qatar
FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT

In the name of His Highness Sheikh Hamad bin Khalifa Al-Thani, Emir of the State of Qatar

IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE

CASE NO: 06/2010
JUDGMENT NO: 2
16 August 2010

IN THE MATTER OF AL MAL BANK LLC (IN LIQUIDATION);

TAMIR OMARA
Applicant

- and -

AL MAL BANK LLC
Respondent

Members of the Court:

JUSTICE DOHMANN
JUSTICE LORD CULLEN
and
JUSTICE SACKVILLE

Hearing date: 12 August 2010

ORDERS

THE COURT ORDERS THAT:

1. Pursuant to Art 95 (1) of the *QFC Insolvency Regulations*, the Court determines the Questions submitted by the liquidators as follows:

   (i) Question 1: Is the "*two months (special payment) bonus*" referred to in Section 5.2 of Al Mal Bank's Human Resources Policies and Procedures Manual ("Manual") a fixed and binding obligation on the Bank to its employees, or is it a discretionary bonus falling within the scope of Section 5.3 of the Manual?

   Answer: A fixed and binding obligation.

   (ii) Question 2: If the "*two months (special payment) bonus*" referred to in Section 5.2 of the Manual is a fixed and binding obligation on Al Mal Bank to its employees, is the applicant entitled to it?

   Answer: Yes.

JUDGMENT

THE COURT:

The Questions

1 By Particulars of Claim dated 15 April 2010, Mr Tamir Omara ("the applicant") commenced proceedings against the Al Mal Bank LLC ("Bank"), now in liquidation, claiming a declaration that his employment with the Bank had been unlawfully terminated on 24 December 2009. The applicant also claimed damages in relation to:

(i) sums allegedly due to him under his contract of employment;

(ii) loss of income in the future; and

(iii) injury to his feelings, pain and suffering by reason of his wrongful dismissal.

2 In a judgment delivered on 7 June 2010, the Court declared that the applicant's employment had been unlawfully terminated. The Court directed that the liquidators of the Bank adjudicate by 26 July 2010 on the applicant's claims as summarised in para 15(1) of his application of 9 June 2010. The applicant claimed, among other things, payment of QAR 19,500 as two months unpaid basic salary due at the date of the termination of his employment. The applicant contended that this sum was to be treated as a preferred debt under art 148 of the *QFC Insolvency Regulations*.

3 The liquidators have carried out an adjudication. They are, however, uncertain as to whether the sum of QAR 19,500 is due to the applicant under his contract of employment. Accordingly, the liquidators have applied to the Court, pursuant to art 95(1) of the *QFC Insolvency Regulations* to determine the following questions:

(i) Is the "*two months (special payment) bonus*" referred to in Section 5.2 of the Bank's HR Policies & Procedures Manual ("Manual") a fixed and binding obligation on the Bank to its employees, or is it a discretionary bonus falling within the scope of Section 5.3 of the Manual?

(ii) If the "*two months (special payment) bonus*" referred to in Section 5.2 of the Manual is a fixed and binding obligation on the Bank to its employees, is the applicant entitled to it?

4 In addition to requesting the Court to determine these questions, the liquidators have applied for a partial lifting of the automatic stay of the proceedings by the applicant against the Bank under art 82 of the *QFC Insolvency Regulations* to enable the Court to make any necessary determination. The liquidators point out that the applicant's contract is in the same form as that applying to other employees of the Bank. This is because the relevant provision was included in a standard form contract drafted by the Bank's solicitors. Accordingly, the questions posed by the liquidators have significance beyond the applicant's particular case.

5 The parties filed written submissions addressing the questions posed by the liquidators. On 12 August 2010, the Court offered the parties the opportunity to elaborate on their written submissions. However, both Mr de Lacy QC, for the applicant, and Mr Swainston QC, for the liquidators, indicated that they were content to rely on the written submissions.

6 The Presiding Judge, Justice Dohmann, then gave the following ruling:

> "The Court is of the view that the construction to be put upon the contract is that these two months of 'bonus' are a fixed entitlement and that the employees can claim that sum and, in addition, that clearly [the applicant] would have been in employment in February 2009, had he not, as this Court found, been unlawfully dismissed, in which circumstances, therefore, he is entitled to those two

months. We will hand down in due course a written reasoning for this judgment."

7 These are the Court's reasons for the determination announced on 12 August 2010.

Contractual Documents

8 The applicant's Employment Contract Agreement ("Agreement") was dated 8 February 2009. Article 7.1 of the Agreement was headed "*Remuneration (Benefits and Allowances)*". The applicant was to receive a "*Basic Salary*" of QAR 9,750 per month, together with allowances totalling QAR 5,250 per month. The applicant was also to receive a "*Bonus Based on Article 7.3 and 7.4 of this cont[r]act*".

9 Articles 7.2, 7.3 and 7.4 of the Agreement provided as follows:

> "**7.2: Remuneration**
>
> The employee will be paid monthly salary in arrears at the end of each month. Payment will include pay for each and every day of full month worked, including the weekend (as defined in the work Week section above), and holidays.
>
> Salary increases may be granted at the Bank's sole discretion, subject to market data and yearly Employee performance appraisal reviews. Determination of successful and satisfactory performance of the employee's work will be based on performance evaluation(s) received from the Employee's manager(s). A yearly salary review will be performed and any approved increase will be **based on the Employee's Monthly Basic Salary only** (Emphasis in original).
>
> **7.3: Annual Bonus Scheme**
>
> The Employee will be eligible to be considered for the Bank's annual special bonus scheme. The criteria for awarding bonuses are reviewed and determined by the Bank's Board of directors every year. The Bank at its sole discretion may vary the criteria for awarding bonus payments. Any bonus award made is subject to the Employee being an employee of the Bank on the date of the bonus payment and no notice of termination has been either given or received.

7.4: Management Incentive Scheme

The Bank's Board of Directors may approve a Management Incentive Scheme such as awarding a combination of shares and bonuses. Eligibility for the Management Incentive Scheme is solely at the discretion of the Board."

10 Article 27 of the Agreement was as follows:

"**Article 27: Entire Agreement**

This Agreement, including all Schedules, Bank Policies, Rules and Regulations, Employee Handbook or Attachments hereto including the references, constitute the entire agreement between the Parties with respect to the Employee's employment by the Bank in the Qatar Financial Centre and supersedes and renders null and void all prior or contemporaneous agreements or understandings, whether oral and written.

The Bank Policies, Procedures, Rules, Regulations, Operational Requirements and Handbook in force will prevail to resolve all queries and/or dispute between the Bank and Employee."

11 The Manual included the following provisions:

"**5.2 Compensation and Benefits**

Policy

...

The monthly salary for employees comprises of two components:

- Basic salary
- Allowances

The allowances paid by Al Mal are to guarantee the employee a certain standard of living, which [is] commensurate with his/her position in Al Mal.

Policy Statement

Compensation-Basic Salary

...

Employees will be paid 12 months base pay during the year and two months (special payment) bonus.

5.3 Incentives and Promotion

Policy

Al Mal is committed to providing a work environment which recognizes performance and provides incentives and rewards.

...

Policy Statements

...

Annual Bonus

All employees are eligible for a bonus review unless under probation and must be in full time employment on the day the bonus is paid. Only those employees who are employed and not on notice on the day bonuses are eligible to be paid a bonus.

The annual bonus is purely discretionary and designed to be paid for the achievement of stretching organizational results. The annual bonus is linked to the organizational objectives and approved by the Board of Vice Presidents. Once approved by the Board of Vice Presidents, eligible employees are sent notifications about their bonus payment."

Reasoning

12 The applicant's remuneration under the Agreement comprised his Basic Salary and the benefits and allowances set out in art 7.1. Article 7.2 created an entitlement to be considered for the annual special bonus scheme. The criteria for awarding bonus payments were to be reviewed each year and the Bank could vary the criteria for awarding such payments (art 7.3). It is common ground, however, that art 27

incorporated into the applicant's employment contract the provisions of the Manual and that those provisions prevailed in resolving all queries or disputes between the Bank and the applicant.

13 Clause 5.2 of the Manual is unequivocal. Under the heading "*Compensation – Basic Salary*", it states that employees will be paid 12 months base pay during the year and two months (special payment) bonus. The clear intention is that this (special payment) bonus is to be treated as part of the employee's "*Basic Salary*". The bonus is therefore payable as of right and is not subject to the exercise by the Bank of a discretion in the employee's favour.

14 By contrast, the employee is not entitled as of right to the annual bonus described in cl 5.3 of the Manual. The annual bonus is "*purely discretionary*". However, any entitlement to the annual bonus under cl 5.3 is clearly a matter separate from the entitlement to the (special payment) bonus created by cl 5.2 of the Manual.

15 There are two ways of looking at the relationship between art 7.3 of the Agreement and cll 5.2 and 5.3 of the Manual. The first, as the applicant suggests, is that the (special payment) bonus provided for in cl 5.2 of the Manual is outside the scope of art 7.3 of the Agreement. The second is that art 7.3 of the Agreement is subject to cl 5.2 of the Manual, since cl 5.2 prevails over art 7.3. Either way, the applicant is entitled to the (special payment) bonus of two months salary as of right, rather than his entitlement arising only if the Bank exercises a discretion in his favour.

16 The second question referred to the Court is whether, if entitlement to the (special payment) bonus is a matter of right, the applicant is entitled, in the circumstances of this case, to a payment equivalent to two months' salary.

17 The Court ruled on 7 June 2010 that the applicant was unlawfully dismissed by the Bank on 24 December 2009. If he had not been so dismissed, the applicant would, on the balance of probabilities, have

continued in his employment until the anniversary of his service, in February 2010. On any view, therefore, by the time the Bank went into compulsory liquidation, on 6 June 2010, the applicant had an accrued entitlement to the two months bonus. Accordingly, he is entitled to receive this payment from the liquidators.

APPEARANCES

Representatives for the Applicant

Mr. Richard de Lacy QC (3 Stone Buildings Chambers, London, UK)

Ms. Prudence van der Craats (King's Chambers, Dorest, UK)

Representatives for the Respondent

Mr. Michael Swainston QC (Brick Court Chambers, London, UK)

Mr. Edward Harrison (Brick Court Chambers, London, UK)

Mr. Irvine Marr (Clyde & Co LLP, Doha, Qatar)

DIGITALLY SIGNED AND VERIFIED
موقع رقمياً ومعتمد