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: [2022] QIC (F) 5

IN THE QATAR INTERNATIONAL COURT

FIRST INSTANCE CIRCUIT

12 April 2022

CASE No. CTFIC0019/2021

FADI SABSABI

Claimant

v

DEVISERS ADVISORY SERVICES LLC

Defendant

JUDGMENT

Members of the Court

Justice Frances Kirkham

Justice George Arestis

Justice Fritz Brand

ORDER

1. The defendant is directed to pay to the claimant:

   (a) The sum of QAR 65,000.00, and

   (b) Reimbursement of expenses incurred for

      i) Visa application fees in the sum of US$3,177.00, and

      ii) Immigration health surcharge fees in the sum of US$6,372.00

   (c) The reasonable costs of these proceedings to be assessed by the Registrar if not agreed.

2. The defendant's counterclaim is dismissed.

JUDGMENT

1. The claimant, Mr Fadi Abdul Sabsabi, a Lebanese National, is employed in the State of Qatar where he resides with his wife and two minor children.

2. The defendant, Devisers Advisory Services LLC is a company licensed according to the laws of the State of Qatar and in the Qatar Financial Centre to render professional consulting services related to visa applications. The defendant is part of an international concern with offices both in London and in Qatar.

3. By an agreement dated 16 December 2019 ("the Agreement") the defendant agreed to provide services for a total fee of QAR 75,000. The identity of the contracting parties to the Agreement is in issue, and is dealt with in detail below.

4. The claimant's case is that he entered into the Agreement. He would not have done so if he had been correctly advised by the defendant. He claims repayment of the total of QAR 65,000 which he paid to the defendant and the further expense he incurred, namely visa application fees in the sum of US$ 3,177.00 and immigration health surcharge fees in the sum of US$ 6,372.00.

5. The defendant denies liability and counterclaims the sum of QAR 10,000 being the balance due to it under the Agreement, the claimant having paid QAR 65,000.

6. From the outset neither party has had legal representation. The pleadings, witness statements and other documents filed on both sides bear the hallmark of lack of legal training and experience.

7. The Court conducted a remote hearing (due to practical difficulties created by the Covid-19 pandemic) on 28 February 2022. At the hearing the claimant represented himself, while the defendant was represented by Mr Zohaib Ahsan and Mr Rivan Mouhamad. The claimant gave evidence on his own behalf and also called Mr Kamal Fadlelmola to give evidence. The only witness called on behalf of the defendant was Mr Muhammed Irfan Shahid who practices as an accountant in London.

Background

8. The claimant and his wife decided to seek nationality in the United Kingdom (UK) or, in the claimant's words, UK passports, for them and their family. For that purpose, the claimant consulted the defendant at its offices in Doha where he met representatives of

the defendant, including Mr Mohammed Nadeem. Mr Nadeem gave the claimant information and advice about the UK immigration requirements.

9. The claimant puts his case in his claim form as follows:

> *"1. Claimant and defendant have entered into an Immigration Service Agreement signed on 16 December 2019 (the agreement).*
>
> *2. In performance of the agreement defendant has consulted and assisted claimant to apply for immigration visa and then for UK nationality with his family.*
>
> *3. Defendant has advised that only main applicant must reside at the UK for six months per year where dependents should only reside in the UK for three months per year. In several discussions and occasions defendant has assured that under the UK laws and regulations, dependent applicants are not required to reside in the UK for six months in order to be eligible for the nationality.*
>
> *4. Based on the advice and confirmation of defendant, the claimant took a decision to commence the process with the assistance of defendant and opened a company branch in the UK which as per the advice of the defendant will support the application of claimant and his family.*
>
> *5. Parties have agreed that advisory fees will be paid in three stages. Claimant has honoured his obligation and paid the advisory fee of QAR65,000.00 until date.*

6. *However now after opening a company branch and applying for the visa and incurring plenty of governmental and administrative expenses and fees and having to travel to the UK and incurred numerous expenses for claimant and his family, and paying the advisory fees, claimant was surprised to know that both main applicant and dependents to reside in the UK for six months per year and the regulations in this regard have never changed. It is of no doubt that defendant has deceived him and provided him with a false advice."*

10. The defendant denies liability. Its case is that

(a) The claimant has no standing to bring this claim as it was his wife, not the claimant, who was party to the Agreement pursuant to which the defendant was to provide the immigration services. Mrs Sabsabi is not a claimant in these proceedings.

(b) The defendant did provide the services it had undertaken to provide.

(c) There were no grounds on which the claimant was entitled to withdraw from the Agreement. The Agreement provided that the claimant would not be entitled to a refund of the money he had paid if (as was the case) he withdrew from the Agreement.

(d) There is nothing in the Agreement regarding advice as to the period during which the claimant would have to reside in the UK.

(e) The claimant was aware of the residency requirements as stated on the defendant's website, namely that "*after the completion of successful 5 years on*

the visa, the visa holder can apply for permission to settle permanently in the UK."

(f) The declaration in the Agreement which the claimant signed on behalf of his wife "*certified the validity of the information*" which the defendant had provided.

(g) The claimant's motives for entering into the Agreement have not been proved. That motive was "hidden".

11. The defendant makes a counterclaim. It asks the Court to require the claimant to pay "*the outstanding amount of QAR 10,000 … due to the withdrawal from the signed agreement on his own will and according to the agreement between the parties".* The defendant refers to the provision in the Agreement which "*stipulates the Client is liable to pay full services charges or fees agreed to Devisers Advisory Services LLC in case of withdrawal from the signed agreement after the visa application to the authorities*." The defendant seeks payment of QAR 10,000 "*for revoking and/or withdrawing the agreement from his side and on his own will*".

12. The allegations contained in the claimant's claim form were elaborated upon by the claimant in his witness statement and his oral evidence. In summary, he explained that, before the Agreement was entered into, he met Mr Nadeem and Mr Mohammed Luqman at the offices of the defendant in Doha. Mr Nadeem advised him that the main applicant for a business visa in the UK would have to stay in the UK for at least 90 days per year while there was no requirement for dependents to stay in the UK at all. That arrangement would be possible for the claimant and his family: he could not reside in

the UK for 90 days a year, because of his work in Qatar, but this would be possible for his wife. He therefore agreed with the defendant's suggestion that his wife be identified as the main applicant for a "Sole Representative of Overseas Business Visa" (i.e., a business visa), and that he and their children would be her dependents. Mr Nadeem then provided a written agreement which the claimant signed at the meeting with Mr Nadeem. The Agreement recorded Mrs Sabsabi as the main applicant and party to the Agreement. The claimant signed it. It was dated 16 December 2019, i.e., the date of the claimant's meeting with Mr Nadeem.

13. After the visa had been obtained the claimant went to London in November 2020 to arrange for the start-up of a business in the name of his wife in accordance with the requirements of the visa. He then visited the offices of the defendant in London where he met an employee by the name of Kate. Kate told him that, even as a dependent, he would have to stay in the UK for a minimum of 90 days per year. The claimant said he was upset by this news because it was directly contrary to what he had been told by Mr Nadeem and which had been confirmed by another employee of the defendant at a time, namely Mr Luqman. In consequence he sent the following email to Mr Nadeem and Mr Luqman on 28 November 2020:

> *"Dear Nadeem and Luqman*
>
> *I just finished my meeting with Kate, she was no nice and helpful. She told me that I have to stay also in UK for minimum 90 days. I remember during our meetings you told me that only the main applicant must stay for a minimum of 90 days not the rest of the family.*

Kate asked me to double check with you.

I can't stay in UK for 90 days because of my work in Qatar. Please confirm."

14. When he received no response to this email, the claimant explained that he started sending WhatsApp messages to Mr Nadeem and Mr Luqman along the same lines. Eventually he received a response from Mr Luqman stating that, after Brexit, the laws in the UK had changed and that a dependent now had to stay in the UK for at least three and a half months per year, failing which he would not qualify for permanent residence after five years and eventually for nationality. He then realised, he said, that there was something drastically wrong with the advice he had received from the defendant's representatives. In consequence he consulted a lawyer specialising in immigration affairs in London who advised him that (a) both the main applicant and dependents would have to reside in the UK for at least six months per year and that (b) these regulations had not changed at material times.

15. On the face of it, there is a contradiction in the claimant's version in his claim form, on the one hand, and his evidence on the other. Whereas the representation according to his claim form was that the main applicant had to stay for six months per year and a dependent for three months, his evidence was that he had been told by Mr Nadeem that the main applicant had to stay for ninety days (or three months) per year and there was no requirement that dependents had to stay in the UK at all. When asked about this at the hearing the claimant explained that different representations had been made to him by the defendant's employees on different occasions. On the first occasion he was told that there was no residential requirement for dependents while he was told on a later occasion that it was ninety days. But both representations were wrong. The true

requirement, as the claimant subsequently discovered from Kate and immigration lawyers, was that a dependent, in the same way as the main applicant, must stay for a minimum period if he or she eventually wanted to apply for a British passport, which was the whole purpose of the visa applications from the outset. Had this been known to him, so the claimant said, he would never have entered into the Agreement with the defendant, or incurred the incidental costs, because the visas would be of no use to him.

Jurisdiction

16. As set out in detail below, the Agreement dated 16 December 2019 is relevant to this case. Clause 4 provided:

> "*These terms and conditions shall be governed and interpreted in accordance with the laws of England and Wales and/or Qatar and the parties submit to the exclusive jurisdiction of the English courts and/or Qatar courts*."

Both the claimant and defendant have proceeded on the basis that this Court has jurisdiction to deal with the claimant's claim and the defendant's counterclaim. The need for interpretation of the clause was avoided by an agreement between the parties at the start of the hearing that this Court has jurisdiction to determine their disputes and that the applicable legal system is the law of the State of Qatar: more specifically, in the context of a case involving a QFC licensed company, the laws and regulations of the QFC. There is therefore no need for us to construe the wording of clause 4.

The misrepresentation claim

17. We consider first the claimant's claim that Mr Nadeem and others gave him incorrect information as to the residency requirements.

18. The claimant's version as to the advice he received from Mr Nadeem (and as set out above) was confirmed, to an extent, by his witness Mr Kamal Fadlelmola. Mr Fadlelmola said that he visited the offices of the defendant with the claimant on an occasion after the Agreement had been signed. The purpose of his visit, he explained, was for him to obtain UK nationality through the same process as the one adopted by the claimant. On that occasion, so he testified, Mr Nadeem gave his advice that dependents of an applicant for a business visa were not required to reside in the UK at all while the main applicant only had to reside in the UK for ninety days.

19. The defendant 's first answer to the claimant's case is that he had failed to establish the representation by the representatives of the defendant on which his case relies. We do not believe this answer can be sustained. The claimant gave evidence under oath that the representations had been made. It is true that he gave two different versions about the contents of these representations. But he explained this discrepancy and there is no reason why his explanation should not be accepted. Moreover, his version as to the advice he received from Mr Nadeem and Mr Luqman at the outset is borne out by the contents of the email that he sent to them at the time when he received advice to the contrary by another employee of the defendant and the complete absence of any denial of these allegations in the WhatsApp messages by these two gentlemen to him that followed the email. The claimant's version is also supported by Mr Fadlelmola. It is true, as pointed out by defendant, that the meeting attended by Mr Fadlelmola happened

after the Agreement had been signed. But the obvious point is that the same advice was given by the same individuals which turned out to be wrong.

20. The defendant has not denied the claimant's case as to what he claims to have been told by the defendant's staff. In cross-examination it was never suggested to the claimant or his witness that their evidence was not true. The defendant chose not to call Mr Nadeem to give evidence, though it was admitted by the defendant's representatives that Mr Nadeem was still employed by it.

21. As set out earlier, the claimant's evidence is that another employee of the defendant known to him as Kate also told him that the business visa entailed a residency requirement for dependents, albeit a shorter one, that he could in any event not comply with. Again, the defendant did not call Kate as a witness and gave no explanation for its failure to do so.

22. Although the claimant's evidence was that an immigration lawyer in London had told him that the information which the defendant had given had been incorrect, he gave no detail at all to substantiate that. However, the defendant did not challenge this. If it had considered that the information said to have been conveyed to the claimant by the immigration lawyer in London was not correct, we can think of no reason why it would not have dealt with that point.

23. We found the claimant to be a credible witness. In any event, the clear position is that the claimant's version of events stands unchallenged.

24. Neither party has called evidence as to the actual residence or other requirements to enable a person to put himself into a position where he might be able to apply for "a British passport". We make no finding as to the actual requirements. What is however, clear is that the defendant has not challenged the claimant's understanding of the requirements, and the defendant's own employee Kate confirmed to the claimant that the advice which the defendant had given him before he entered into the Agreement had been incorrect.

25. The claimant's case is that if he had been given the correct advice he would not have gone ahead with visa applications, formation of a company and so on. When he discovered the true position, namely that he would have to spend significant periods of time in the UK, which he was unable to do because of his work commitments in Qatar, he decided not to proceed.

26. The defendant has challenged the claimant's reasons for not proceeding with his plans. It called Mr Shahid to give evidence. Mr Shahid could not comment on the alleged representations made to the claimant or the alleged inaccuracy thereof. His evidence was aimed at showing that the claimant decided to abandon his project, not because of any residence requirements, but because of the difficulties that he and his wife encountered, for example, in meeting the regulatory requirements of setting up and maintaining her proposed consultancy business in the UK. But Mr Shahid's evidence amounted to no more than an inference which he drew from the difficulties he surmised that the claimant had encountered. There was no evidence to support those assumptions. We do not believe it justifies the rejection of the claimant's direct evidence that his abandonment of the project was motivated by the fact that he could

not meet the residency requirement. After all, his version appears to be supported by the inherent probabilities arising from undisputed facts: he is employed in Qatar and he cannot leave his employment even for 3 months per year, that is why his wife was the applicant in the first place. That rendered the visa of no use to him. The fact that the claimant may have had some difficulties in meeting the regulatory requirements as well does not detract from these probabilities. On balance, we accept the claimant's evidence that he decided not to proceed when he discovered the onerous residence requirements.

The Agreement of 16 December 2019

27. This Agreement is said to be between the defendant and "the client listed in schedule 1". It includes the following which are relevant to this case:

The introduction states that the defendant "*offers services to applicant to apply Visa to enter THE UK UNDER SOLE REPRESENTATIVE OF OVERSEAS BUSINESS VISA*". "*The client has requested Devisers Advisory Services LLC in this and attached documents."*

"B The client appoints Devisers to provide such assistance for them. IT IS RECORDED:

1 the client appoints DEVISERS for immigration services to assist the client to apply for the Visa mentioned above.

2 DEVISERS will act on client's instructions and will provide all legal advice and services with best endeavors to obtain the Visas for the client and their dependent, if any, as per schedule 1."

Clause 4 states that the fee payable is set out in schedule 3.

Clause 5 states "*If the client revokes this Agreement or changes his/her mind or found to (sic) a criminal record after signing this Agreement, then DEVISERS shall nevertheless be deemed to have performed its services satisfactorily*".

The Terms of Business include the following:

"1. You are automatically bound by the terms of this application process after you have paid an initial deposit of the total fees or have accepted by signing DEVISERS application form. …… you will be liable to pay full service charges or fees agreed in case of withdrawal of submission of application.

…

4. These terms and conditions shall be governed and interpreted in accordance with the laws of England and Wales and/or Qatar and the parties submit to the exclusive jurisdiction of the English courts and/or Qatar courts.

5. "*We attempt to ensure that the information on DEVISERS website and other stationary (sic) at any time is accurate. We also attempt to provide correct information at the time of advice. However, we will not be held liable for any changes made by immigration authorities towards any visa application process."*

28. Schedule 1 states that Main Applicant 1 is Rania Chamsine EP.Fadi Sabsabi.

29. Schedule 2 sets out the detail of the services which the defendant agreed to provide. This includes a section headed "*After Visa Services*" in which the defendant undertook to give advice on "*requirements of obtaining leave to remain in the UK and/or nationality two or three- or five-years route*". This cryptic reference to time periods must be understood in the light of the defendant's advice to would-be applicants, which appears from its documentation, that this kind of visa allows the holder to stay in the UK for an initial period of three years and that "*you can extend your visa for another period of two years*" and that "*after you have completed five years you can apply for permission to settle permanently in the UK*".

30. Schedule 3 noted that the fee was QAR 75,000, payable in three tranches: QAR50,000.00 payable upon signature of the contract; QAR15,000.00 when the visa is granted and QAR10,000.00 when the visa is extended.

31. The Agreement contained a section headed Declaration. This stated: "*You must read the declaration and sign it. It is mandatory to sign the declaration below. The Application will be invalid if it is not signed as specified.*

"I/We hereby apply for an immigration application for myself/ourselves and dependents, if any." …

32. Under the heading "Contract Acceptance" the Agreement contains "*I/we Ms Rania Chamsine EP.Fedi Sabsabi hereby accept the services offers by DEVISERS on the terms set out above and in DEVISERS Terms of Business. Applicant/Client OR for and on behalf of Main Applicant*."

33. The Agreement shows the claimant's signature.

34. This is followed by the declaration which states "*Ms Rania Chamsine EP.Fedi Sabsabi….have hired DEVISERS ADVISORY SERVICES LLC by signing an agreement to assist me/us for my SOLE REPRESENTATIVE OF OVERSEAS BUSINESS VISA. .... I am/we are bound by the Terms and Conditions of DEVISERS ADVISORY SERVICES LLC after signing an agreement for my/our visa application process and paid initial deposit…*"

35. Below the words: *"Applicant(s)/Client(s) Signature OR on Behalf of the Main Applicant*" the claimant signed his name.

Is the claimant entitled to bring this claim?

36. The claimant's explanation as to how it came about that he entered into the Agreement in the name of his wife and not in his personal capacity stands uncontroverted. When he consulted Mr Nadeem he explained that he was bound by his employment to stay in Doha and so could not be the main applicant. The claimant's evidence was that Mr Nadeem understood from the start that he was acting on his own behalf and that he was, in fact, the contracting party who accepted all the obligations under the contract with

the defendant. The claimant says that the only reason his wife was nominally referred to in the contract as the client was because of Mr Nadeem's advice that his wife should be the main applicant. That is why in both the Agreement and the business visa application Mrs Sabsabi is indicated as the applicant for the visa, with the claimant and their two minor children applying for visas as her dependents. This is not denied by the defendant and there is no evidence from Mr Nadeem as to what his understanding was.

37. The contract provided in substance that the claimant required the defendant to provide, and the defendant did agree to provide, the services to his wife as the main applicant and to him and their two children as dependents. That was the parties' clear intention and the clear purpose of the Agreement. And that is what in fact happened: the defendant did provide the services to the whole family.

38. As set out above, many of the provisions and terms of the Agreement recognise that their services are to be provided both to the person identified as the main applicant and to other family members. The use of phrases such as "*I am/we are bound by the Terms and Conditions…"* and *"I/We hereby apply for an immigration application…."* indicate that the defendant acknowledged that the benefit of the Agreement was for Mrs Sabsabi and the claimant and their family.

39. We conclude that the fact that Mrs Sabsabi was shown as the contracting party is not definitive. We should give effect to what was clearly the true intent of the Agreement, namely that the defendant would provide services to the claimant and his family in, what the defendant had advised, would be the most advantageous way for the whole family. As Mr Nadeem must have well understood, the claimant signed the Agreement

on the basis that the defendant would provide services to him and his family, with (nominally) his wife shown as the main applicant for the reasons advanced by the defendant. The defendant, through Mr Nadeem, knew that this was the reality.

40. As the defendant acknowledges in bringing its counterclaim, the reality was indeed that the claimant undertook and was responsible for the family's obligations under the Agreement. Indeed, as Mr Nadeem must have known, the claimant paid the initial tranche of the defendant's fee on signature of the Agreement.

41. That this is the reality of the arrangement is supported by the terms of the defendant's own counterclaim, which the defendant has made against the claimant personally and is based on the provisions of the same Agreement which forms the basis of claimant's case. The defendant cannot both argue that the claimant is not a party to the Agreement and claim that the claimant is indebted to it pursuant to the same Agreement.

42. The claimant is entitled to bring this claim.

43. We conclude that it was not necessary that Mrs Sabsabi sign the contract instead of or in addition to the claimant himself, or that this claim should have been brought by her rather than by the claimant.

44. Closely linked to this is the further argument raised by the defendant that there is no evidence about Mrs Sabsabi's motivation for entering into the contract or about her attitude towards the cancellation thereof. That is true. But once it is held, as we do, that the true contracting party was the claimant and not Mrs Sabsabi, her motivation and attitude towards the cancellation of the contract are irrelevant.

The defendant provided the services

45. It is not in dispute that the defendant did provide the services which the Agreement required. Mrs Sabsabi was treated as the main applicant and the claimant and their two children were treated as her dependents. Visas were obtained for the whole family and the defendant arranged the formation and registration of a company (described as a branch office) in the UK. The whole family used the visas to enter the UK.

46. However, the claimant's case is not that the defendant has failed to perform its part of the bargain. His case is that he is entitled to set the Agreement aside and to claim both restitution and damages by reason of the fact that he was induced to enter into the Agreement by a material misrepresentation on the part of the defendant's representatives.

Is the defendant entitled to rely on the provisions of clause 5 of the Agreement?

47. The defendant also relies on the provisions of clause 5 of the Agreement in defence to the claim. It submits that the declaration contained in the Agreement "*certifies the validity of the information provided by the Defendant to the Claimant*". We conclude that that provision does not provide any defence to the claim which the claimant makes in this case, because:

> the claimant is not contending that information on the defendant's website or stationery was inaccurate;

the clause states only that the defendant will attempt to provide correct information at the time that advice is given: it does not suggest that it is entitled to avoid liability for incorrect advice; and

as stated above, and as confirmed by the defendant's own Kate, there was no change made by immigration authorities relevant to this case.

Misrepresentation

48. The relevant legal principles regarding misrepresentation are to be found in article 35 of the QFC Contract Regulations No. 4 of 2005. It reads, with admirable brevity:

"1. *A party may avoid the contract when it has been led to conclude the contract by a material misrepresentation by the other party.*

2. Misrepresentation is an inducement to enter into a contract by a statement which is misleading."

49. On the evidence presented by claimant which stands uncontroverted he has succeeded, in our view, to show that

(a) representatives of the defendant had made representations to him as to residency requirements;

(b) the representations were material given the claimant's personal circumstances;

(c) the representations were incorrect on the facts of the present case and thus misleading as set out in article 35;

(d) the claimant was induced by the misleading representations to enter into the Agreement with the defendant;

(e) when the claimant discovered that the representations were incorrect and that he would not be able to position himself whereby he and his family could apply for British passports, he chose to seek to set aside the Agreement and claim back the sum he had paid to the defendant.

50. We conclude that the claimant was (i) entitled to set the Agreement aside and (ii) entitled to succeed in his claim for repayment of the QAR 65,000 he paid to the defendant.

The claimant's loss

51. For the reasons set out above we conclude that the claimant is entitled to be repaid the QAR 65,000 he paid to the defendant.

52. The defendant did not challenge the claimant's claim that he had incurred further expense, namely visa application fees in the sum of US$ 3,177.00 and immigration health surcharge fees in the sum of US$ 6,372.00. We accept that the claimant incurred those fees and did so only because these formed part of the expense he would have to incur to achieve his aim of putting himself into a position where he could apply for British passports for himself and family. If he had not been induced to enter into the Agreement with the defendant he would not have incurred those expenses. We

conclude that he is entitled to be paid an equivalent sum by way of damages arising out of the misleading representations.

The defendant's counterclaim

53. It follows from the conclusions we have reached, as to the claimant's claim and his entitlement to be reimbursed the QAR 65,000 he paid to the defendant, that the defendant's counterclaim fails.

54. These are our reasons for the Order.

By the Court,
[signed]

Justice Frances Kirkham

A signed copy of this judgment is held with the Registry

DIGITALLY SIGNED AND VERIFIED
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