



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) 45

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

Date: 9 November 2023

CASE NO: CTFIC0014/2021

AMBERBERG LIMITED

1st Claimant

PRIME FINANCIAL SOLUTIONS LLC

2nd Claimant

v

THOMAS FEWTRELL

1st Defendant

NIGEL PERERA

2nd Defendant

LOUISE KIDD

3rd Defendant

CHRISTOPHER IVINSON

4th Defendant

JUDGMENT

Before:

Justice Lord Hamilton

Justice Fritz Brand

Justice Helen Mountfield KC

Order

1. The First, Second and Third Defendants are ordered, jointly and severally, to pay the reasonable costs incurred by the First Claimant in the Jurisdictional Challenge proceedings (in so far as not already dealt with), the quantum of such costs to be determined by the Registrar if not agreed upon.
2. The First Claimant is ordered to pay the costs incurred by the First, Second, and Third Defendants and the Second Claimant in defending the application for a freezing order, the quantum of such costs to be determined by the Registrar if not agreed upon.
3. With regard to the Quantum Proceedings, there is no order as to costs.

Judgment

1. The issues presented for determination arise from the costs of three different matters which formed part of a series of litigation between the parties. The nature of these proceedings renders a detailed narrative of the background facts unnecessary. They are all recorded in the previous judgments of this Court in the course of the underlying litigation. Suffice it therefore to refer to the background in broad outline only.
2. It all started with a claim for contractual damages by the First Claimant and the Second Claimant against the Defendants. The claim arose for alleged breaches of warranties afforded by the Defendants, as sellers, in favour of the First Claimant by virtue of a

Share Purchase Agreement. In terms of the Share Purchase Agreement, which was entered into with effect from 28 November 2019, the First to Third Defendants sold the total shareholding in the Second Claimant to the First Claimant.

3. Apart from their defences to the merits of the claims, the First to Third Defendants raised a challenge to the jurisdiction of this Court to entertain the claim of the First Claimant, a company established in the British Virgin Islands. The claim by the Second Claimant, an entity established in the Qatar Financial Centre, was not challenged on jurisdictional grounds. After a separate hearing on the jurisdictional issues, this Court gave judgment on 7 March 2022 ([2022] QIC (F) 3), dismissing the jurisdictional challenge, but reserving the costs of the proceedings (the ‘**Jurisdictional Proceedings**’) for later determination. The costs of the Jurisdictional Proceedings raise the first matter for determination in this case.
4. Pursuant to procedural directions from this Court, a preliminary hearing was held on the antecedent question regarding the merits of the Defendants’ liability for the damages claimed by the Claimants while the issues regarding the quantum of these damages were directed to stand over for later determination. After the preliminary hearing on the merits, this Court held, in December 2022 ([2022] QIC (F) 34), that the First to Third Defendants acted in breach of their warranty in favour of the First Claimant pursuant to clause 9.3.2 of the Share Purchase Agreement and that they were therefore liable for such damages as the Claimant could establish in the prospective quantum proceedings (the ‘**Quantum Proceedings**’). The Court further held the First to Third Defendants liable, jointly and severally, for the costs incurred by the First Claimant in the preliminary proceedings. The damages claim by the Second Claimant, on the other hand, was dismissed with a cost order against made against the Second Claimant in favour of the First to Third Defendants for the costs they incurred in the preliminary proceedings.
5. The Registrar then proceeded to assess, inter alia, (i) the reasonable costs incurred by the First Claimant in pursuing its claim against the First to Third Defendants in an amount of QAR 240,525; and (ii) the reasonable costs incurred by the First to Third Defendants in defending themselves against the claim of the Second Claimant in an amount of QAR 124,455. When the First Claimant sought to recover its costs from the

First to Third Defendants, it was met by the answer that they were unable to pay. Following from this, the First Claimant brought an application for a freezing order in this Court on 4 June 2023. The effect of the freezing order sought by First Claimant would, inter alia, be to restrain the Second Claimant from paying the costs ordered in their favour into their (the First to Third Defendants) nominated bank accounts in the United Kingdom and to direct it instead to pay the assessed amount into Court, pending the final outcome of the First Claimant's damages claim. The application was opposed by two separate firms of legal representatives acting, on the one hand, for the First to Third Defendants, and for the Second Claimant on the other.

6. On 14 June 2023, the First to Third Defendants informed the First Claimant that the amount of the costs order in their favour had been paid into their nominated bank accounts. The First Claimant nonetheless proceeded with the application until it was eventually withdrawn without explanation on 23 July 2023. The costs arising from these proceedings (the freezing order application costs) are the subject of the second matter arising for determination in this case.
7. The hearing to assess the quantum of the First Claimant's damages was held on 2 and 3 August 2023 in the absence of the First to Third Defendants who were unrepresented due to lack of funds. In the Court's judgment of 7 September 2023 ([2023] QIC (F) 41), that followed upon the hearing, the Order reads as follows:

The First, Second and Third Defendants are jointly and severally liable to the First Claimant in the sum of QAR 5 as nominal damages for breach of the warranty under clause 9.3.2 of the Share Purchase agreement.

Costs to stand over for later determination.

8. The costs order in paragraph 2 (the '**Quantum Proceedings**') gives rise to the third matter arising for determination.
9. Submissions regarding all three matters were filed on behalf of the First Claimant, while the submissions filed by two different firms of legal representatives acting on behalf of the First to Third Defendants, on the one hand, and on behalf of the Second Claimant on the other, were confined to the costs occasioned by the freezing order application. A substantial part of the submissions raised by the parties addresses the

issues pertaining to the reasonableness of the costs incurred, being issues which fall outside the Court's domain: these are matters for determination in the first instance by the Registrar, failing agreement between the parties with regard thereto. Hence, the Court confines itself to the submissions regarding the question of principle as to who should be held liable for the costs incurred in the respective proceedings.

10. As rightly accepted as their starting point in their submissions by all parties, matters of costs are governed in this Court by article 33 of our Regulations and Procedural Rules which provides in relevant part:

33.1 The Court shall make such order as it thinks fit in relation to the parties' costs of proceedings.

33.2 The general rule shall be that the unsuccessful party pays the costs of the successful party.

Jurisdictional Proceedings

11. With regard to the costs of the Jurisdictional Proceedings, we find that the First Claimant was the successful party. The fact that the challenge raised rather complex and novel legal issues, does not detract from this conclusion. Neither does the fact that eventually the First Claimant was held to be entitled to nominal damages only. The conclusion remains that the First to Third Defendants raised a jurisdictional challenge which was held unwarranted. Hence, we can see no basis for deviating from the general principle formulated in article 33.2. Certain of these costs (relating to a discharged hearing) have already been dealt with; that order remains in force.

Freezing Order

12. As to the costs of the freezing order application, we find guidance in the following succinct statement in *Xavier Roig Castello v Match Hospitality Consultants LLC* [2023] QIC (F) 30, at paragraph 9:

We have no hesitation in concluding that the claimant, having simply withdrawn the entire claim, must be considered to be the unsuccessful party and the defendant the successful party within the meaning of Rule 33.2. It follows that the claimant must pay the reasonable costs of these proceedings.

13. As we see it, this case is indistinguishable from *Xavier Roig Castello* on the facts. In the same way as the Claimant in that case, the First Claimant simply withdrew its

application for a freezing order at a late stage and after the First to Third Defendants and the Second Claimant had incurred legal expenses in opposing the application, without any explanation for doing so. In accordance with the general approach subscribed to in that case, we therefore find the First Claimant liable for the reasonable costs incurred by all four other parties in resisting the freezing order application.

Quantum Proceedings

14. As to the costs of the Quantum Proceedings, the decisive consideration is in our view that the First Claimant was found to have failed to establish that it had suffered any material loss resulting from the First to Third Defendants' breach of warranty and was accordingly held to be entitled to nominal damages only. The inevitable conclusion to be drawn from this is in our view that the First Claimant achieved no substantial success in its claim. Accordingly, we hold it appropriate that there should be no order as to the costs of these proceedings.

15. These are the reasons for the order that we make.

By the Court,



[signed]

Justice Fritz Brand

A signed copy of this Judgment has been filed with the Registry.

Representation

The First Claimant was represented by Eversheds Sutherland (International) LLP (Doha, Qatar).

The Second Claimant was represented by Al-Tamimi and Company (Doha, Qatar).

The First to Third Defendants were represented by Sultan Al-Abdulla & Partners (Doha, Qatar).