



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: [2023] QIC (F) 37

**IN THE QATAR FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT
FIRST INSTANCE CIRCUIT**

Date: 14 August 2023

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

Before:

Justice Dr Rashid Al-Anezi

Justice Fritz Brand

Justice Yongjian Zhang

Order

1. The Claimant is liable for the reasonable cost incurred by the Defendants in resisting the claims against them under case numbers:
 - CTIFIC 0029/2023
 - CTIFIC 0030/2023
 - CTIFIC 0031/2023
 - CTIFIC 0032/2023
 - CTIFIC 0035/2023
2. Such costs are to be assessed by the Registrar if not agreed between the parties.

Judgment

1. The issues arising at this stage of the proceedings relate to the costs incurred by the Defendants in resisting the claims brought by the Claimant against them. The background can be broadly stated in the following way.
2. The Claimant, Aegis Services LLC, is a company established within the Qatar Financial Centre ('QFC') and registered as a consultant in the field of International Standardization Organization ('ISO') certification. The First Defendant, EMobility Certification Services ('EMobility'), is a company registered in the State of Qatar but not within the QFC, where it conducts business in the same field and in direct competition with Aegis. The Second Defendant (Muhammad Nawab), Third Defendant, (Mohith Mohan) and the Fourth Defendant (Marilyn Biales) are former

employees of the Claimant who are now employed by, or at least associated with, EMobility.

3. The dispute between the parties arose from the employment contracts between the Claimant and the three individual Defendants as its former employees and more particularly the non-disclosure, non-competition and non-solicitation provisions in those contracts. In May 2023, the Claimant instituted three separate actions against three Defendants on the grounds that (i) two individual Defendants (Mr Nawab and Mr Mohan) were recently employed by EMobility; and (ii) they were acting in breach of the said provisions of their employment contracts with the Claimant by soliciting the Claimant's clients for EMobility and by disclosing confidential information to their new employer which was used by the latter in furtherance of its business which is in direct competition with the Claimant.

4. Based on these grounds, the Claimant instituted actions for a permanent injunction prohibiting the four Defendants from acting in breach of the said clauses in their employment contracts. At the same time, it brought a separate application under this case number for an interim injunction pending the finalisation of the actions for a final injunction prohibiting the Defendants from using any content or material or intellectual property of the Claimant in breach of these clauses of their employment contracts for the benefit of EMobility. After consideration, this Court granted an order on 1 June 2023, inter alia, in the following terms:
 1. *The four Defendants are directed to show cause (if any), by*
 - i
 - ii *Appearing before this Court on Monday 4 July 2023 ... at a virtual hearing.. explaining why an interim injunction shall not be granted against them, pending the final outcome of the actions for final injunctions instituted by the Claimant, prohibiting them from using any content or material or intellectual property of the Claimant....*
 2. ...
 3. *Pending the return date in 1 (ii) the rule in 1 will continue as an injunction with immediate effect against the Second – Fourth Defendants....*
 4. *For the avoidance of doubt the Second – Fourth Defendants / Respondents are prohibited with immediate effect from taking any action that contravene the non-disclosure and non-compete clauses in their employment*

agreements with the Claimant, and if already contravening that clause must desist forthwith, and must take all actions to cease using the First Defendant as a vehicle through which that clause is contravened.

5. On 2 July 2023, the Claimant launched a further application under case number CTFIC0035/2023 for third party disclosure relating to the Defendants' alleged breach of the injunctions against them in terms of the order of 1 June 2023.
6. On 4 July 2023, the parties appeared before this Court in a virtual hearing where both parties were represented by lawyers from abroad. In the event the Court's judgment in the matter was handed down on 30 July 2023 ([2023] QIC (F) 33). In terms of this judgment, the actions instituted for final injunctions were postponed for hearing on 8 and 9 October 2023; the interim injunction contemplated in paragraph 1(ii) of the Order of 1 June 2023 was refused; the interim injunction in terms of paragraphs 3 and 4 of that Order was set aside; and costs of the proceedings were ordered to stand over for determination in the action for a final injunction to be heard in October 2023. As appears from the judgment, it essentially derived from our conclusion that the Claimant had failed to establish a prima facie case that the individual Defendants had acted in breach of the non-compete and non-disclosure clauses in their employment agreements with the Claimant.
7. This appears, for example, from the following statement in paragraph 24 of the judgment:

We do not exclude the possibility that after disclosure of documents have been made by the Defendants as they are bound to do and after their evidence had been tested at the main hearing on 8 and 9 October 2023, we may find that the Defendants did indeed disclosed the Claimant's confidential information to EMobility. But at this stage we cannot make a prima facie finding that this is what happened despite suspicions that may well arise that this is so.

8. On 1 August 2023, two days after the judgment was handed down, the Claimant formally withdrew all its claims against the Defendants. In consequence, the Defendants insisted on payment of the costs incurred by them in defending themselves against these claims. The Claimant's refusal to do so gave rise to the dispute presented for determination herein.
9. The authority of this Court to grant costs orders pertaining to matters brought before it is governed by article 33 of our Regulations and Procedural Rules (the '**Rules**'). Of

particular relevance is article 33.2 of the Rules which pertinently provides that, as a general rule, the unsuccessful party shall pay the costs of the successful party, although the Court is afforded the discretion to make a different order. With reference to these provisions it was held in *Xavier Roig Castello v Match Hospitality Consultants LLC* [2023] QIC (F) 30 (paragraph 9) that:

We have no hesitation in concluding that the Claimant, having simply withdrawn the entirety of his claim, must be considered to be the unsuccessful party and the Defendant the successful party within the meaning of article 33.2. It follows that the Claimant should pay the Defendant's reasonable costs of these proceedings.

10. Contrary to the reasoning in the *Castello* case, the Claimant submitted that it should not be regarded as the unsuccessful party in that there was no final judgment in favour of the Defendants on the merits of the case. In support of this submission, reference was made to those passages in this Court's judgment of 30 July 2023 which expressly envisaged the possibility of different findings of fact in favour of the Claimant when all the issues are fully ventilated at the hearing on the merits of the main case. But we do not think this argument can be sustained. As we see it, a claimant can only be regarded as successful in the context of a costs order if it prosecuted its claim to a judgment in its favour on the merits of the case. Stated differently, in the light of the reasoning in *Castello*, with which we fully agree, we find that the Claimant was the unsuccessful party as contemplated in article 33.2 and that, as a general rule, it should therefore be held liable for the costs of the Defendants.

11. Further wide-ranging and sometimes convoluted arguments by the Claimant appear to be advanced, as we understand it, in support of the proposition that even if the Claimant were to be regarded as the unsuccessful party, the Court should, in the exercise of its discretion, refuse to make a costs order adverse to it. Included amongst these argument were:

- i. That the Claimant is a small company that is yet to become profitable and that the imposition of a costs order against it would place an inequitable and onerous financial burden on it.
- ii. The Claimant abandoned its claim at an early stage thereby demonstrating

responsible conduct and a prudent assessment of its case, and this thoughtful conduct should not be punished by way of an adverse order as to costs. Moreover, because the proceedings were terminated at a relatively early stage, they resulted in minimal prejudice to the Defendants.

- iii. Relying on authorities from the United States District Courts the Claimant contends that a successful party can be deprived of its costs for reasons of its behaviour in the conduct of its case. Having regard to these authorities, so the Claimant's argument went, regard should be had to the fact that the litigation resulted from the alleged breach by the Defendants of the non-compete and non-disclosure provisions in their employment contracts with the Claimant.
- iv. The Claimant started the litigation in good faith relying on information and evidence available to it at that stage. However, as the facts unfolded, the Claimant exercised due diligence and foresight by making the transparent decision voluntarily to discontinue its claims.
- v. For a large part of the proceedings the Claimant was a self-representing litigant, engaging legal representation for one hearing only. This, so the Claimant says, exemplifies its commitment to save costs.

12. We find ourselves unpersuaded by these arguments to deviate from the general rule that costs should follow the event. In the first place these arguments seem to focus exclusively on the plight of the Claimant in total disregard of the Defendants' position. In its miseracordia plea based on its the financial detriment resulting from the litigation, the Claimant ignores the financial burden which it cast upon the Defendants. Secondly, the argument that the litigation resulted from the misconduct of the Defendants rests on allegations of fact which the Claimant had failed to establish.

13. Thirdly, the Claimant's arguments seem to start out from the premise that an adverse costs order is aimed as punishment for the unsuccessful party. It is not. The purpose of a costs order is to compensate the successful party for costs it was compelled to incur through the actions of the unsuccessful party, through no fault of its own, which proved to be unjustified. Because the unsuccessful party has embarked on a case that it had

failed to establish, it has to bear the costs resulting from that action, including the costs incurred by the successful party. That is the reasoning behind the general rule from which we find no reason to deviate in this case.

14. These are the reasons for the order we propose to make.

By the Court,



[signed]

Justice Fritz Brand

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).