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) 12

IN THE QATAR INTERNATIONAL COURT

FIRST INSTANCE CIRCUIT

Date: 17 July 2022

CASE No. CTFIC0026/2021

ADIL BASHIR AHMED

Claimant

v

360 NAUTICA LLC

Defendant

JUDGMENT

Members of the Court

Justice Arthur Hamilton

Justice Fritz Brand

Justice Helen Mountfield QC

ORDER

1. The Defendant shall pay to the Claimant the sum of FOUR HUNDRED AND FIVE THOUSAND, FIVE HUNDRED AND NINETY-ONE QATARI RIYALS (QAR 405,591).

2. Failing payment in full of the foregoing sum within Twenty-One days of the issue of this judgment, the Claimant shall further be entitled to recover from the Defendant interest on any outstanding sum at the rate of seven per cent per annum from that date until payment.

3. The Claimant is entitled to recover from the Defendant such reasonable costs, if any, as he has incurred in raising and pursuing this action, including such costs, if any, as he incurred in resisting the Defendant's challenge to the Court's jurisdiction, such costs if not agreed to be assessed by the Registrar.

JUDGMENT

1. The Claimant and Dr Tejinder Singh ("Dr Singh") had been business acquaintances for many years prior to 2019. In that year there were discussions between them with a view to the Claimant investing in some way in the corporate group of which the Defendant was part. In anticipation of some such arrangement a contract of employment was entered into between the Claimant and the Defendant, a QFC company of which Dr Singh was a shareholder and director.

2. The contract was constituted by an Offer Letter from the Defendant to the Claimant dated 8 December 2019, accepted by the Claimant signing on the last page of that Letter an Acceptance docket dated 9 December 2019. The Offer Letter offered to the Claimant the position of "Principle Advisor" (sic) with the Defendant on certain terms and conditions. These included monthly remuneration at QAR 45,000, comprising Basic Salary and other benefits. It also provided that the Claimant's appointment "will be effective on your joining date, which is **February 1, 2020**" (bold in original). An

alternative possible joining date of 25 January 2020 was requested by the Claimant in the docket; but there is no evidence that that request was accepted.

3. At some date (discussed below) the Claimant commenced that employment. Subsequently, however, relations between him and Dr Singh broke down and the Claimant resigned from his employment with the Defendant. Although the documentation as to the effective date of that resignation is not wholly clear, it is not in dispute that the Claimant submitted his resignation by email of 11 March 2021. There may be issues between the parties as to whether the Claimant duly worked his notice period but these are not properly before the Court. For present purposes it can be taken that the Claimant's remunerable employment with the Defendant ended at or about the end of March 2021.

4. The issues properly before it, which are interrelated, are essentially twofold: (1) when, for the purposes of remuneration under this contract, the Claimant's employment commenced and (2) whether the Claimant has been paid the full amount of his entitlement under it.

5. As the QFC Employment Regulations apply to the relationship between the parties, it is important to notice their terms, in so far as material to the issues in dispute.

> Article 17(1) provides:
> "The Employer shall give each Employee a written contract which shall include as a minimum:
> (A)…..
> (B) the date of commencement of employment;
> ……".
>
> Article 27 provides:
> "An Employer shall not deduct from an Employee's salary or accept payment from an Employee, unless:
> (1)…..;
> (2) the Employee has previously agreed in writing to the deduction or payment;

……
……”.

Article 65 (Interpretation) provides that in these Regulations a reference to "…….

(F) writing includes any form of representing or reproducing words in a legible form;

……
……”.

6. The Claimant maintains that the date when his employment with the Defendant commenced was 1 November 2019. This is disputed by the Defendant, which maintains that the date of commencement was 1 April 2020.

7. The factual context is complicated by there having been in existence at the time a number of (non-QFC) companies in which Dr Singh had an interest and in which the Claimant may also have had an interest or for which he may have done work. These included "360 Play", "Karak Stop" and "Le Coiffeur". The Claimant led evidence at the hearing from Rodnie Pamintuan Masiclat who testified that, on 25 October 2019, he had been interviewed by the Claimant "who had identified himself as a Principal Advisor of [the Defendant] and as a partner in 360 Play, Karak Stop and Le Coiffeur". He had seen the Claimant in his office at the Defendant's premises after the witness had himself joined on 4 November 2019. The Claimant relied on this testimony as supporting his own evidence that his employment with the Defendant had commenced by early November 2019.

8. However, this evidence is irrelevant to the issue whether the Claimant's employment under the contract of 8 and 9 December 2019 had commenced by 1 November. It may be that, in the context of the somewhat complex relationship between the Claimant and Dr Singh, the Claimant performed some tasks, including interviewing Mr Masiclat on 25 October, and then described himself for the purposes of that interview as a Principal Advisor of the Defendant. But, it does not follow that, as a matter of law, he was then employed by it in that capacity. The written contract of 8 and 9 December, on the basis

of which this claim is made, makes express provision for the effective date of the Claimant joining the Defendant. The Regulations are designed to avoid uncertainty as to the date of commencement of the relative employment. The date specified in the written employment contract was 1 February 2020. The Claimant is not entitled to remuneration under this contract from any earlier date.

9. Likewise, he was and remains entitled to any unpaid salary from 1 February 2020 and not only from some later date. It is irrelevant for present purposes whether or not the Claimant for some weeks after that date did some work for a third party (such as QSports) in breach of Article 19(D) of the Employment Regulations. Proof that he did so might have founded a claim by the Defendant for any damage it sustained by reason of any such breach. But, the Defendant has not filed any counterclaim for damages. In any event, no such damage has been proved. Nor is it relevant that the Claimant's actual work for the Defendant started, if it did, only sometime after 1 February 2020. His entitlement to salary runs from that date.

10. The remaining issue turns on whether it has been established that the Claimant had previously agreed in writing to a deduction from his stated salary or to the making of a non-reimbursable payment of part of his salary to the Defendant. The burden rests on the Defendant of establishing, if it can, that the exception to the prohibition in Article 27 on unauthorised deductions applies in the present case.

11. In terms of the written employment contract the Claimant was entitled to remuneration of QAR 45,000 each month. An arrangement was, however, made between the parties whereby, from March 2020, the Claimant, while receiving QAR 45,000 each month, paid to the Defendant in return QAR 20,000, his net receipt accordingly being QAR 25,000. There is a dispute as to how this arrangement came about but it is unnecessary to resolve this. The true issue is whether there was an agreement in writing that the Claimant's entitlement to monthly salary be reduced, without further resort, to QAR 25,000 or that it remained at QAR 45,000, but with a deferral of QAR 20,000 of that for the time being. The only written material in evidence bearing on that matter is a WhatsApp message sent on 25 November 2019 from the Claimant to Dr Singh and Dr Singh's responding message. The first of these messages reads:

> "…Assuming you are back tonight. Just wanted to bring to your attention that HMC is asking for a Visa transfer along with 360 Play company docs along with comp card copy. While I will not be drawing the actual salary on the offer letter, can this be set at a total of 45k to 50k? This is still 30% less than my current with HMC to avoid banking and overseas visas issues".

The responding message reads:

> "Yes I'll come late tonight".

12. Mr Mahmoud for the Defendant submitted that, notwithstanding their informality, these messages were each a "writing" for the purposes of the Employment Regulations. We are prepared to accept that submission. The Claimant contends that these messages related exclusively to the company 360 Play and are irrelevant to the then prospective employment agreement with the Defendant. We reject that contention. They are, it seems to us, apt to apply to whichever company (in the event the Defendant) came to offer salaried employment to the Claimant.

13. The more difficult issue is whether they constitute, in effect, a side letter under which it was agreed between the Claimant and the Defendant that, whatever the terms of any (then prospective) employment agreement between them, the Claimant would not be entitled to payment of the actual monthly salary stated in it but only to some lesser amount.

14. In the event, the payments made were as follows. With respect to each of the months of February and March 2020, the Claimant received no payment. From April to December 2020, he, with one exception, received QAR 45,000 but remitted to the Defendant QAR 20,000, the exception being the month of November 2020, when he received only QAR 24,401 rather than QAR 25,000. The Claimant's explanation for the two-way payment arrangement is that it was important for his long-term financial standing that his remuneration (at QAR 45,000 per month) be paid as contracted for, though he was content that QAR 20,000 of that be, in effect, deferred. With respect to the months of January and February 2021 he received QAR 45,000 but only after

remitting these sums to the Defendant. With respect to the month of March 2021 he received no remuneration.

15. The WhatsApp messages are open to interpretation. The "Yes" in the responding message, on one view, could simply be an acceptance of the proposal for a meeting later that day, without an acceptance of the remaining content of the initiating message. We are, however, prepared to proceed on the basis that the acceptance extends to the whole content. However, the critical phrase is "I will not be drawing". That, as expressed, does not amount to a clear statement that the writer will depart absolutely from his entitlement to the stated salary; it is consistent with a stated intention by the writer not to take the full salary meantime. On that interpretation the contractual right to the unpaid balance was not given up, payment merely being deferred, which accords with the Claimant's version of the events. We prefer that interpretation. The far more extreme inference that the Claimant waived almost half his agreed salary, would in our view require a clearer manifestation of that intent. Moreover, the extent of any deduction or counter-payment was not identified in the writing; so, that there was no agreement in writing as to the amount of any restriction. The exception in Article 27(2) of the Employment Regulations has not been made out. The Claimant's entitlement to remuneration as per the contract dated 8 and 9 December 2019 stands.

16. The Court finds that the Claimant's salary, due but outstanding, amounts in total to QAR 405,591. That is made up of QAR 45,000 for each of the months of February and March 2020 and for each of the months of January, February and March 2021; and of QAR 20,000 for each of the months from April to December 2020, with the exception of November 2020 where the unpaid sum is QAR 20,591. For that total sum he is entitled to judgment.

17. The Claimant does not claim interest. However, he is entitled to prompt payment of the sum to which he has been found entitled by the Court. In the event of the Defendant failing to pay that sum in full within 21 days of the date of this judgment, interest shall run on any outstanding sum at the rate of seven per cent per annum from that date until payment (*QFCRA v Horizon Crescent Wealth LLC* [2021] QIC (A) 5). The Court does not regard it as necessary or appropriate to grant the restraining orders sought by the Claimant against the Defendant.

18. As the Claimant has been substantially successful in pursuing this action, including resisting the Defendant's earlier challenge on "jurisdiction", the former is entitled to recover from the Defendant any reasonable costs incurred by him in raising and pursuing his claim, these costs if not agreed to be assessed by the Registrar.

By the Court,

[signed]

Justice Arthur Hamilton

A signed copy of this judgment is held with the Registry

Representation:

The Claimant represented himself.

The Defendant was represented by Mr. Abubakar Mahmoud of Sharq Law Firm, Doha, Qatar.