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

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

Neutral Citation: [2020] QIC (F) 19

28 December 2020

CASE No. CTFIC0007/2020

BETWEEN:

BANK AUDI COMPANY LLC

Claimant

v

CLASSICAL PALACE TRADING & DECORATION

Defendant

JUDGMENT

Before:
Justice Arthur Hamilton
Justice Fritz Brand
Justice Ali Malek QC

ORDER

1. The Defendant shall pay to the Claimant the sum of QAR 6,477,518.50.

2. The Defendant shall pay to the Claimant the sum of QAR 923,046.40 in respect of pre-judgment interest.

3. The Claimant is entitled to interest from the Defendant on the sum of QAR 6,477,518.50 at the rate of 9% per annum from the date of judgment until payment.

4. Summary judgment is refused with respect to the Claimant's claim for damages and compensation.

5. The Claimant is awarded against the Defendant its reasonable costs in these proceedings to the date of this judgment, these costs if not agreed to be assessed by the Registrar.

JUDGMENT

1. The Claimant is an entity established in the Qatar Financial Centre (the "QFC") where it provides credit facilities. The Defendant is a body registered with the Register of Commerce in Doha, Qatar.

2. By a Loan Agreement dated 29 May 2018 the Claimant granted to the Defendant a loan of QAR 7,583,921, to be drawn down for the purpose of settling a debt previously owed by the Defendant. By Article Four the Defendant undertook to pay that principal sum, with interest, as follows: (1) in 12 equal monthly instalments each for QAR 120,000 from 31 May 2018 to 30 April 2019, (2) in 12 equal monthly instalments each for QAR 200,000 from 31 May 2019 to 30 April 2020 and (3) in 12 equal monthly instalments each of QAR 400,000 from 31 May 2020 to 30 April 2021. Interest was payable at the rate of 7% per annum, with an additional rate of 2% in the event of default by the Defendant in its payment obligations. By Article Eleven the whole amount of principal and other monies became immediately due and payable in the event of the occurrence

of specified defaults; these included failure to pay any instalment due under the Agreement. By Article Eighteen it was agreed that the Agreement should be governed and construed in accordance with QFC law. By Article Nineteen the parties agreed that this court should have jurisdiction.

3. On 8 June 2020 the Claimant filed in this court a Claim Form in which it sought certain remedies against the Defendant. These included orders obliging the Defendant (a) to pay the full amount of the outstanding debt (said to be QAR 6,477,518.50) "in addition to all the benefits from interest and breach interest, commissions and expenses required by the defendant according to the loan agreement, from the due date to the date of repayment in compliance with Article 104 of QFC Contract Regulations" and (b) to pay "compensation of damages due to its bad intentions according to the 100, 101 and 104 of the QFC Contract Regulations, which the claimant estimates at …350,000 QAR". The Claim Form, with related Particulars, was duly served on the Defendant. No defence was filed by it within the period allowed for such filing nor at any time.

4. Thereafter the Claimant filed and served an Application for Summary Judgment. Certain difficulties with it (particularly with respect to its claim for damages) having been identified by the Court, the Claimant filed and served a Revised Application for Summary Judgment. The Revised Application particularised the damages claim by reference to a "First impairment allowance" (apparently with respect to a prior loan facility, the outstanding debt on which was to be repaid through the Loan Agreement) and a "Second impairment allowance" with respect to the Loan Agreement. The Revised Application also sought damages with respect to "management and administrative yearly fees of QAR 35,000 from 2015 till date". In the witness statement filed with the Revised Application it is stated that "the defendant failed to provide any counterstatement for lack of legal grounds to defend its position".

5. The Court directed that the Claimant file and serve a skeleton argument in support of its Revised Application for Summary Judgment. That was duly done. No response was received from the Defendant.

6. Under Article 22.6 of its Regulations and Procedural Rules the Court has power, if it considers that justice so requires, to grant summary judgment on a claim. Practice Direction 2/2019 is also relevant. Under its present rules the Court has no power to grant judgment against a defendant merely on its default by reason of failure to file any defence. It must itself be satisfied, on the materials placed before it by the particular claimant, that it is just to do so. That claimant must demonstrate that the defendant has no prospect of successfully defending the claim or the relevant issue.

7. The present claim is based on a written agreement, the Loan Agreement, executed by both parties. Under the Loan Agreement the Defendant undertook to pay (in effect, to repay) the principal sum loaned in specified instalments. According to the Particulars filed and served with the Claim Form the Defendant initially paid certain of the instalments but its cheque for the instalment due on 31 May 2019 was dishonoured on the ground of insufficiency of funds. That non-payment constituted an event of default under Article Eleven of the Loan Agreement, so that the whole amounts due to the Claimant thereunder became immediately due and payable. At no stage in these proceedings has the Defendant challenged that that is so; nor has it suggested that any payment has subsequently been made towards that indebtedness.

8. In these circumstances the Court is satisfied that it is just to grant summary judgment in favour of the Claimant to the extent of the undisputed principal sum claimed by it (QAR 6,477,518.50) together with interest on that sum from 31 May 2019 at the rate of 9% per annum (interest plus default interest) until payment. Such interest capitalised to the date of judgment is calculated at QAR 923,046.40. Interest at the same rate will run thereafter until payment.

9. The Court is not, however, satisfied that it would be just to grant summary judgment at this time in respect of the Claimant's claim for "compensation of damages".

10. Article 104 of the QFC Contract Regulations provides for the payment of interest on sums not paid when they are due. Article 100 provides: "Where a party's breach of contract has caused the other party loss the aggrieved party has a right to damages either exclusively or in conjunction with any other remedies... [subject to a proviso with respect to remoteness of damage]". Article 101 provides: "The aggrieved party is

entitled to compensation for loss sustained as a result of the breach so that he will be placed in the position he would have been in if the contract had been properly performed."

11. The circumstance that a claimant is entitled to judgment for interest does not, of itself, preclude him from being entitled also to other remedies, including to damages or compensation, but such further entitlement will arise only if the aggrieved party has sustained loss which is not compensated for by the award and recovery of interest. The object of the provisions is to place the aggrieved party in the position he would have been in had the contract been properly performed, not in a better position.

12. As the Court understands the material placed before it relative to each "impairment allowance", such an allowance is a mechanism used by lenders to assess objectively whether a loan or a group of loans has become impaired in value between the initial recognition of it as an asset and the date of an impending balance sheet. It is, in substance, an accounting provision designed to ensure that, for the purposes of a particular balance sheet, the accounts of the lender express a true and fair view of its financial affairs. It does not, on its face, constitute a recoverable loss under the QFC Contract Regulations. If the Loan Agreement had been properly performed, the Claimant would have been paid the balance of the principal sum, together with interest on it. It is not, at least prima facie, entitled in addition to have judgment for the impairment allowances which it has made. Further, it is not, prima facie, entitled to have judgment with respect to an impairment allowance made relative to a debt arising under an arrangement prior to the Loan Agreement.

13. Nor is it entitled, on the material placed before the Court, to summary judgment for the management and administrative yearly fees which it seeks. The Loan Agreement made provision, by Article Sixteen, that the Defendant pay certain charges and undertake certain other financial obligations. No provision was made whereby the Defendant undertook to pay yearly management and administrative fees. It is not at this stage demonstrated that the fees sought constitute loss recoverable as damages or compensation under the QFC Contract Regulations.

14. It may be that the Claimant wishes to pursue to trial those elements of its claim for which summary judgment is hereby refused. If it so wishes, it must, within 28 days of the issue of this judgment, intimate that wish to the Court, which will then give the appropriate procedural directions. The views expressed in paragraphs 12 and 13 above are conclusions reached only for the purpose of determining whether or not summary judgment should be granted. If the case proceeds to trial, these views will be open to reconsideration in the light of the evidence and argument then before the Court.

15. The Claimant, having been substantially successful in pursuing its claim so far, is awarded its reasonable costs in that regard.

By the Court,

Justice Arthur Hamilton

This judgment was re-issued on 1 February 2021 after the Court corrected the figure representing the calculation of interest at paragraph 2 of the Order and paragraph 8 of the Judgment.

DIGITALLY SIGNED AND VERIFIED
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