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 QATAR INTERNATIONAL COURT

FIRST INSTANCE CIRCUIT

Neutral Citation: [2022] QIC (F) 7

12 May 2022

CASE No. CTFIC0007/2022

BETWEEN:

ARWA ZAKARIA AHMED ABU HAMDIEH

Applicant

v

QATAR FIRST BANK LLC

Respondent

JUDGMENT

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

ORDER

1. Summary judgment is granted in the following terms:

1.1. The respondent is directed:

(a) to facilitate the renewal of the applicant's QID which expired on 3 September 2021;

(b) to issue and provide the applicant with a new and valid No Objection Certificate (NOC) in accordance with the Immigration Department's rules;

(c) to provide the relevant authorities with a copy of the respondent's valid company licence and computer card with the signatory of the NOC matching the authorised signatories on the respondent's computer card;

(d) to remove any notices issued by the respondent to the authorities that would prevent the completion of the sponsorship transfer;

(e) to complete the respondent's section of the online application for the sponsorship transfer on the Ministry of Labour's portal;

(f) to execute the transfer application documents as per the Immigration Department's requirements;

(g) to provide the Ministry of Labour and/or the Immigration Department with any further information and/or documents requested by those authorities to successfully complete the sponsorship transfer.

1.2. The costs of the summary judgment application together with:

(a) The applicant's claim for reimbursement of fines imposed by the authorities resulting from the expiration of her QID; and

(b) her claim for damages for loss of income and benefits,

are to stand over for determination after the hearing contemplated in 2 below.

2.

(a) The hearing for the determination of the outstanding issues is set down for Monday 27 June 2022.

(b) Both parties are to file their witness statements and the documents they will seek to rely on by no later than Sunday 29 May 2022.

(c) The applicant (as claimant) is to file her final submissions for the hearing by no later than Sunday 12 June 2022.

(d) The respondent (as defendant) is to file its final submissions for the hearing by no later than Sunday 19 June 2022.

JUDGMENT

1. This is an application for summary judgment. The Applicant (the claimant in the main proceedings) is Ms Arwa Zakaria Ahmed Abu Hamdieh, a Jordanian national who resides in the State of Qatar. The respondent, Qatar First Bank LLC, is established in the Qatar Financial Centre. The issues arising for determination will appear from the background that follows.

2. In terms of an agreement entered into between the parties in June 2020 the applicant was employed by the respondent as its head of legal and compliance and its board secretary from 8 June 2020. With effect from 16 August 2021 her employment was terminated by the respondent in accordance with the terms of the employment contract. It is accepted by the applicant that she received all the benefits she was entitled to upon termination. Her complaint is that the respondent had failed to complete the process of transferring her residency sponsorship after the termination of her employment on 16 August 2021.

3. In substantiating her complaint, the applicant contended in her statement of claim that:

(a) Although a No Objection Certificate (NOC) by the previous employer for transfer of sponsorship to a new employer is no longer required by the authorities as a matter of course, the Ministry of Labour informed her that since the respondent had previously submitted a letter of objection to her transfer, the Ministry called for a NOC from her as a precondition for transferring her sponsorship to a new employer.

(b) Initially the respondent refused to issue her with a NOC but it was eventually persuaded to do so through the intervention of its external counsel. But the Ministry required the respondent's computer card in order to identify the signatory of the NOC as one of the

authorised signatories. The respondent then refused to provide her with the computer card. In the meantime, the NOC which was valid for 30 days only, had expired and the respondent refused to issue her with a new one.

(c) During the period of delay in the transfer of her sponsorship, the applicant's QID had also expired and the respondent refused to facilitate the renewal of her QID because she was no longer in its employment, although she remained under the respondent's sponsorship.

(d) Because she was no longer in possession of a valid NOC or QID, the applicant is precluded from starting her employment contract with her new employer.

4. In consequence, the applicant's statement of claim proceeded, she has suffered a loss of income and benefits in an amount of QAR 440,000.00 as a result of the delay in the transfer of her residency sponsorship. On this basis the applicant claimed the following relief:

(a) An order directing the respondent to take all necessary steps and actions to complete the transfer of her residency sponsorship to her new sponsor/employer without delay or further obstruction.

(b) An order directing the respondent to pay all governmental fines resulting from the delay in the renewal of her QID.

(c) Payment of damages in the sum of QAR 440,000.00 for the loss of income and other benefits suffered through the delay in the transfer of her sponsorship.

(d) Her expenses occasioned by these proceedings.

5. According to the respondent's statement of defence, its answer to these claims is broadly as follows:

(a) The applicant has received all service benefits that she was entitled to upon termination of her employment.

(b) The respondent has done everything possible to facilitate the transfer of the applicant's sponsorship to her new employer, but she has consistently failed to provide it with the identity of her new employer. In addition, the applicant has done everything she could to delay the transfer process.

(c) In terms of Article 16 of the QFC Immigration Regulations the applicant does not need a NOC for the transfer of her sponsorship to her new employer.

(d) The respondent has in any event issued the applicant with a NOC. It refused to provide the applicant with the computer card identifying its authorised signatories because of its policy to do so only in exchange for a computer card by the new employer, which it never received.

(e) The respondent has established from the Government relations officer that the expiry of the applicant's QID does not preclude her from transferring her sponsorship to her new employer.

6. In the application for summary judgment subsequently filed by the applicant, her claim is confined to a prayer directing the respondent (a) to take all necessary steps and actions to complete the transfer of her sponsorship to her new employer; and (b) directing the respondent to pay all Governmental fines resulting from the delay in the renewal of her QID. It follows

that even in the event of this application being successful, the applicant's damages claim will stand over for determination at a trial in the normal course.

7. The respondent's first answer to the summary judgment application is of a procedural nature, namely that the applicant has failed to comply with Article 4 of the Practice Direction No. 2/2019 of this Court which governs applications for summary judgment. The respondent's second answer relies on the merits of its defence to the claim as formulated in its pleadings.

8. Preceding the hearing of the application the applicant was pertinently asked by this Court to identify the steps she requested the Court to order the respondent to take. Her answer was as follows:

"I request the Court to order the respondent to undertake the following actions and steps to complete the sponsorship transfer.

- Renew my QID and pay the relevant fines since the expiration of the QID.
- Issue and provide the applicant with a new and valid No Objection Certificate (NOC) in accordance with the Immigration Department's rules which requires the NOC to be dated no later than 30 days from the date of the intended sponsorship transfer.
- Provide the applicant with copies of the respondent's valid company licence and computer card with a signature of an authorised signatory matching the authorised signatories on the respondent's computer card.
- Remove any notices issued by the respondent to the Ministry of Labour and/or the Immigration Department that would prevent the completion of the sponsorship transfer.

- Complete the respondent's section of the online application for the sponsorship transfer on the Ministry of Labour's portal.

- Execute the transfer application document as per the Immigration Department's requirements.

- Provide the Ministry of Labour and/or the Immigration Department with any further information and/or documents requested by those authorities to successfully complete the sponsorship transfer."

9. At the same time the respondent was asked by this Court:

"(a) Does the respondent accept that it owes/owed legal duties to the applicant with respect to the transfer of residency sponsorship?

(b) If so, what are/were these duties?

(c) What particular steps did the respondent take to fulfil any such duties?"

10. Its response was as follows:

"• Respondent does not owe the employee any obligations regarding transfer of sponsorship.

- Respondent fulfilled all contractual and legal obligations regarding the claimant's end of the employment.

- Respondent provided the claimant with the full end of service settlement, more than three months of grace period and an NOC.

- The legal duties of the employer (respondent) involve only the full co-operation (upon the request) with authorities regarding employees failing to leave the country after termination on any criminal or security proceedings involving these employees."

11. The hearing of the matter was conducted virtually on Sunday 25 April 2022. At the hearing the applicant, who is a trained lawyer, appeared in person while the respondent was represented by Ms Maysa Sleiman and Ms Sherouk Abdallah of the Hamad Al Yafei law firm. The arguments presented at the hearing essentially comprised an elaboration of what was said by the parties on their pleadings and their written submissions filed before the hearing. Of significance was the denial on behalf of the respondent that it ever filed an objection to the transfer of the applicant's sponsorship with the relevant authorities.

12. In considering the opposing contentions we deal first with the procedural objection raised by the respondent. Its argument in support of this contention was that on a proper interpretation of Article 4 of the Practice Note 2/2019, it requires the application for summary judgment to be accompanied by a witness statement deposed to by someone other than the applicant which (a) shows that the claim and the application have been properly served; and (b) confirms the truth of the grounds on which the application relies. Insofar as the interpretation contended for requires a statement by someone other than the applicant, we do not believe it can be sustained. But we agree that on a proper construction the Article does require a witness statement separate from the standard application form to be filed by the applicant. After all, the application form itself could hardly confirm its own service on the respondent.

13. The applicant's explanation for her failure to file a separate witness statement was that she understood the application form itself to satisfy the requirement. In support of her understanding, she referred to the statement in the last paragraph of the standard form immediately above her signature that: "*I believe that the facts stated in this Application Notice are true and I acknowledge and understand the points listed above*". It is true, she said, that there is no statement in confirmation of service, but she thought that service would not be a problem in that it had been effected in compliance with the directions by the Registrar of this Court.

14. In the circumstances we believe that, although the applicant had failed to comply with the requirements of Article 4, the shortcoming should be excused. The statement at the end of the standard application form did in fact confirm the grounds of the application. Although the statement did not confirm service, the respondent plainly received proper notice of both the claim and the application. Finally, the respondent did not suggest that it had suffered any prejudice in consequence of the procedural shortcomings and we can think of none.

15. Turning to the merits of the application we do not agree with the respondent's contention that it did not owe the applicant any obligation regarding transfer of sponsorship. As we see it this contention is in direct conflict with Article 10 of the QFC Employment Code, relied upon by the applicant, which provides in express terms that "*employers must take all steps necessary to permit their employees, whether sponsored or not, to transfer to another employer in the State, whether in the QFC or not*". That obligation extends beyond the termination of the relative employment contract.

16. As to the NOC, the respondent's answer that it had already provided the applicant with one, is not calculated to produce a solution to the applicant's problem that the NOC previously provided had lapsed. It also begs the question as to why the respondent could not provide the applicant with a new one. If it was willing to do so once, why would it be unwilling to do so again? The respondent's answer seems to be that the applicant only has herself to blame for allowing the NOC to lapse. The applicant denies that this is so. The reason for the delay which caused the NOC to lapse, she contends, is because the respondent refused to provide the Ministry with its computer card which would establish the authority of the person who signed the NOC.

17. It is not denied by the respondent that it refused to provide the required computer card. As a matter of policy, the respondent contended, it is only prepared to do so in exchange for receiving the computer card of the new employer. The reason for the policy advanced by Ms Sleiman in argument was that it arose from the respondent's concern that the departing employee may take up employment with another bank or similar entity operating in competition with it in contravention of the post-termination restrictive covenant in the employment contract. It therefore wanted to know the identity of the prospective transferee of the sponsorship so that it was alerted to the nature of its business and guard against a breach of that covenant. The applicant, who was the head of the respondent's legal department, denied that this policy ever existed. We are not in a position to resolve the dispute of fact thus arising. But we find it unnecessary to do so. On the face of it we can find no logic in the reason advanced for the policy. Why the provision of the transferee's computer card is required for that purpose is not clear to us. It may amount to an ulterior and illegitimate reason for an employer to comply with its obligations under the QFC Employment Code. But be that as it may, now that the identity of the applicant's new employer has been disclosed to the

respondent, the underlying reason behind the alleged reason no longer seems to find application in this case. At this stage we cannot and do not finally exclude the possible existence of the policy contended for, or that there may be some valid reason for such policy. These issues may be of great importance when we have to decide the validity of the applicant's damages claim. But at this stage we believe that the balance of convenience favours a decision that the respondent should provide the computer card required by the Ministry.

18. The further dispute about the NOC is whether it is required by the Ministry at all. As stated by way of introduction, the applicant's contention is that although the NOC is normally not a requirement for the transfer of sponsorship, it is required by the Ministry in her case because of an earlier objection to the transfer of her sponsorship filed with the Ministry by the respondent. This is denied by the respondent. Again, the dispute thus arising cannot be resolved at this stage. But we believe we can decide the present application without doing so. When it comes to the damages claim it may become necessary to resolve these issues. But at this stage we believe that the applicant has shown that she will suffer substantial prejudice through the respondent's failure to provide her with a new NOC. By contrast, the respondent has not shown any potential prejudice if it should be directed to do so.

19. More or less the same considerations apply with reference to the applicant's QID. It is not in dispute that the applicant's QID had lapsed. The dispute arises from the applicant's contention that it happened because of the respondent's failure to facilitate the transfer of her sponsorship. We are not in a position to resolve that dispute at this stage. It will probably be centre to the applicant's damages claim. But suffice it in our view to find in this application that it will cause no harm to the respondent if it were to be directed to facilitate the reissue of the applicant's QID while the refusal of the relief will cause the applicant considerable harm.

20. What remains to be decided is the form of the relief to be granted. In the application for summary judgment the applicant disclosed for the first time that her new employer is Professional Security Services Company LLC and that she was seeking to transfer her sponsorship to this company. She also seeks an order, however, that the respondent be directed to facilitate the transfer of her sponsorship to any other employer of her choice. The reason she advanced for the blanket order is that her present employment contract may fail due to further delays in the transfer of her sponsorship. We do not find it appropriate however to grant a blanket order of this kind. If her new employment happens to fail, the applicant will at least have the precedent of the order we propose to grant in this case. The applicant also seeks an order that the respondent be directed to pay all fines resulting from the delay in the renewal of her QID. We do not believe however that the applicant is entitled to summary judgment for the reimbursement of these fines. As we see it, this relief is bound up with the issue as to who is to blame for the delay in the transfer of the applicant's sponsorship, which is an issue we will have to decide when determining the applicant's claim for damages.

21. These are the reasons for the order we propose to make.

By the Court,

[signed]

Justice Fritz Brand

A signed copy of this Judgment has been filed with the Registry

Representation:

The applicant represented herself.

The respondent was represented by Ms Maysa Sleiman and Ms Sherouk Abdallah of Hamad Al Yafei Law Firm, Doha, Qatar.

DIGITALLY SIGNED AND VERIFIED
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