christopher Grout
Registrar of the Court

