Neutral Citation: [2019] QIC (F) 5

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

22 November 2018

CASE No: 9 of 2018

BLOM BANK QATAR LLC

Applicant

v

(1) QATAR ASPHALT COMPANY WLL
(2) EMIL MICHEL TURK

Respondents

JUDGMENT

Before:
Justice Arthur Hamilton
Justice William Blair
Justice Rashid Al Anezi

ORDER

THE COURT DOES HEREBY:

(1) Authorise the use, in security of the claimant Bank's claim against the First Defendant, of temporary distraint on each and every debt owed by third parties to the First Defendant, including without prejudice to that generality:

(i) on any monies owed to the First Defendant by Doha Bank in furtherance of a tripartite assignment of proceeds agreement made in March 2014 between Doha Bank, the claimant Bank and the First Defendant; and

(ii) in current accounts, deposit and term deposits due to the First Defendant from banks in the State of Qatar.

(2) The effect of this order is that such debts including monies in accounts and deposits with banks must not be paid to the First Defendant without further order of the Court.

(3) Authorise the notification to all relevant persons and bodies of the authorisation granted in paragraph (1) above.

(4) Otherwise, refuse the remedies sought on an *ex parte* basis by the claimant Bank in respect of the Applications currently before the Court.

(5) Parties affected by this order may apply to the Court for discharge or variation of the order.

(6) All questions of costs and other relief are reserved to a future hearing.

JUDGMENT

1. The Claimant, Blom Bank Qatar LLC (the "Bank"), is a company registered in the Qatar Financial Centre, and part of the Lebanese Blom Bank group. The First Defendant, Qatar Asphalt LLC, is a company incorporated in Qatar (outside the QFC) that carries out construction activities. The relevant activities were carried out pursuant to a 2012 contract with the Public Works Authority. The Second Defendant, Mr Emil Michel Turk, is a manager and major shareholder of the First Defendant.

2. The Bank's case is that it has made various secured facilities available to the First Defendant in connection with the contract which were guaranteed by the Second Defendant, that the facilities have not been repaid, and that its security is threatened. Accordingly, it has applied to the court for various interim measures which it says are necessary to protect its position. The question for this Court is whether it is empowered to, and if so should, grant such interim measures, and if so in what terms.

3. Before us the Bank has been represented by Ms Claudia El-Hage of Al Marri & El Hage Law Office. As appears below, the application has been made without notice to the defendants, the Bank's case being that it fears that the Second Defendant may flee from the State in the circumstances which might lead to the loss of its security.

4. The facts are as follows. On 4 October 2018, the Bank instituted proceedings in the Court by which it seeks payment, jointly and severally, from the Defendants of monies allegedly due to it by them. The First Defendant is said to have been the borrower, and Second Defendant is said to have personally guaranteed the borrowings. The total sum said to be outstanding is QR19,463,394.21 plus various other sums claimed as legal fees and costs.

5. By a Credit Facilities Agreement made on 26 June 2012 between each of the parties to these proceedings, and on which the claim is founded, security was to be provided by way of a personal guarantee of the Second Defendant, and by a pledge in favour of the Bank given by the First Defendant over the financed equipment which was the subject of the facility.

6. Both Defendants are described as having the same address (a P.O. Box in Doha). By article 13 of the Agreement, these are the addresses to which notice of claims are deemed to have been duly given. The Agreement has subsequently been varied on various occasions (but not in respect of the addresses of the Defendants).

7. By article 16.2 of the Agreement ("Governing Law and Jurisdiction"), the parties agreed that the Agreement was to be governed by the applicable laws of the State of Qatar, and that any dispute which may arise out of or in connection with the validity, interpretation and/or enforcement of the Agreement should be settled by this Court.

8. The Claim form has been served at that address on both Defendants. There has also been notice of the proceedings given, we were informed, by the Bank to the Defendants by email to the address usually used in communications with them.

9. The Bank has also filed with the Court a separate Application in which it seeks "preventative attachment of all and any assets owned by the First Respondent and the Second Respondent [that is, the Defendants respectively] …", with a view to securing the monies claimed during the proceedings. This Application has not been served on either of the Defendants nor have they had email notice and it is accordingly made *ex parte*.

10. So far as appears, this Court has not previously been asked to make an order for preventative attachment. Further, it appears that the assets which the Claimant seeks to attach are, or may be, in Qatar but outside the QFC. The Application has accordingly been listed for a hearing before the Court so that it may examine whether it has the power to make such an order, and in particular whether it can and should make it in this case.

11. This Court's Procedural Rules make no express reference to preventative orders. However, clause 16 of Schedule 6 to the QFC Law No. (7) of Year 2005 (as amended) provides that the provisions of the Civil and Commercial Procedures Law as issued by Law no (13) of the year 1990 and amendments thereof (the "Procedure Law"), shall

apply to the claims submitted before the Court, where the QFC Law and the rulebook and proceedings put in force by the Court are silent on the concerned matter.

12. The Procedure Law provides for preventative attachment of movables in certain circumstances. In particular, Part 2 of Chapter Five of Book Three of that Law (Articles 398-404) makes such provision. Article 398 provides for the making of temporary distraint on movable property in cases where the creditor fears the loss of the surety on his entitlement. Article 401 provides that "[if] the lawsuit is filed before the competent court claiming an entitlement, a request may be made to the president of the competent court for [temporary] distraint". Article 402 provides that the rules and processes stipulated in Chapter 1 of Part 4 of the Law shall (except in relation to sale) apply to the temporary distraint of movables.

13. Further, Part 3 of Chapter Five (Articles 405-7) provides for the making in certain circumstances of an order preventing a debtor from travelling. In particular, Article 405 provides: "The creditor may request the judge of execution to order the prohibition of the debtor from travelling if there are serious reasons for fearing that the debtor will escape or smuggle the money." In its Application, the Claimant also seeks such an order against the Second Defendant. In the Court's opinion, these provisions are capable of applying in the present case because the QFC Law and the rulebook and proceedings put in force by the Court are silent on the matter of preventative attachment and travel bans.

14. Before the Court considers this Application, it is noted that the Bank has filed a second Application under which it seeks an order under Article 241 of the Qatari Commercial Code that it is entitled to seize the equipment said to have been pledged as security for the indebtedness. The equipment in question comprises vehicles and plant said to have been purchased by the First Defendant with the financial assistance of a loan from the Bank for the purposes of the First Defendant's contracting business. Exhibit 3 to the Claim is a list of the pledged equipment. The Court was informed that the Bank is not presently in a position to provide details as to the status of the equipment.

15. As with the first Application, this Application has not been served on or otherwise brought to the notice of the Defendants. Accordingly, it is also made *ex parte*.

16. It is relevant to state that the period for filing any Defence has recently expired without defences being filed by either Defendant. Of course, no judgment on the validity of the claim has yet been given. Nevertheless, on the face of the documentation filed with the Court by the Bank, it appears that the First Defendant has an outstanding debt to the Bank of QR19,463,394.21 which debt is currently payable. Again, on the face of the documentation filed, the Second Defendant has guaranteed payment of that indebtedness.

17. In the circumstances, the Court's decision is as follows.

18. The Court will not at this stage, and on the basis that the hearing is *ex parte*, grant the order referred to in paragraph 14 above, namely an order under the second Application to the effect that the Bank is entitled to seize the pledged equipment. Apart from the question whether seizure of property under Article 241 is available on a temporary basis (as distinct from in execution of a judgment), the Court considers that the case for immediate interim relief is not made out.

19. This is because on the face of the documentation filed, sufficient protection is already available to the Bank in respect of the sums said to be owing. As the Court understands it, public records held by the Traffic Department of the Ministry of the Interior record that the vehicles and plant in question are pledged to the Bank. As the Court understands it, these records of themselves serve to deter any third party treating with the First Defendant for the disposal of the pledged property. Further, the question of possible prejudice to the First Defendant must be taken into account, and in the circumstances the Court is not prepared to make such an order without the First Defendant being notified of the Application and having an opportunity to answer it.

20. As to the first Application, it appears that the First Defendant may have other movable property in the form of debts which may properly be the subject of an order for temporary distraint under Article 401 of the Qatari Procedure Law. In particular, there are sums to which it is entitled or may become entitled to receive from Doha Bank pursuant to a tripartite assignment of proceeds agreement entered into in March 2014. There are three parties to this agreement, being Doha Bank, the claimant Bank, and the

First Defendant company. The agreement provided that project revenues transferred from the Public Works Authority to the First Defendant's account at Doha Bank should be divided as to 40% to the account of the claimant Bank, and as to 60% to the account of the First Defendant. No transfers have been made to the claimant Bank since July of this year according to Ms. El-Hage.

21. The Court is satisfied that it is legitimate, as a temporary measure in security of the Bank's claim, that Doha Bank be restrained from paying any sums due from it to the account of the First Defendant for the time being. The First Defendant may, if it sees fit, apply to the Court for the discharge of or variation of the temporary distraint. In that event, the issue can be argued before the Court with both parties represented.

22. The Court is also satisfied that a temporary distraint can properly be granted in respect of any other debts due to the First Defendant. This includes current accounts, deposit and term deposits due to the First Defendant from banks in Qatar. The effect of the order is to freeze such accounts and deposits pending further order of the Court. Parties who are affected by the order may, if they see fit, apply to the Court for the discharge of or variation of the temporary distraint.

23. At this stage, the Court is not satisfied that a sufficient basis has been made out for a temporary distraint with respect to the property of the Second Defendant. It is likewise not satisfied at this stage that a sufficient case has been made out for imposing a prohibition on the Second Defendant from travelling. The test under Article 405 is that there are serious reasons for fearing that the debtor will escape or smuggle his money. It appears to this Court that that is a high test and that it has not been satisfied in this case on the information currently available. Accordingly, these particular applications are at this stage refused. The Bank is entitled to renew these applications, if it sees fit, after notice has been given to the Second Defendant.

24. In the circumstances, the Court considers it appropriate that the order which it makes should be by the Court, and not only by the President.

By the Court,

Justice Arthur Hamilton

Representation:

The Applicant was represented by Ms Claudia El Hage (Al Marri & El Hage Law Office, Doha).

As the hearing was *ex parte* the Respondents did not appear and were not represented.