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 (A) 5
(on appeal from [2021] QIC (F) 21)

IN THE QATAR INTERNATIONAL COURT
APPELLATE DIVISION

Case No. CTAD0006/2021

2 August 2022

JOHN AND WIEDEMAN LLC

Appellant/Claimant

v

(1) TRIMOO PARKS LLC
(2) TALAL BIN MOHAMMED TRADING LLC
(3) LEISURE LLC
(4) FUTURE QATAR FOR BUSINESS DEVELOPMENT (ADABISC) LLC

Respondents/ Defendants

JUDGMENT

Before:
Lord Thomas of Cwmgiedd, President
Justice Fritz Brand
Justice Helen Mountfield QC

ORDER

1. The appeal is dismissed and the judgment of the First Instance Circuit affirmed.

2. There be no order as to the costs of the application for permission and of the appeal.

JUDGMENT

Introduction

1. The appellant is a limited liability company established in the Qatar Financial Centre where it is licensed to provide legal services. Prior to April 2020 it practised under the name "ILC International Legal Consultants Ltd". Mr Michel Daillet ("Mr Daillet") is, and for many years has been, an owner of or partner in the appellant.

2. The respondents are limited liability companies, each separately incorporated in Qatar but outside the QFC and part of the TBMT group. We refer to each respectively as Trimoo Parks, TBMT, Leisure, and Adabisc. Trimoo Parks is owned entirely by Adabisc which is 80% owned by TBMT. TBMT is 99% 0wned by Mr Talal Al Attiyah, a prominent Qatari businessman who is the General Manager of all the respondents.

3. The appellant which had a long-standing relationship with Adabisc had entered into an agreement set out in a letter of engagement. That letter was addressed only to Trimoo Parks as the client dated 12 September 2018, though the appellant supplied legal services to each of the respondents. The terms of the agreement set out in the letter provided for the rates at which fees would be charged and for interest on unpaid fees. The agreement was subject to the laws of the QFC and the exclusive jurisdiction of the courts of the QFC.

4. The appellant brought proceedings in 2020 against all the respondents in the First Instance Circuit for unpaid fees for legal services which had been so provided.

5. The First Instance Circuit (Justice Frances Kirkham, Justice Arthur Hamilton and Justice Rashid Al Anezi) first determined the issue as to its jurisdiction as far as it

then could (see the judgment at [2021] QIC (F) 4). The trial of the proceedings was heard on 7 July 2021 with oral and documentary evidence and submissions. In a judgment dated 22 August 2021 ([2021] QIC (F) 21 the First Instance Circuit held that:

a. The letter of engagement of 12 September 2018 was the vehicle through which legal services were to be provided not only to Trimoo Parks, but also to the other respondents.

b. Legal services, including additional work, had been provided to the other respondents for which the appellant was entitled to be paid.

c. The respondents were not jointly liable. The only respondent liable was Trimoo Parks. The letter of engagement had so provided. The terms set out in the letter had not been varied by conduct.

d. There was no defence to the claim by Trimoo Parks.

6. Judgment was given therefore against Trimoo Parks in the sum of QAR 416,539 and QAR 42,974.55 in respect of pre-judgment interest together with further interest and costs. The claim against the other respondents was dismissed.

7. In the course of its judgment the Court observed at paragraph 30:

> It may be, however, that TBMT and Leisure, who undoubtedly received the benefit of the Claimant's legal services, would find it commercially fitting to acknowledge that benefit and make good any shortfall in what the Claimant can recover from Trimoo [Parks].

8. Trimoo Parks has not paid any part of the judgment and none of the other respondents has paid any regard to the Court's observation by paying for the services received by any of them. We were given no explanation by Dr Hazem Sherif (who appeared for the Respondents) as to why TMBT or any other respondent had failed to provide funds to enable Trimoo Parks to pay for the work done and to satisfy the judgment.

Our decision on the grounds on which permission to appeal was sought by the appellant and Trimoo Parks

9. The appellant sought permission to appeal against that part of the judgment which held that only Trimoo Parks was liable. There were four grounds on which permission was sought:

   (1) TBMT made a legally enforceable commitment to pay the Appellant's invoices.

   (2) TBMT and Adabisc owed a duty of care to the appellant on the principles as to the responsibility of a parent company in relation to the activities of subsidiary companies as explained in the decision of the UK Supreme Court in *Vedanta Resources plc v Lungowe* [2019] UKSC 20.

   (3) Leisure, TBMT and Adabisc persistently failed to warn the appellant that Trimoo Parks was not "good for the money".

   (4) Leisure, TBMT and Adabisc kept instructing the Appellant, implicitly representing that Trimoo Parks was "good for the money".

10. Trimoo Parks also sought permission to appeal against that part of the judgment that held Trimoo Parks was liable for the fees for the additional work the appellant contended it had carried out. Its grounds for seeking permission were (1) that there was no evidence before the First Instance Circuit that such additional work had been requested by Trimoo Parks and (2) that the invoice submitted was invalid.

11. We gave the appellant permission to appeal on grounds 1 and 2. We refused the appellant permission on the other grounds and refused the respondents' permission for the reasons set out in our judgment dated 17 February 2022 ([2022] QIC (A) 2). We reserved the costs of the applications.

The factual background

12. The appellant formed a professional relationship with Adabisc in 2009 when Luay Darwish, a Jordanian businessman based in Qatar and Riad Makdessi, a Syrian businessman similarly based, were its partners and owners. The terms of the engagement to provide legal services were subsequently set out in a letter of engagement dated 3 February 2015 between the appellant and Adabisc as the client. This set out the terms of payment and other terms of the engagement.

13. In 2016 TBMT acquired 80% of Adabisc and its interest in Trimoo Parks. Mr Talal Al Attiyah, the owner of TBMT, became the General Manager of each of the four respondents; this was recorded in the Commercial Register and the four respondents operated as an integrated and interlocking group of companies.

14. In August 2018 following a request from Mr Darwish, negotiations took place between Mr Daillet for the appellant and Mr Darwish for a new letter of engagement. It was signed in September 2018 by Mr Daillet and Mr Darwish for Trimoo Parks. Trimoo Parks was named as the client. The terms of the letter are set out in detail in the judgment of the First Instance Circuit at paragraphs 5-10. The agreement was governed by the law of the QFC and hence the QFC Contract Regulations 2005 – for the general approach adopted by the Court, see section 3.6 of Qureshi and Nicol: *A Guide to the Court and Regulatory Tribunal: Procedure and Jurisprudence (2022).*

15. As the First Instance Circuit held at paragraphs 16-19, it was envisaged that the work to be done by the appellant under the letter of engagement would be for all the respondent companies.

16. Mr Dawish and Mr Makdessi left the group of companies after a disagreement with Mr Talal Al Attiyah in December 2018. It is clear from the evidence of Mr Daillet (which the First Instance Circuit found to be truthful and accurate) as well as the documents before the First Instance Circuit and this Court that from the time the letter of engagement was signed and well into 2019, the appellant was asked to carry out legal work for all the respondents. It is clear from the documents before the First

Instance Circuit and from the evidence of Mr Daillet that direct instructions were given to the appellant by Mr Talal Al Attiyah, TBMT, Leisure and Adabisc.

17. Invoices were delivered by the appellant addressed to "Trimoo" and Mr Darwish. Payment was made for the first four months by cheques drawn by Adabisc in early 2019.

18. No payment was made on the invoices for the remaining period in an outstanding amount of QAR416,539.

First Ground of the appeal: Was there an agreement by the other respondents to pay for the legal services provided to them by the appellant?

19. The First Instance Circuit, after finding that the appellant had done the work claimed for Trimoo Parks and the other respondents and was entitled to be paid for it, concluded that the only respondent company in the group liable to be pay under the letter of engagement was Trimoo Parks.

20. It also concluded

    a. No amendment had been made to the letter of engagement either in writing or orally to make the other respondents liable. No such amendment could be implied.

    b. If there had not been an engagement letter, it might have been possible to hold on the basis of the conduct of the parties that each respondent had entered into an implied contract for the provision of legal services and that each was liable to pay for the services rendered to it or that there had been a single implied contract under which all were liable. However, the existence of the letter of engagement made such an implication impermissible.

21. On the appeal no challenge was made to the conclusion reached by the First Instance Circuit as to the meaning of the letter of engagement which we have summarised at paragraph 20, but there are a number of issues which we will consider in turn.

An agreement to pay in January 2020?

22. The appellant's primary submission was that there was an enforceable agreement made by Mr Shehata on behalf of TBMT in early 2020 that the appellant's invoices would be paid when a certain payment had been received from the Ministry of the Municipalities.

23. The evidence of Mr Daillet was that he had been repeatedly told by Mr Ahmed Shehata, the Chief Financial Officer of TBMT, that the invoices would be paid. Furthermore in January 2020 Mr Daillet who often saw Mr Shehata as their offices were adjoining, contacted Mr Shehata after a year's delay in the payment of the invoices about payment. He was told that TBMT was awaiting payment from the Ministry of the Municipality. On 31 January 2020, as recorded in a WhatsApp message, Mr Shehata told

> "Hi Michael, I am waiting for the payment coming from the Ministry of municipality , once received I will contact you directly. You may contact Talal also directly as you pleased. Thank you"

24. Numerous further requests were thereafter made by Mr Daillet to Mr Shehata in the period up to June 2020, but no response or payment was made.

25. We cannot accept the appellant's submission that this amounted to an agreement by TBMT to pay the amount of the outstanding invoices of Trimoo Parks. As recorded it was no more than a statement that once payment was received from the Ministry of the Municipalities, the appellant would be contacted. Although no consideration is required under Article 31 of the QFC Contract Regulations 2005 for a contract to be binding, the statement made by Mr Shehata was not a contractual commitment on behalf of TBMT. It did not amount to an offer on behalf of TMBT to pay that would be binding on acceptance or provide any other basis on which an agreement could be

inferred. It was simply a statement intended to delay further the making of the payment due to the appellant.

A variation of the letter of engagement?

26. We have considered whether the agreement was varied so that when instructions were given by the respondents other than Trimoo Parks, there was an agreement by the relevant respondent to pay for that work. However, there is no evidence to support any such variation. Moreover, all the invoices were addressed to Trimoo Parks; no invoice was rendered to any of the other respondents and in the letter of 6 July 2020 sent before these proceedings were brought the fees were claimed under the letter of engagement of 12 September 2018 entered into with Trimoo Parks.

A collateral contract?

27. We have also considered whether in the circumstances we have set out there was parallel to the main contract for the supply of legal services was between Trimoo Parks and the appellant, a collateral contract between the other respondents and the appellant. The contract would be to the effect that if the appellant was requested, as envisaged in the letter of engagement, to carry out legal services for the other respondent companies, the other respondent companies would, as a group, ensure that Trimoo Parks was provided with sufficient funds to pay the appellant for that work.

28. The creation and operation of a collateral contract has been recognised as part of the common law of England (see for example *Shanklin Pier v Detel Products* [1951] 2 KB 854 and the many cases referred to in the judgment in *New York Laser v Naturastudios Ltd* [2019] EWHC 2893 (QB) at paragraphs 34- 62). We consider that the principles relating to collateral contracts are recognised as part of the law of the QFC as being entirely consistent with the QFC Contract Regulations 2005.

29. However, for there to be a contract between the appellant and the other respondents collateral to the main contract between Trimoo Parks and the appellant, there would have had to have been a statement or representation by the other respondents. The statement would have had to have been to the effect that if the appellant carried out

legal work on the terms of the letter of engagement, they undertook to the appellant as a group that if it did the work under the terms of the letter of engagement that they would ensure that Trimoo Parks would receive the funds from the group to pay the appellant for the work done. There is no evidence in the witness statement of Mr Daillet or elsewhere or in any document that there was any such statement from the respondents. There is therefore no basis on the facts of the case for holding that there is a collateral contract.

Agency?

30. We have further considered whether there was any evidence that Trimoo Parks acted as an agent for the other respondents when it entered into the letter of engagement with the appellant. There is none.

Conclusion on the first ground of the appeal

31. It appears that when the appellant entered into the letter of engagement it was acting on the usual commercial position that as a contractor it was happy to enter into a contract with one of the companies within a group to do work for it and the other companies in the group on the basis it would be paid by the group; trust is the basis on which business is done. As is almost invariably the position in such circumstances, the contractor is right to operate on the basis of trust as the group acts honourably and ensures the contractor is paid, even if the company with which the contract was made is short of funds. It is therefore understandable that the appellant did not at the time concern itself with obtaining a contract with all the respondents or a guarantee from TBMT. However, in the rare case where, as here, the TBMT group has not acted honourably and has broken the trust, the contractor unfortunately has no legal remedy against the other companies within the group, as nothing was done to put in place agreements with the other parties or seek a guarantee.

32. This is a conclusion we have reached with regret as we have little doubt that TMBT and the other respondent companies have acted dishonourably and not in accordance with proper business and commercial practice. The appellant should have been paid by TBMT not only because that is what is expected of a group, but also because the parent company TBMT benefitted directly from the work done.

The second ground of appeal: was a duty of care owed by TMBT?

33. The second ground of appeal was that TBMT owed a duty of care to the appellant for the activities of its subsidiary Trimoo Parks under the principles explained by the Supreme Court of the United Kingdom in *Vedanta Resources plc v Lungowe* [2019] UKSC 20 and *Okpabi v Royal Dutch Shell* [2021] UKSC 3.

34. It was submitted that TBMT was in complete control of Trimoo Parks through its 80% interest in Adabisc, its control of the day to day management by Mr Talal Al Attiyah and its control of its financial resources; the relevant activities of Trimoo Parks were directed by TBMT. TBMT therefore owed a duty of care to the appellants. It was in breach of that duty, as in circumstances where it approved of the letter of engagement and requested the appellant to carry out work under it, it failed to provide funds to Trimoo Parks and failed to inform the appellant that Trimoo Parks had no funds to pay for that work. No case of dishonesty on the part of TBMT was advanced before the First Instance Circuit or before us.

35. Although we accept that TBMT acted in the manner suggested as it never informed the appellant of the financial position of Trimoo Parks and did not provide funds to it to pay for the work done, the principles in the two cases decided by the UK Supreme Court are of no assistance to the appellant. Both cases involved claimants who sought to make the parent company of a group responsible for the tortious actions of its subsidiaries in causing them loss and damage; the first case was a claim for damages resulting from discharges from a copper mine in Zambia and the second was a claim for damages for leaks from oil pipelines in Nigeria that had caused water and ground contamination.

36. In each case the court was concerned to establish whether the parent company had by its level of control over the subsidiary taken over or shared responsibility for the relevant activity and so had incurred a direct tortious liability for the damage caused to the claimants by a breach of the duty of care it directly owed to the claimants.

37. In this appeal we are not concerned with liability for tortious damage to a third party, but with the responsibility of the parent company for the debts of its subsidiary.

Neither of the two decisions are relevant to that question. It is well established, absent clearly defined circumstances (none of which are said to arise in the present case), that a parent company is not responsible for the debts of its subsidiaries. This is not, as we have said, a difficulty that arises where the parent company conducts itself in accordance with ordinary commercial and business principles and has the funds to pay. However, although ordinary commercial and business principles have not been followed in this case, there is no basis on which we can create a remedy in tort, assuming this Court has jurisdiction over such a claim, a point that it is not necessary for us to consider.

Conclusion and costs

38. For the reasons we have set out, we must dismiss the appeal. However, we do not order the appellant to pay the respondents' costs given the way in which the respondents have as a group of companies conducted themselves.

By the Court,

[signed]

Lord Thomas of Cwmgiedd
President

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

Representation:

The Appellant was represented by Mr. Michel Daillet.

The Respondents were represented by Dr Hazem Sherif.