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: [2021] QIC (F) 21

IN THE QATAR INTERNATIONAL COURT

FIRST INSTANCE CIRCUIT

22 August 2021

CASE No. 15 of 2020

JOHN AND WIEDEMAN LLC

Claimant

v

(1) TRIMOO PARKS LLC
(2) TALAL BIN MOHAMMED TRADING LLC
(3) LEISURE LLC
(4) FUTURE QATAR FOR BUSINESS DEVELOPMENT (ADABISC) LLC

Defendants

JUDGMENT

Before:

Justice Frances Kirkham

Justice Arthur Hamilton

Justice Rashid Al Anezi

ORDER

1. The First Defendant (Trimoo Parks LLC) shall, within 15 days of the issue of this judgment, pay to the Claimant the sum of QAR 416,539.

2. The First Defendant shall, within the same period, pay to the Claimant the sum of QAR 42,974.55 in respect of pre-judgment interest.

3. The Claimant is entitled to interest from the First Defendant on the sum of QAR 416,539 at the rate of 7% per annum from the expiry of that period until payment.

4. The Claim in so far as directed against the remaining Defendants is dismissed.

5. The Claimant is entitled as against the First Defendant to payment of its reasonable costs in pursuing this action, these costs if not agreed to be assessed by the Registrar.

JUDGMENT

1. The Claimant is a limited liability company established in the Qatar Financial Centre ("the QFC"), where it is licensed to provide legal services. Prior to April 2020 it so practised under the name "ILC International Legal Consultants Ltd". Michel Daillet ("Mr Daillet") is, and for many years has been, an owner/partner of the Claimant.

2. The Defendants (referred to hereafter respectively as "Trimoo", "TBMT", "Leisure" and "Adabisc") are limited liability companies, each separately incorporated in Qatar but outside the QFC. The principal owner/partner of TBMT is, and as at September 2018 was, Talal bin Mohammed Al Attiyah ("Mr Al Attiyah"), a prominent Qatari businessman. TBMT is and then was the parent company of Leisure and of Adabisc. The latter is and then was, in turn, the parent company of Trimoo.

The background to and terms of the Engagement

3. As at September 2018 Adabisc was a long-standing client of the Claimant, their professional relationship having commenced in about 2009. The owners/partners of

Adabisc were at that time Luay Darwish, a Jordanian businessman, and Riad Makdessi, a Syrian businessman, for each of whom Mr Daillet came to have much respect. Among the professional arrangements entered into from time to time between the Claimant and Adabisc was one regulated by a Letter of Engagement (with incorporated Terms of Business) dated 3 February 2015. That arrangement took the form of a yearly retainer with monthly payments for a defined number of afternoons, with provision for additional work if required. In 2016 Mr Darwish and Mr Makdessi sold most of their interests in Adabisc to TBMT, retaining at that time minority interests.

4. In August 2018 Mr Darwish approached Mr Daillet with a view to a further annual retainer being entered into. The parties were on this occasion to be the Claimant and Trimoo. The terms were negotiated by Mr Daillet for the Claimant and by Stefan Weber, a business manager of Trimoo, for that company. It took the same broad form as the arrangement of February 2015 (including incorporated Terms of Business) but with some differences. The Letter of Engagement was addressed to Mr Darwish and Mr Makdessi at Adabisc. The contract was signed on 12 September 2018 by Mr Daillet for the Claimant and by Mr Darwish for Trimoo. Although section 1 of that Letter of Engagement ("the Engagement") refers to "Trimoo LLC", rather than to "Trimoo Parks LLC", it was confirmed at the hearing of this case that the former was a misnomer, the contracting party being the latter.

5. Under section I, headed "Introduction", the Engagement provided:

> "We are to assist Trimoo LLC (the "**Client**") in relation to the preparation or review of a list of contracts pertaining to Trimoo's business".

6. Under section 3, headed "Scope of Work; presence at Trimoo's offices", the Engagement provided:

> "Michel Daillet will prepare or review a number of documents between September 1, 2018 and August 31, 2019.

Michel Daillet will spend 104 half-days of four hours (arriving between 3:30 and 4 pm), that is 416 hours of work, over the course of one year, in the offices of Trimoo, to accomplish this task.

The number of afternoons spent at the offices of Trimoo each week will vary upon the workload. It is envisaged that, during the initial few months, Michel Daillet will spend three or more afternoons per week to cover the backlog of legal work to undertake.

Michel will give notice to Trimoo in advance of any holidays he intends to take. However, this will not affect the number of 104 half-days of presence in Trimoo's offices and any of its affiliates."

7. Under section 4, headed "Charges", the Engagement provided:

"The Client will pay ILC an amount of QAR 30,000 per month during the course of one full year, for a total of QAR 360,000, in consideration for the implementation of the scope of the work described above.

Unless otherwise agreed between the parties, any additional work that we are required to undertake in excess of the agreed hours for the full year as per section 3 above will be charged subject to our regular hourly rates (excluding VAT and disbursements) as follows: [certain rates were then specified]..."

8. Under section 5, headed "Reporting arrangements", the Engagement provided:

"Our principal contact at the Client on this matter will be you, Besna Kraiem, or any person appointed by you and involved in the task in hand."

Ms Kraiem was a business development officer of Lebanese origin then employed by Leisure.

9. Under section 6, headed "Billing arrangements", the Engagement provided:

> "We will render a monthly invoice to the Client, marked for your attention, for an amount of QAR 30,000, on each last day of the calendar month.
>
> Attached to the invoice will be a rolling overview of the total time worked for the Client year-to-date as well as the remaining balance required to complete the agreed hours for the full year as per section 3 above." This section continued by making certain financial arrangements in the event that the Engagement was terminated (by either party) prior to expiry of the full year. These included that, in the event of less work having been done than the monthly hours anticipated, "Michel will work for the Client and its affiliates for the additional afternoons necessary…".

10. The Terms of Business provided among other things:

> "20 *Governing Law and Jurisdiction*
> The terms of the Engagement are to be governed by and construed in accordance with the laws of the Qatar Financial Centre (QFC) and any disputes arising in connection with the Engagement are to be subject to the exclusive jurisdiction of the Courts of the QFC."

They also provided, under paragraph 7 *Fees*:

> "We reserve the right to charge interest on overdue amounts at 2% above the base rate from time to time of the Qatar Central Bank or the rate payable on judgment debts at the time the amount is due."

The proceedings

11. In this action the Claimant sues the Defendants, jointly, for QAR 416,539 together with interest thereon. The action is based, fundamentally, on the Engagement.

12. The Defendants responded initially to the Claim by contesting this Court's jurisdiction to entertain it. They did so by a joint Defence in which they had common legal representation, as they have had throughout these proceedings. The basis of that challenge was that none of the Defendants had explicitly agreed to submit to the jurisdiction of the Court. That challenge was rejected by the Court in its judgment dated 8 February 2021 (reported at [2021] QIC (F) 4). The Court, however, recognised (at paragraph 8 of the Judgment) that jurisdiction, in so far as based on Article 9.1.3 of its Rules, was dependant on the relevant Defendant being a "contractor" with the Claimant. That was a matter to be determined in due course.

13. In advance of the hearing (which was held remotely on 7 July 2021) the Claimant filed and served numerous documents, including witness statements by Mr Daillet and by a Mr Fabregat, who had been employed by Adabisc between April 2018 and June 2019. The Defendants filed and served a witness statement by a Mr Elbassiouny, who had worked as Acting Managing Director for Leisure from April 2019. The Defendants filed no other documents. Mr Daillet also appeared at the hearing as the legal representative of the Claimant. The Defendants were legally represented by Dr Hazem.

14. Although the Defendants had indicated earlier that they chose to present their case in Arabic rather than in English (as they are entitled to do), in the event Dr Hazem chose to present it in English. There were no language difficulties. Mr Daillet spoke to his witness statement, which he confirmed subject to a minor typographical correction. Dr Hazem stated that he had no cross-examination of the witness. The Court, however, asked certain questions of him. Neither Mr Fabregat nor Mr Elbassiouny gave oral testimony. Mr Daillet and Dr Hazem made oral submissions in amplification of Skeleton Submissions filed earlier.

15. Mr Daillet's evidence as to matters of fact, both in his witness statement and orally, was clear and convincing. It was not challenged nor, subject possibly to one matter referred to below, contradicted. The Court has no hesitation in finding it to be both truthful and accurate.

The conduct of parties relative to the Engagement

16. In September 2018 the Claimant (in the form of Mr Daillet) commenced work under the Engagement. At the outset he was provided, as envisaged in section I of it, with a list of contracts. That list, which was provided orally by Mr Weber and recorded by Mr Daillet, is reproduced at pp. 50-52 of the Bundle of Exhibits. It identifies a number of contracts, in some of which Trimoo and a third party are the prospective contracting parties. However, the list also includes contracts in which Trimoo was not to be a party, for example, a staff costs contract between Adabisc and Leisure and a number of service agreements between Leisure and its eight operating subsidiaries. It was thus evident from the outset that the work expected of the Claimant was not limited to work in which Trimoo alone had the need for legal services but included work for the remaining Defendants, all of whom can properly be regarded as "affiliates" of Trimoo within the meaning of the Engagement. Further, a principal task given to Mr Daillet in the early months of the operation of the Engagement was to review the corporate structure referred to above, which review involved all four companies.

17. In due course drafting work was required for an Amendment to a Lease Agreement between TBMT and the proprietor of premises at Doha Festival City Mall, a draft intellectual property rights licence between Trimoo and Leisure, a draft Management Agreement between Trimoo and the proprietor of Musheireb and a draft Secondment Agreement between Adabisc and Leisure. Mr Daillet also reviewed various contractual arrangements for TBMT in relation to a dispute which arose with Mr Darwish and Mr Makdessi, former owners/partners in Adabisc, who had early in 2019 disposed of the remainder of their interests in that company. Numerous other items of work were undertaken by him in the interests of one or more of the affiliate companies. Emails point to instructions for the work coming from senior employees of each of the four Defendants. Towards the end of the Engagement period Mr Al Attiyah personally consulted Mr Daillet in relation to the dispute with Mr Darwish and Mr Makdessi regarding their departure from Adabisc.

18. Both Mr Daillet and Dr Hazem were content that the Court should have regard to the witness statements of Mr Febragat and Mr Elbassiouny, although neither had given oral testimony. Mr Febragat's statement was supportive of Mr Daillet's testimony and was

not contradicted. In his witness statement Mr Elbassiouny states that he was appointed as Acting Managing Director of Leisure from 21 April 2019. He suggests in that statement that Mr Daillet acted only for Trimoo. He can, by reason of the date of his appointment, speak only to a limited part of the period of the Engagement. As he was not called to give oral evidence, he was not subject to cross-examination. In so far as the contents of his witness statement may conflict with the unchallenged testimony of Mr Daillet, we prefer the latter.

19. As provided for in the Engagement, the work was carried out at Trimoo's offices, mainly those at the Gate Mall but for a few weeks in June/July 2019 at the Doha Festival City Shopping Mall. At the former there was a security system which involved Mr Daillet punching in and out his times at the premises. For the latter he was supplied with a magnetic access card. He was allocated a dedicated parking space.

20. As further provided in the Engagement, the Claimant each month rendered to Trimoo with its monthly invoice a rolling overview of the total numbers of afternoons worked to date. These documents went initially to Mr Darwish but, after his departure in January 2019, to the finance department of Trimoo. No challenge was made at any time to those numbers. Payments were made (ultimately) for the first four months of the Engagement by cheques drawn on accounts in the name of Adabisc. Payment remains outstanding for the remaining eight months and for additional hours (54 afternoons), for which an invoice was rendered in August 2019. The principal outstanding amounts to QAR 416,539. Interest thereon is also claimed.

21. The only contract in writing concerned with the provision of these legal services is the Engagement, to which as drafted and signed the Claimant and Trimoo are the only parties. The remaining three Defendants clearly each, to some extent, benefited from the services rendered. The Defendants, including Trimoo, denied, in a common defence, that any sum was due to the Claimant by any of them, although ultimately at the hearing Dr Hazem conceded that Trimoo still owed the Claimant QAR 240,000, being eight of the monthly payments due under the Engagement. They also contend that this Court has no jurisdiction against any of TBMT, Leisure or Adabisc and that none of these three Defendants is liable, on any basis, to make any payment to the Claimant.

The relevant law

22. The terms of the Engagement are governed and are to be construed in accordance with the laws of the QFC (Terms of Business, paragraph 19). The QFC Contract Regulations provide:

> "Article 45-INTENTION OF THE PARTIES
> (1) A contract shall be interpreted according to the common intention of the parties.
> (2) If such an intention cannot be established, the contract shall be interpreted according to the meaning that reasonable Persons of the same kind as the parties would give to it in the same circumstances.
>
> Article 47-RELEVANT CIRCUMSTANCES
> In applying Article 45…, regard shall be had to all the circumstances, including:
> …….
> (3) the conduct of the parties subsequent to the conclusion of the contract;
> (4) the nature and purpose of the contract;
> ……..".

Interpretation and application

23. Section 3 of the Engagement provided that Mr Daillet would "prepare and review a number of documents" during the year of the engagement. It did not specify what these documents were nor the character of the particular legal services which would be called for. Although section 1 of the Engagement referred to a "list of documents pertaining to Trimoo's business", that list when provided to the Claimant by Trimoo encompassed documents which did not, in a narrow sense, pertain solely to that business but included documents for "affiliates" of it. It was clearly envisaged by the Engagement that the other Defendants, as affiliates of Trimoo, might in some circumstances benefit from the Claimant's services under it. Section 6 obliged the Claimant, in the event contemplated there, to work for them. Section 3 also envisaged Mr Daillet working in the offices of any of them. The named principal contact at the Client was an employee of Leisure. The Claimant proceeded to provide its services on the basis that the scope of the work to be done by it under the Engagement was not to be narrowly construed.

24. The nature and purpose of the Engagement, entered into in the context described above, was consistent with it being intended to be used as a vehicle through which services could be provided not only to Trimoo but also, if appropriate, to one or more of its affiliates, with the Claimant being remunerated under the Engagement for such services. The conduct of parties points clearly to a mutual understanding that it be so used. This implicit understanding is fortified by the fact that, when payment for the services was (partially) made, that payment was not by Trimoo but by one of its affiliates (Adabisc). By the time of that partial payment, services had been rendered for the benefit of all four Defendants. Trimoo cannot have been unaware that the Claimant's services were being provided not only for itself but also for its affiliates. If the Engagement as drafted did not encompass work for Trimoo's affiliates, then it was by the parties' conduct amended so as to encompass such work.

25. The Court is satisfied that additional work (amounting to an extra 55 afternoons) was duly required under the Engagement and was duly executed. No challenge was, until 21 March 2021, made to such work having been executed, although each monthly report (except those for June and August 2019) indicated that more than the basic hours had been worked. No evidence was led by the Defendants which rebutted Mr Daillet's evidence to that effect. The Claimant is entitled to receive payment for such work, as well as for the unpaid monthly amounts. The Claimant has restricted the sum sued for by discounting charges for four afternoons.

26. The next question is who is liable in law to pay that sum. The Claimant submitted that the Engagement as drafted was amended to the effect that all four Defendants as well as the Claimant became parties to it and that all became "jointly" liable under it. There was, however, no amendment in writing and, so far as appears from the evidence, no express oral agreement to that effect. Mr Daillet submitted that the Defendants and the Claimant had, by their conduct, implicitly amended the Engagement so that all four Defendants became clients of the Claimant under it. We are not persuaded that any agreement to that effect can properly be implied.

27. There was already in place a written agreement, the effect of which was, as we have held, that work done by the Claimant for any of the four Defendants was to be remunerated, the person obliged to pay such remuneration being Trimoo. The need, in

the circumstances existing at the time of the operation of the Engagement, for any enlargement of the parties to it has not been demonstrated. While there was no contractual or other bar to its amendment by conduct, there is no basis in the evidence to justify a conclusion that there was an intention by the Claimant and all four Defendants that the Engagement be amended to that effect. A consequence of such amendment would have been that each Defendant would then have become exposed to liability on a "joint" basis, that is, jointly and severally, so that the Claimant could recover the whole amount due from any one of them, with the paying party having rights of relief against the other Defendants. That would have been a radical variation to the written Engagement. Mr Daillet in his submissions described the relationship among the Defendants as "symbiotic". That may have been an apt description of their working practices; but the separate character of their legal personalities must be recognised and given effect. There is a general presumption against joint and several liability.

28. In circumstances where there was no existing Engagement it might have been possible to hold, on the basis of the parties' conduct, that each Defendant had entered into an implied contract with the Claimant for the provision of legal services and that each was liable to pay the appropriate sum for the services received by it. It might even have been possible in such circumstances to hold that there had been a single implied contract under which all the Defendants were liable, whether jointly or on some other basis. But, in the context of the existence of the express Engagement no such contract or contracts can properly be implied.

29. We have considered whether Trimoo might alone be liable for the unpaid monthly fees but that all the Defendants might be liable, jointly and severally, for the additional work. However, we are not satisfied that a different scope of liability can have been intended to apply to those two elements. There is nothing in the written Engagement to suggest that any such difference was contemplated. Further, the work undertaken for affiliates of Trimoo was undertaken from the outset with the basic two half-days per week and the additional time being devoted indiscriminately to work for all four companies. There is no evidential basis for an inference that it was intended that the nature of the obligation to pay was to differ as between these two elements.

30. The scope of the parties liable for payment of unpaid sums may, as it turns out, be of some practical importance. The Court was informed that, while TBMT and Leisure remain active commercially, Adabisc and its subsidiary, Trimoo, are no longer active, though neither of the latter has been or is in the course of being wound up. The Court cannot become involved in any question as to whether a debtor is "good for the money"; its concern is only with who, as a matter of law, is liable. It may be, however, that TBMT and Leisure, who undoubtedly received the benefit of the Claimant's legal services, would find it commercially fitting to acknowledge that benefit and make good any shortfall in what the Claimant can recover from Trimoo.

31. As it has not been established that any of the Defendants other than Trimoo was a contractor with the Claimant with respect to these services, this Court has no jurisdiction against any of them under Regulation 9.1.3 of its Procedural Rules (reflecting Article 8.3.c/3 of the QFC Law). No other basis of jurisdiction is suggested. Accordingly, the case, in so far as directed against TBMT, Leisure and Adabisc, must be dismissed on jurisdictional as well as on substantive grounds.

32. Dr Hazem submitted that it had not been proved that any additional work had been "required" under section 4 of the Engagement. There had been no acknowledgement by Trimoo or otherwise that such work had been done nor any documentary approval or endorsement of that work. As indicated above, we reject that submission. No evidence was led by the Defendants to counter Mr Daillet's evidence (which we accept) that the additional work was duly instructed by appropriate employees and was duly performed. The incorporated Terms of Business (by paragraph 5) provided that the Claimant was entitled to presume that all of the client's employees who gave instructions were authorised to do so and that the Claimant might act on oral instructions. Given the way in which the Engagement was operated, that presumption extended to employees of all four Defendants. Dr Hazem further relied on the circumstance that the Claimant was claiming remuneration for work allegedly done after payment for the monthly fees had ceased to be made. But, no question of limitation of action arises and, the Engagement not having been terminated by the Client, the Claimant was entitled to continue performing under it and to receive due payment for such performance. Trimoo is, accordingly, liable in law to pay the whole amount sued

for, being the total of the unpaid monthly fees (QAR 240,000) and the fees for the additional work (QAR 176,539), namely, QAR 416,539.

33. Dr Hazem raised an issue of the "standing" of the Defendants other than Trimoo. But, that, as we understood it, was not an issue of the legal capacity of any of them to be sued (as corporate bodies they clearly could) but of whether they or any of them had ever entered into a contractual relationship with the Claimant. We have already dealt with that issue. An earlier complaint that the signed original of the Engagement had not been produced was departed from. Dr Hazem also referred to certain provisions of Qatari national law; but, as the Engagement was expressly made subject to QFC law, such references are of no assistance.

Compensatory interest

34. The Claimant also seeks interest on the unpaid sums due to it. As noted in paragraph 10 above, the Terms of Business provided for one or other of two rates of interest to be charged. Prior to the hearing no option as between these rates had been exercised by the Claimant and no calculation of interest filed. Dr Hazem raised the question whether the recovery of any interest was legitimate under Qatari law. In these circumstances the Court allowed time to the Claimant to file a written submission on interest with the Defendants allowed time to respond.

35. In its written submission the Claimant set forth three sets of calculations for pre-judgment interest: (1) on the basis that the Qatar Central Bank rate from time to time plus 2% should be applied, (2) on the basis that the Court's rate of 5% should be applied throughout and (3) on the basis that the Court's rate of 5% was a minimum rate and thus should be applied during any period that the Qatar Central Bank rate + 2% was less than 5%. On the basis that the principal sum due comprised (as we have held) the total of the unpaid monthly fees and the fees for additional work, these calculations brought out pre-judgment interest at certain figures respectively.

36. The Defendants responded with a written submission. The only substantive point taken in it was to contend that the calculations provided by the Claimant proceeded erroneously on the basis that nine, rather than eight, of the monthly payments remained

outstanding. Alternative calculations were supplied, which, on the premise that fees for the additional work as well as for these monthly payments remained due, brought out pre-judgment interest on the three bases referred to above at (1) QAR 38,945.64, (2) QAR 40,374.55 and (3) QAR 41,678.82.

37. The Claimant responded in turn with an amended submission which, in substance, conceded the error referred to. The revised calculations brought out figures which were not materially different from those stated in the preceding paragraph.

38. It appears that all these figures for "pre-judgment" interest are calculated up to the date of the hearing (7 July 2021). The Claimant in its responding submission invited the Court to award further compensatory interest up to the date when judgment was actually delivered.

39. In *Protech Solutions LLC v Qatar Islamic Bank* [2021] QIC (A) 6 the Appellate Division of this Court addressed the question of the recovery of compensatory interest on overdue debts. It held (paragraph 29) that the obligation to pay interest on a sum not paid when due is governed by the proper law of the contract. The proper law of the Engagement is QFC law (paragraph 19 of the incorporated Terms of Business). Compensatory interest accordingly falls to be paid by Trimoo under Article 104 of the QFC Contract Regulations. Under paragraph 7 of the Terms of Business the Claimant is contractually entitled to charge interest on overdue amounts at one or other of the two rates referred to in that paragraph. It may charge interest at whichever of these rates is in the circumstances the better to its advantage. That, in this case, is rate (2) referred to above. The Court's rate of 5% is not a "minimum" rate; rate (3) does not apply. Accordingly, the Claimant is entitled to pre-judgment interest at the Court's traditional rate of 5% throughout the time or times from when sums were due by Trimoo but unpaid until the date of judgment. The Defendants' calculation of that sum (which is not materially different from that of the Claimant's revised calculation) is QAR 40,374.55, to which is to be added compensatory interest up to the actual date of judgment. We assess that additional sum (broadly) at QAR 2,600. The total award of pre-judgment interest is accordingly QAR 42,975.55.

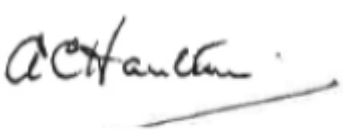
Enhanced interest

40. In *Qatar Financial Centre Regulatory Authority v Horizon Crescent Wealth LLC* [2021] QIC (A) 5 the Appellate Division addressed the question whether a higher rate of interest should apply where there was a failure by a party to pay a debt for which judgment had been given by the Court. It held (paragraph 17) that "it would be generally in the interests of justice and would assist in the enforcement of the judgments of the Court that a party to proceedings should be encouraged to pay a judgment debt within the time specified by the court and be penalised for a contravention of the Order". That case concerned the non-payment of a regulatory penalty for which judgment had been given by the Court. However, it is plain that the general principle is applicable to all judgment debts. Accordingly, it is applicable in the present case where Trimoo will, on the issue of this Judgment, have notice of the amounts judicially held to be payable by it within the time identified in it. In the circumstances 15 days from the issue of the Judgment (as sought by the Claimant) is an appropriate period within which payment should be made. The Claimant sought post-judgment interest at 10% but the Court regards that as excessive. An enhanced rate of 7% will apply from the expiry of the period mentioned until payment.

Costs

41. The Claimant, having been successful in its claim against Trimoo, is entitled to payment against it of reasonable costs. The Claimant was unsuccessful in its claim against the remaining Defendants. However, as all four Defendants presented a common defence and there is nothing to suggest that any greater costs were incurred by the joining of the remaining Defendants as parties, we consider that it would be inappropriate to make any further order as to costs.

By the Court,



Justice Arthur Hamilton

Representation:

The Claimant was represented by Mr. Michel Daillet.

The Defendants were represented by Dr. Hazem Sherif.

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AND VERIFIED
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