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

10 September 2018

CASE No: 07/2017

OUSSAMA ASSAAD

Claimant

v

NOMURA INTERNATIONAL PLC

Defendant

JUDGMENT

Members of the Court:

Justice Robertson
Justice Kirkham
Justice Hamilton

ORDER

1. **The Claimant's Claim is dismissed; and**
2. **Costs are reserved, to be determined in accordance with paragraph 43 below.**

JUDGMENT

1. In these proceedings the Claimant, Mr Assaad, claims payment of salary and other compensation in relation to his employment by the Defendant, Nomura International PLC ("Nomura"). Throughout this case Mr Assaad has represented himself. Nomura has been represented by solicitors. Mr Francis appeared for Nomura at the recent hearing.

2. The background to Mr Assaad's claim is that he had been employed by Lehmann Brothers until 2008 when some of Lehmann's staff were taken over by Nomura. His employment was transferred to Nomura and commenced on 13 October 2008. Nomura issued to Mr Assaad a formal employment contract dated 28 January 2009 confirming Mr Assaad's employment as a Public Relations Officer at Nomura's Dubai branch. Mr Assaad's employment was terminated on the basis of gross misconduct on 11 February 2016. Between October 2008 and February 2016 he was based in Nomura's DIFC branch in Dubai, though his duties took him to a number of different countries, including Qatar. Mr Assaad maintains that he was working at a senior level, reporting to senior officers in Nomura.

3. In September 2017, Mr. Assaad commenced proceedings alleging, among other things, that in May 2012 it had been agreed that he would be transferred from the Emirate of Dubai to the State of Qatar and occupy a position there as the Executive Manager for Nomura. This was to be at a separate and additional aggregate annual salary of USD 181,319. In these proceedings he seeks payment of that salary for a period of almost 4 years together with an end of service gratuity and damages resulting from the delay of this new employment contract and the salary due under it being finalised and implemented. Nomura denies the claim, on the grounds summarised below.

4. Nomura alleges that Mr Assaad's employment was terminated for cause in January 2016. Mr Assaad claims that he was unfairly dismissed, and included in these

proceedings a claim for relief in respect of the dismissal. Nomura applied for Mr Assaad's claims as regards his employment in Dubai and dismissal to be struck out, on the ground that the Court lacked jurisdiction to deal with those aspects of the dispute. The Court considered Nomura's jurisdictional challenge in a separate hearing on 24 April 2018, and on 13 May 2018 issued its order and delivered its judgment in respect of that jurisdictional challenge, concluding that it lacked jurisdiction over any dispute arising out of or in connection with Mr Assaad's work and role in Nomura's DIFC branch.

5. Despite detailed Directions as to the need for specificity and detail, including the proper provision of witness statements, Mr Assaad advanced his position on a somewhat informal basis. As he was unrepresented, the Court adopted a sympathetic response but we are conscious of the frustrations for Nomura and our own difficulty in grasping all nuances of his claim which was an inevitable consequence.

6. On a number of occasions Mr Assaad has raised the possibility of the Court itself directing certain persons to appear at a hearing or provide information and to initiate a forensic enquiry into the authenticity of a document or signature. There is no doubt that a court has the power so to intervene directly but in an adversarial structure will only do so in exceptional circumstances. At no point was the Court satisfied that an appropriate foundation was laid for this to occur. The Court did facilitate a request for Third Party Disclosure by the QFCA of matters relevant to the establishment card of Nomura in Qatar.

7. Mr Assaad's case has developed over the course of these proceedings. In his statement of claim dated 10 September 2017 he claimed that, as at 1 May 2012, he was appointed Executive Manager at Nomura and that it was agreed that he would be transferred from Dubai to Qatar to occupy a post in consideration of a separate monthly salary of QAR 55,000 based on an aggregate annual salary of USD 181,319. Mr Assaad relied on a letter dated 15 May 2012 which is addressed to the Qatar Financial Centre, Doha, and states (in its English translation):

"Kindly be informed that Mr Osama Asaad has been appointed as an executive manager of the Company. Therefore we confirm the following information:

Employee's name Osama Asaad

Nationality Lebanese

...

Profession Executive Manager

Month Salary QAR 55,000 (Fifty-five thousand Qatari riyals)

Appointment date 1 May 2012

This monthly salary is based on the total annual salary, which includes allocations and cash allowances of USD 181,319 converted to Qatari riyals according to the current exchange rate.

Accordingly, please direct the relevant person to issue a work visa and complete all legal procedures so that the above-mentioned person can obtain a visa in accordance with the state's applicable laws.

With much appreciation and respect.

Arshad Iqbal Ghafour

[signature]

Chief Executive Officer

Nomura International plc"

We refer to this as "the May 2012 letter".

8. In his statement of claim Mr Assaad claims that thereafter there was a delay in the preparation of an employment contract though he had been promised that it would be prepared as soon as possible. But although Mr Assaad pressed for the contract to be completed, it was not.

9. He claimed that his salary for work in Qatar was not paid, for the whole period from May 2012 until his employment was terminated in January 2016. He seeks payment of

unpaid salary, end-of-service gratuity and compensation in respect of the delay in paying that salary.

10. In their defence Nomura denied that there had been any agreement that Mr Assaad be transferred to Qatar or that he be paid a separate salary in relation to any transfer to Qatar. Mr Assaad had only one employment contract with Nomura which covered all of his work in Dubai and Qatar, namely the contract dated 28 January 2009. While it was part of Mr Assaad's role to travel, including to Nomura's office in Qatar, his presence was not required in the Qatar office on any extended basis and there was no need for him to be moved to Qatar. Nomura denied that the May 2012 letter was a genuine document issued by Nomura. In any event, Nomura denied that the letter contained an accurate record of any agreement between Mr Assaad and Nomura with respect to the former's employment terms.

11. In a Reply dated 31 October 2017 Mr Assaad stated that there had been an agreement that he should have a contract in respect of his role in Qatar which would be separate from his contract for work based in Nomura's Dubai office.

12. In a submission dated 28 December 2017, Mr Assaad claimed that letters akin to the May 2012 letter had been issued on many occasions to other employees of Nomura.

13. At the hearing in April 2018 Mr Assaad confirmed that his case was that, in May 2012, it had been agreed that he would have two separate contracts, one for his work based in Dubai and the other for his role in Qatar.

14. In June 2018 Mr Assaad filed a statement in which he said that the agreement concerning his role in Qatar had been discussed more than once before the May 2012 letter was issued. He also stated that this had been discussed after May 2012 with a number of Nomura's employees including Mr Piero Ricci, a senior officer in the company.

15. In July 2018 Mr Assaad filed a submission in which he stated that Mr Ricci had acknowledged that he, Mr Assaad, had played an important part in securing a significant deal and would provide a way to make a payment to acknowledge this. However, although Mr Ricci had promised to arrange an employment contract for Mr Assaad in

Qatar he had failed to do so. Mr Ricci filed two witness statements and was available at this hearing. He denied Mr Assaad's contentions and he was not challenged during the hearing.

16. Although he had been directed by the Court, in clear terms, to do so, Mr Assaad did not prepare a detailed statement to explain the circumstances concerning his allegation that an agreement had been reached in May 2012 that there be two separate contracts. When asked about this at the hearing, Mr Assaad explained that he preferred to give his evidence orally. A consequence is that Nomura did not have, before the hearing, Mr Assaad's detailed account of how the alleged oral agreement had come about.

17. The issues which this court must decide are (1) whether an oral agreement was made in or around May 2012 whereby Mr Assaad would have two separate employment contracts, one for his role in Nomura's DIFC branch and the other in respect of his role in Qatar, and (2) if so, what were the terms of the Qatar contract?

18. In support of his claim, Mr Assaad relies principally upon the May 2012 letter which he maintains was signed in his presence by Mr Ghafour, a more senior official in Nomura's organisation who was at that time responsible for its Qatar office. Mr Gharfour did not give evidence before the Court and we shall address the consequences of that in due course. But, in assessing Mr Assaad's credibility and reliability in relation to this document and its immediately surrounding circumstances, it is appropriate to have regard to the relative employment context and Mr Assaad's knowledge of it.

19. Mr Assaad had been employed in Dubai by Nomura under a contract dated 28 January 2009. That contract remained in place in 2015. The contract was in detailed terms. It included a provision: "No variation to the terms will be valid unless they are authorised in writing by the Human Resources Department". Mr Assaad countersigned the January 2009 contract.

20. Mr Assaad's contention is that the remuneration to be paid to him was additional to his entitlement under his Dubai contract. As appears from a salary certificate issued by Nomura on 8 November 2012, Mr Assaad's remuneration in his existing post as Public Relations Manager was based on an annual salary plus cash allowances of USD 134,700 together with reimbursement of USD 33,000 per year towards his children's school

fees, a total of USD 167,700. Thus, if his contention is correct, he became entitled as from May 2012 to a more than doubling of his remuneration from Nomura. It would be remarkable if any such change, if it was to be valid, could have been effective unless authorised in writing by the Human Resources Department. Mr Assaad must have recognisd that. Although the January 2009 contract speaks of "any variation to the terms" (of the Dubai contract) and what is said to have occurred in May 2012 was not a variation of those terms but the creation of a separate and additional contract of employment, Mr Assaad can have been in no doubt that such a fundamental and financially significant change would, to be valid and effective as between the parties, have required the authorisation in writing of the Human Resources Department. On the evidence before us no such authorisation existed in 2012 or at any time thereafter.

21. In evidence Mr Assaad stated that the initiative for the preparation of the May 2012 letter had been his. He had, he told us at the earlier hearing on jurisdiction, had an oral discussion with his immediate superior, Mr Datani, in which he had been appointed "to run the business in Qatar". He had then asked an (unnamed) colleague to draft a letter reflecting the terms of his new appointment. The May 2012 letter (in its original Arabic text) had then been presented by Mr Assaad to Mr Ghafour and signed by him in Mr Assaad's presence. It had then been retained by Mr Assaad, though, he said, he had left a copy of it in the Qatar office.

22. Nomura has carried out an extensive search of its records for any documents in its possession which might bear upon Mr Assaad's employment with them. Ms Scourfield, a solicitor in Nomura's solicitors' office in Dubai, prepared a witness statement in relation to that search and its results. She gave evidence at the jurisdiction hearing in which she confirmed the truth of the facts in the witness statement. This evidence was largely unchallenged and we accept it. That search did not disclose any copy of the May 2012 letter.

23. That document had been prepared in Arabic. It bears a signature which is not in Arabic form. Mr Gharfour, although he signed a witness statement, did not give evidence before the court. In these circumstances we accept Mr Assaad's evidence insofar as he testified that he placed the May 2012 letter (in Arabic) before Mr Gharfour and that the

latter signed it in his presence. What is more difficult is determining the effect of that signature in the circumstances.

24. As Mr Assaad accepted, Mr Gharfour did not speak or understand or read Arabic. Although a person signing a document which is expressed in his own language will be bound by its terms, the same is not necessarily true of a document expressed in a language which the signatory does not understand. While Mr Assaad stated in evidence before us that he had explained the document to Mr Ghafour, we have serious doubts as to whether any explanation was such as reasonably to bring home to Mr Ghafour the nature of what he was being asked to sign. It would be remarkable if Mr Ghafour, a senior employee of Nomura, would knowingly have signed a document recording that Mr Assaad had been appointed to a post in Qatar carrying the remuneration referred to in the May 2012 letter, without at least first having consulted the Human Resources Department and obtained their affirmation. The evidence which Mr Assaad gave as to his giving a verbal explanation to Mr Ghafour was not preceded by any witness statement or pleading or other document filed by him that contained an assertion to that effect.

25. We have referred already to the Directions issued by the Court requiring Mr Assaad to file a witness statement giving details of his claim. Further, at the close of the jurisdictional hearing the Court had explained clearly to him that he was required, in advance of the oral hearing on the merits of his claim, to file witness statements, including from himself. He failed to do so. At the hearing he stated that he "preferred to argue verbally", at one stage asserting that he had a right to do so. But, he has no such right. If, having been directed by the Court to file a witness statement, a party fails without good excuse to do so, the Court may decline to hear evidence which has not been anticipated or may give little or no weight to any unanticipated oral evidence given. In these circumstances we do not accept Mr Assaad's evidence that he explained the May 2012 letter to Mr Ghafour or, in any event, that he explained it sufficiently so that he could understand its full terms.

26. The signing of the May 2012 letter is said by Mr Assaad to have been preceded by an oral agreement with Mr Datani that he have two contracts, one for Dubai and one for Doha, but no evidence was adduced from Mr Datani. He likewise was a senior official

of Nomura. It would be remarkable if he made an appointment involving substantial additional remuneration for Mr Assaad without first having written authorisation from the Human Resources Department. The Nomura search for documents referred to above did not disclose any such authorisation.

27. Mr Assaad, as Public Relations Officer under the Dubai contract, had certain responsibilities in relation to Nomura's Qatar office, including communicating with the authorities in Qatar in relation to obtaining visas and residency permits and transmitting other information to those authorities. The May 2012 letter on its face is a communication to be sent to those authorities. It may be that Mr Gharfour was advised by Mr Assaad that his signature was required for a communication to the authorities. We do not accept that he was told that the communication included a reference to Mr Assaad's being appointed to an office with the remuneration stated in that letter. It may be noted in passing that the Immigration Regulations, whilst requiring the employer to provide certain information to the Immigration Office in relation to a sponsored employee, do not require information as to the employee's earnings (see Article 10). There is evidence that the Immigration Office at some stage received and granted an application for a residency permit for Mr Assaad; but the terms of that application and any documents in support of it are not before the Court.

28. In December 2015 Nomura prepared a draft employment contract for Mr Assaad and a draft side letter. The draft contract was a formal document setting out the proposed terms of Mr Assaad's employment by Nomura, at Nomura's Qatar office, with effect from 1 January 2016. The draft described his proposed role as Public Relations Officer. As with the January 2009 contract, the December 2015 draft contract envisaged Mr Assaad's signature to confirm formal acceptance. The draft side letter, dated 16 December 2016, and addressed to Mr Assaad, stated "You have entered into two employment contracts governing your terms of employment with (a) Nomura Dubai dated 28 January 2009…and (b) Nomura Qatar dated 16 December 2015". The draft side letter stated that Mr Assaad's base salary under the Nomura Dubai contract would be USD 22,000 and under the Nomura Qatar contract USD 43,000, a total of USD 65,000. The letter noted that the Nomura Dubai contract would be amended to record the change in base salary.

29. Mr Assaad was not aware of the draft contract or draft side letter until they were disclosed by Nomura in these proceedings. It appears that discussions concerning termination of Mr Assaad's employment altogether overtook completion of the proposed new arrangement.

30. Having assessed the totality of the evidence and the submissions thereon from Mr Assaad and Mr Francis, we are not satisfied that Mr Assaad has met the onus on him to establish the existence of a separate and additional contract of employment for work in Doha.

31. First, the evidence of the oral discussion with his superior was imprecise and provided no clear definition or certainty.

32. Mr Assaad's evidence as to the creation of the May 2012 letter must be viewed and assessed in light of the clear and uncontested information as to how Nomura went about dealing with employment matters. The January 2009 contract is detailed and demonstrates an ongoing practice which Mr Assaad accepted was in place. It is clear from the draft contract and side letter dated December 2015 that when Nomura contemplated two separate contracts- one for Dubai and one for Qatar- their approach as to formality was similar to that taken in relation to the January 2009 contract.

33. We are not satisfied that in some way in May 2012 Nomura adopted an entirely different, casual and sparsely documented approach to an employment issue.

34. Secondly, it is common ground that at no point from May 2012 until termination at the beginning of 2017 was any payment made under such an additional contract. Nomura's search for documents did not reveal any enquiry by Mr Assaad as to why he had not been paid under the alleged separate Qatar contract or any request that payment be made. Mr Assaad said that he agitated for action and at one point was given cash as a loan because he told his employer of a finance problem. He said they made an advance of something like USD 120,000. But we find it unbelievable that a man who is as experienced and articulate as Mr Assaad presented in giving evidence would have left unresolved an entitlement as great as this over such a substantial period of time.

35. Thirdly, it was apparent in evidence that Mr Assaad was of the view that his value to his employer was being insufficiently recognised in the remuneration he received under his Dubai contract. However, no evidence was proffered which made commercial sense of a more than doubling of his income in respect of work being undertaken in Qatar. From May 2011 onwards, Mr Assaad was never in this country for more than a few days in each year and certainly not resident in any meaningful sense. We accept that with modern technology physical presence is not essential but there was no evidence which explained or justified Mr Assaad receiving an additional salary greater than his normal salary, for his Qatar activity or otherwise.

36. In all the circumstances, we conclude that Mr Assaad has not proved that he is entitled to the relief he claims, and his claim therefore fails.

37. Mr Assaad in his statement of claim, filed 14 September 2017, sought in Section 3 paragraph 4 a certificate of experience. What exactly this meant has not been clarified.

38. In his response to the Defendant's defence, filed 30 October 2017, he sought in para 5(1)(e) "any additional or equivalent ex-aequo et bono found to be fit and fair by the Court".

39. In light of various submissions and assertions in the documentary material and during the two hearings it appears all of this has its foundation in a desire to have his name cleared from the consequences of his summary dismissal for gross misconduct.

40. In light of our conclusion that there is no stand-alone Qatar contract, issues of this sort can all arise out of his sole employment contract with Nomura which is subject to the jurisdiction of the DIFC Courts and we have no jurisdiction to consider the claims.

Costs

41. At the hearing neither party addressed us on costs. The Court's Regulations and Procedural Rules provides:

> "33.1 The Court shall make such order as it thinks fit in relation to the parties' costs of the proceedings.

33.2 The general rule shall be that the unsuccessful party pay the costs of the successful party. However, the Court can make a different order if it considers that the circumstances are appropriate."

Any order as to costs will be only of such costs as are reasonable in all the circumstances.

42. In this case Nomura was successful in its jurisdictional challenge as to Mr Assaad's claim in so far as based on matters truly within the jurisdiction of the DIFC Courts. It has also been successful in resisting Mr Assaad's claim in so far as based on an alleged separate Qatari contract. In these circumstances in accordance with the general rule Mr Assaad could be ordered to pay Nomura's reasonable costs. But the Court is entitled to make a different order if it considers that the circumstances are appropriate.

43. In these circumstances we shall direct that Nomura should first have the opportunity of making, if it sees fit, an application for reasonable costs. Any such application should be made in writing within 21 days of the date of this Order and should specify what order as to costs it seeks and, without undue elaboration, the basis for the order sought. A translation of any such application will be provided by the Court to Mr Assaad. Within 21 days of his receipt of that translation, Mr Assaad may make representations in writing to the Court as to what disposal as to reasonable costs he contends should be made. The Court will then consider the matter of reasonable costs.

By the Court,

Justice Bruce Robertson

Representation:

The Claimant represented himself.

The Defendant was represented by Mr Yacine Francis of Allen & Overy LLP (DIFC, Dubai).

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