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) 18

23 December 2020

CASE No. 13 of 2020

BETWEEN:

MOHAMED ABDULAZIZ MOHAMED ALI AL EMADI

Claimant

v

HORIZON CRESCENT WEALTH LLC

Defendant

JUDGMENT

Before:
Justice Arthur Hamilton
Justice Fritz Brand
Justice Helen Mountfield QC

ORDER

1. The Defendant is ordered within 28 days of the issue of this judgment to provide all the further information and documents specified in the Schedule to this judgment.

2. The costs of the request for further information and documents are reserved.

3. The applications for security for claim and costs and the application for the costs of that application are refused.

4. Paragraph 11 of the defence lodged on 6 September 2020 will be struck out on 15 January 2021, unless, before that date, the Defendant notifies the Court and the Claimant that it wishes to rely upon it and shows cause why it wishes to do so, in which case the Court will give the Claimant an opportunity to comment upon any representations made and reconsider this issue.

JUDGMENT

1. The Court has before it two applications by the Claimant, both dated 4 November 2020. These are:

(a) For an order that the Defendant provides the further information and documents requested in numbered paragraphs 1 to 8 of a letter from the Claimant's lawyers to the Defendant's lawyers, dated 29 September 2020 ("the Request for Further Information"), plus the costs of making that application and

(b) For an order that the Defendant provides security for claim and costs in the sums of QAR 10,508,000 and QAR 1,400,000 respectively ("the security application"), plus the costs of making that application.

2. These applications arise in the context of the Claimant's claim lodged on 27 July 2020 against the Defendant for unpaid wages, expenses and bonus payments which, it is said, are due under an oral contract of employment made between the Claimant and the Defendant on 22 March 2015. The applications were heard in an oral application, held online due to the covid pandemic, on 13 December 2020. The Claimant was represented on this application by Thomas Williams, Ahmed Durrani and Mohammad Ahmad of Sultan Al-Abdulla & Partners. The Defendant did not appear and was not represented (a late application of adjournment having been refused by an order dated 11 December 2020).

Refusal of Adjourment Request

3. The order of 11 December 2020 was a response to an application made on 7 December 2020, very shortly before the 13 December hearing, so it was made with reasons to be given later.

4. The short reasons for the refusal are as follows. The applications before the Court were deemed to be unopposed, after a Court direction of 22 November 2020, the Defendant having failed to respond to the applications by 18 November 2020, the date allowed by the Court and duly intimated to the Defendant. Nonetheless, on 7 December 2020, the Defendant's lawyers made an application to the Court by letter, seeking an adjournment of the hearing listed for Sunday 13 December 2020. It was not supported by evidence, and had not been served on the Claimant, but an assertion that "the Defendant's" son had suffered a serious car accident, which

prevented him from instructing lawyers. The Defendant is of course a legal entity, but from further correspondence it appears that reference is made to the son of Mr Patrick Baeriswyl, a director of the Defendant, who was injured in an accident that occured in August this year. The application to adjourn was sent to the Claimant for comment, and he opposed it. The application attached a photograph of a young man whom the Claimant's lawyers understand to be Mr Baeriswyl's son who is in Geneva in a coma. While expressing sympathy at the apparent circumstances in the photograph, the Claimant pointed out that it had been taken on 4 August 2020 while the Defendant's letter of defence was filed a month after that, in September 2020. The Claimant said he would be prejudiced by further delay in otaining the information he sought, which cannot be gainsaid.

5. The application to adjourn was refused because:

(a) There was no purpose in the adjournment as the application was deemed unopposed following the order of 22 November 2020;

(b) The Defendant is a legal not a natural person and no explanation was given as to whose son was said to be ill; or the date of the accident; or why this prevented lawyers from being instructed on the interlocutory issues in hand despite the fact that they were able to take instructions to prepare a letter of defence a month after the accident;

(c) The application was made very late in the day and was unsupported by any statement of truth or witness statement explaining the circumstances in which it was sought;

(d) We accepted that a delay caused by so late an adjournment could prejudice the Claimant, given that the hearing had been fixed some time earlier and he and his lawyers had taken steps to prepare for it.

The underlying issue

6. The Claimant's case is that he was employed as the Defendant's Deputy Chairman from 1 July 2015 until 27 March 2018. The Defendant is an LLC which was licensed from 4 February 2015 until 27 March 2018 by the QFC Authority to undertake trust adminstration under QFC licence no 00223, first as Crescent Wealth LLC and from 27 September 2016 as Horizon Crescent Wealth LLC.

7. The oral contract of employment is said by the Claimant to have been made in a meeting between the Claimant and Robert Sharratt, then a director of the Defendant acting on its behalf, on 22 March 2015; and to be 'partly recorded in and/or evidenced by' a letter from the Defendant to the Claimant dated 8 October 2015'.

8. The defence was filed and served on 6 September 2020, an extension of time for which was granted by Mr Christopher Grout, the Registrar of the Court, on 15 September 2020. In its defence, the Defendant denies that there was an oral contract of employment with the Claimant or that it owes the Claimant the sums alleged or any sums. There appears to be an allegation against the Defendant in paragraph 11 of the defence of improper use of the Defendant's funds, but there is no counter-claim. We say more about this in paragraphs 16 and 17 of this judgment.

The Request for Further Information and Documents

9. The Claimant sent the Defendant a request for further information on 29 September 2020, but did not receive a response. He also sought, but failed to obtain, certain information from filings

made by the Defendant to the QFCRA and the QFC Authority, but neither provided these to him.

10. This application was therefore made because the Claimant contends that the defence is insufficiently particularised to enable it to understand the Defendant's case and to respond to it, so as to discern the case he has to meet. He contends that both the further information and the documents sought are necessary to enable him to do this, and that the documents sought are likely to be within the Defendant's custody and control.

11. It is clear that we have power to make this order under Article 24.1.3 of the Regulations and Procedural Rules of the Court ("the Rules"), and that in considering whether and if so how to exercise this power, we should be guided by the overriding objective of dealing with cases before us justly, expeditiously and effectively, and ensuring so far as practicable that the parties are on an equal footing (Article 4 of the Rules, especially Articles 4.1, 4.2, 4.3.1 and 4.3.2)).

12. We accept that the majority of the Claimant's requests for further information and documents are well founded, having regard to the issues between the parties and the overriding objective. They are applications for information which the Claimant needs to know in order properly to consider the defence he has to meet to his claims against the Defendant. In particular, the Claimant is entitled to know:

(a) whether the Defendant takes issue with his assertions of fact in paragraph 1 of the Claim:

(i) that there was a meeting between the Claimant and Mr Sharratt on 22 March 2015; and

(ii) that he served as the Defendant's Deputy Chairman between 1 July 2015 and 27 March 2018.

(b) When and where meetings said in paragraph 2 of the defence to have taken place between himself, Mr Baersiwyl and Mr Sharratt with a view to Mr Baeriswyl buying the Defendant occurred, and who was said to be present;

(c) What is meant by "the email and other communication from him over the past years" in paragraph 2 of the defence, and to be provided with copies of the alleged email and "other communication" (if in physical form);

(d) What is meant by the assertion in paragraph 3 of the defence that "during the period when [the Claimant] represented [the Defendant] in the QFC and his name was on the so-called Computer Card, it was his sole responsiblity for informing the QFC and the State about the details of all employees of the company", and in particular, the legal basis of the suggestion of 'sole responsibility'; and to be given a copy of the alleged computer card, and any other documents through which the Defendant informed the QFC and/or the State about its employees.

(e) To be given copies of the official acounts of the company said in paragraph 4 of the defence to have been prepared by Moore Stephens in QFC filings, and the date or dates upon which it is said he allegedly approved these accounts.

(f) In relation to paragraph 5 of the defence, to be provided with official reports allegedly submitted to the QFC Companies Registration Office containing details of the Defendant's employees, and with the legal basis for the suggestion that it was at some dates the Claimant's 'sole responsiblity' to submit these reports; and to be informed of who was responsible or authorised to make such filings in periods in which it was not said to be the Claimant's sole

lity;

(g) In relation to the allegation in paragraph 6 of the defence that when the Claimant controlled the Defendant's bank account, he never made any salary payments to himself, to be provided with the bank statements for the relevant period; and to understand whether or not it is the Defendant's case that the Claimant had the authority to make salary payments to himself; and if so, the legal basis for that assertion.

13. However, there are three respects in which we do not accept the Claimant's application for further information because we consider it goes further than is necessary to achieving the overriding objective of just and expeditious disposal of the proceedings.

14. First, in relation to the request in para 1(b) of the Claimant's request for further information, we do not consider it necessary for the Defendant to obtain particulars of what was discussed at a meeting on 22 March 2015, if such meeting is admitted. The fact of an oral contract made on that date is denied, and any wider discussions are irrelevant to the claim before us.

15. We make the same observation in relation to the request at paragarh 2(b)(iv), which is a request in general terms as to 'what was discussed at alleged meetings between the Claimant and Mr Baeriswyl and Mr Sharratt'.

16. Finally, we reject the extensive requests for further information in relation to the assertion in paragraph 11 of the defence that "my client note [sic] further that Mr Al-Emadi unlawfully removed substantial sums that belonged to trust beneficiaries ...". However, this is for a slightly different reason. There is no counterclaim against the Claimant, for fraudulent use of the Defendant's credit card or at all. So the 'note' in paragraph 11 of the defence does not go to any

pleaded issue. It is simply irrelevant to the matters in the claim. Indeed, paragraph 11 itself expressly concludes, these are matters "separate to his [that is the Claimant's allegedly] false claim". Consequently, the Claimant does not need the information sought in paragraph 8 of his letter of 29 September 2020, because he has no claim to meet in relation to it, and it is not relevant to his own allegation that he is owed sums under an oral contract of employment.

17. The corrollary is that we are minded on the information we have before us that paragraph 11 of the defence ought to be struck out as being wholly irrelevant to the claim before us. However, we will not do so unless and until the Defendant has had an opportunity to persuade us to the contrary. So we will order that paragraph 11 of the Defence lodged on 6 September 2020 will be struck out on 15 January 2021, unless, before that date, the Defendant notifies the Court and the Claimant that it wishes to rely upon it, and shows cause why it should be allowed to do so. If the Defendant does seek to show cause, then paragraph 11 of the defence will not stand as struck out. Instead, we will give the Claimant 14 days to respond to the Defendant's submissions and then give further consideration to whether this is an issue we can decide on the papers.

The Security Applications

18. The Claimant's second application has two limbs. He seeks security for the provisional value of the claim in the sum of QAR 10,508,000 and security for costs in the sum of QAR 1,400,000 which represents approximately half of his potential legal costs.

19. On behalf of the Claimant, Mr Williams submitted that the Court had jurisdiction to order for security for claim under Articles 4, 10.1, 10.3 and 10.4 of the Rules. Article 4, cited above, contains the overriding objective. Article 10.1 gives the Court the power to take all steps that are necessary or expedient for the proper determination of the case. Article 10.3 gives the Court power

to grant all such relief and to make all such orders as may be appropriate and just, in accordance with the overriding objective and Articles 10.4.1 and 10.4.10 give specific powers to order that a party pay a sum of money or pay another party's costs.

20. The Claimant could point us to no authority in this jurisdiction as to how these powers should be exercised in relation to security for claim or costs, other than to submit that the essential question for the Court was whether exercising the powers in the way sought furthered the overriding objective. Nor did he cite any authority from any other jurisdiction which might assist in this matter.

21. The Claimant submitted that it was just to order security for claim and costs here because:

(a) The claim prima facie enjoys reasonable prospects of success;

(b) The Claimant has reason to believe that if the Defendant were subject to an adverse judgment in this case it would be unable or unwilling to meet it; and

(c) Such an order would be fair in all the circumstances.

22. Mr Williams agreed that the relevant question was that which would be applied in an English court when it considered the grant of an interim injunction to 'hold the ring' ahead of proceedings: namely whether the inconvenience to the party against whom an interim order was made, but at the substantive hearing were to prove unjustified would outweigh the inconvenience to the party seeking the order if it were not granted, but were to prove, at the substantive hearing to prove justified – sometimes referred to as the balance of inconvenience.

23. He submitted, that applying this test in these circumstances pointed to the making of both

orders the Claimant sought, because otherwise the Claimant's litigation to seek sums he submits are owed to him might well, even if judgment were ultimately awarded in his favour, be in vain. The Claimant had reason to believe that the Defendant (which is no longer trading) may be insolvent, and it also faces financial exposure in other proceedings before the Court.

24. While we are prepared to accept – without needing to decide the point – that in exercise of our powers under Article 10 of the Rules, we may have jurisdiction to make orders for security for costs and/or security for claim, and that any such jurisdiction should be exercised having regard to the overriding objective, we are utterly unpersuaded that the mere fact of the Defendant's potential impecuniosity could make it just to make the orders for security sought in this case. Indeed, rather the reverse.

25. If we were to make the orders sought against a Defendant who may well lack the means to fulfil them, we would, in effect, shut it out from defending a claim which, while it has a prima facie chance of success seems to us to turn on contested evidence, and therefore, equally, may fail. Given that the Claimant is a man of means, whose solvency he positively avers, he can take his own decision as to whether it is worthwhile to sue a Defendant which may not ultimately be able to fulfil the judgment. However, if we were to make the orders sought, the Defendant may effectively be prevented from defending itself, irrespective of the merits of the claim against it. That would be a serious inequality of arms in access to the court.

26. We have not disregarded the Claimant's reliance on the Defendant's history of non-compliance with court and tribunal rules and directions, in this litigation and elsewhere in this jurisdiction. The risk that an unsuccessful defendant may, in the end, not satisfy an order for payment judicially made against it is not, at least ordinarily, a ground for ordering it during the litigation to provide security for costs or for the sum claimed. However, persistent non-compliance with rules and directions may potentially so prejudice the other party that such sanctions may in

some circumstances be warranted. The Defendant should bear this in mind when addressing the directions now and in future issued by this Court.

27. For those reasons, in our view, the principle in Article 4.3.2 of the Rules that we should so far as is practicable ensure that the parties are on an equal footing indicates that the security applications should be refused, as should the application for costs of and occasioned by that application.

28. It seems to us that matters of costs in relation to the partially successful application for further information and documents should be reserved until after the substantive hearing.

By the Court,

Justice Helen Mountfield

Representation:

The Claimant was represented by Mr. Thomas Williams (leading Mr. Ahmed Durrani and Mr. Mohammad Ahmad), Sultan Al-Abdulla & Partners, Doha, Qatar.

The Defendant was not represented at the hearing and did not appear.

Schedule

1. Of paragraph 1 of the Defence, when the Defendant says that "[t]he claim is based on an alleged (and rejected) verbal contract from over 5 years ago":

   (a) Does the Defendant admit, deny or not admit that the Claimant met with Robert Sharratt on 22 March 2015?

   (b) …

   (c) Does the Defendant admit, deny or not admit that the Claimant served as its Deputy Chairman, with effect from 1 July 2015?

2. Of paragraph 2 of the Defence, when the Defendant says that "[a]t the time that Mr Baeriswyl evaluated buying the company he met with Mr Al Emadi and Mr Sharratt, amongst others. As he well knows, he never mentioned that he was an employee of the company nor was owed money":

   (a) How many meetings were there?

   (b) In respect of each meeting, please identify: (i) the date; (ii) the location; (iii) who was present; and (iv) …

3. Of paragraph 2 of the Defence, when the Defendant says that "[i]n the email and other communication from him over the past years there is exactly zero mention from him that he is employed by the company and owed money":

   (a) What was the date of the alleged email?

   (b) What form did the alleged "other communication" take?

   (c) What was the date of the alleged "other communication"?

   (d) Please provide a copy of the alleged email.

   (e) Please provide a copy of the alleged "other communication", if the same is in physical form.

4. Of paragraph 3 of the Defence, when the Defendant says that "[i]t is telling that during the period when your client represented HCW in the QFC and his name was on the so-called "Computer Card" it was his sole responsibility for informing the QFC and the State about the details of all employees of the company" (emphasis in original):

(a) What is the legal basis for the suggestion that it was the Claimant's "sole responsibility for informing the QFC and the State about the details of all employees of the company"?

(b) Please provide the alleged "Computer Card" or a copy thereof.

(c) Please provide the documents through which the Defendant, whether allegedly acting through the Claimant or otherwise, informed the QFC and/or the State about its employees.

5. Of paragraph 4 of the Defence, when the Defendant says that "[i]t is further noted that him, in fulfilling his role as a director of the company, approved the official accounts of the company prepared by Moore Stephens in QFC filings":

(a) Please provide the "official accounts of the company prepared by Moore Stephens in QFC filings".

(b) On which date or dates did the Claimant allegedly approve the said accounts?

6. Of paragraph 5 of the Defence, when the Defendant says that "[i]n addition, official reports submitted to the QFC Companies Office are required to state who is employed by the company. Mr Al-Emadi never included himself in these filings at any time, including when he was solely responsible for such filings, against completely disproving his Statement of Claim":

(a) Please provide the "official reports submitted to the QFC Companies Office".

(b) What is the legal basis of the suggestion that it was the Claimant's "sole responsibility" to submit reports to the QFC about the details of the Defendant's employees?

(c) For the period in which it was not the Claimant's "sole responsibility" to conduct such

"filings", please identify who was responsible or authorised to do so.

7. Of paragraph 6 of the Defence, when the Defendant says that "[i]t is further noted that when Mr. Al Emadi controlled the HCW bank account, he never made any salary payments to himself as he alleges was his right":

(a) Please provide the bank statements of the "HCW bank account" for the period 1 July 2015 to 27 March 2018.

(b) Is it the Defendant's case that the Claimant had the authority to make salary payments to himself?

(c) If the answer to question (b) above is yes, what is the legal basis of that authority?

DIGITALLY SIGNED AND VERIFIED
موقّع رقمياً ومعتمد