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 (C) 1

IN THE QATAR INTERNATIONAL COURT

Date: 26 June 2022

CASE NO: 11 of 2019

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

Applicant

v

FIRST ABU DHABI BANK P.J.S.C

Respondent

JUDGMENT
(on applicable interest rates)

Before:

Mr. Christopher Grout, Registrar

Introduction

1. The Applicant, Qatar Financial Centre Regulatory Authority, is the independent regulator of the Qatar Financial Centre ("the QFC"), established to authorise and regulate firms and individuals conducting financial services in or from the QFC. The Respondent, First Abu Dhabi Bank P.J.S.C, is the largest bank in the United Arab Emirates. It has a branch in the QFC which, by a decision of the Applicant, is currently closed to new business.

2. On the 27 February 2020, the First Instance Circuit of the Court (Justices Bruce Robertson, Arthur Hamilton and George Arestis) determined that, pursuant to Article 59(4) of the QFC Financial Services Regulations, a financial penalty in the sum of QAR 200,000,000 imposed upon the Respondent by the Applicant in a Decision Notice dated 21 August 2019 was a debt payable to and recoverable by the Applicant. The Court further ordered, pursuant to Article 10.4.9. of the Regulations and Procedural Rules of the Court, for payment of interest (at a rate to be determined by the Registrar) by the Respondent from the date the Applicant's application was filed, namely 9 September 2019. The judgment of the Court is reported at [2020] QIC (F) 2. That judgment was not appealed.

3. The Applicant filed, on 28 June 2020, submissions in respect of what it considered to be the appropriate rate of interest. That application was served on 5 July 2020. No response was filed by the Respondent. However, shortly thereafter, the Appellate Division of the Court, in an unrelated case, was asked to consider principles relating to the award of interest. The Applicant therefore sought a stay of the determination in this matter until the judgment of the Appellate Division had been issued. The judgment was issued on 20 June 2021: see *Qatar Financial Centre Regulatory Authority v Horizon Crescent Wealth LLC* [2021] QIC (A) 5. As foreshadowed in that judgment, there followed the issue of a Practice Direction, by the President of the Qatar International Court, dated 16 August 2021, which sets out relevant considerations to the award of post-judgment interest.

4. In light of the above, the Applicant filed an amended application for the determination of interest on 23 September 2021. It was served on the Respondent by various (and extensive) means on 23 September 2021, 3 October 2021 and 24 February 2022. The reason for the

extensive efforts was because of the Respondent's repeated attempts to evade service. Again, no response was filed by the Respondent.

5. A further amended application was filed and served on 11 March 2022. That application was supported by two witness statements of Andrew Lowe, the Director of Enforcement with the Applicant. One statement is dated the 7 March 2022, the other 10 March 2022. Various annexes were attached to those statements. No response was forthcoming from the Respondent.

A Note on Service

6. It has been a repeat feature of these proceedings that the Respondent has not only failed to engage with the process but has also taken deliberate steps to evade service. As the Court observed in its judgment at [2022] QIC (F) 2, para.19,

> "All the regulatory requirements have been complied with and, on the facts, every possible sensible step has been made by the Regulator to inform the Bank about the various steps in the proceedings. There has been a determined and orchestrated campaign to thwart the moves made. We are satisfied on the evidence that the Bank has had notice and if there have been problems they have been entirely of the Bank's making."

7. Those observations apply equally to the many and varied attempts to serve the Respondent in respect of the present application for the determination of the applicable rate of interest. The two witness statements of Andrew Lowe set out, in some considerable detail, the extensive efforts the Applicant has gone to in order to ensure that the Respondent is aware of this application. Moreover, the Registry of the Court has written, on repeated occasions, to the Respondent in order to prompt a response, but without success. I am entirely satisfied that the Respondent has been given ample opportunity to engage with this process but has decided, for reasons best known to itself, not to do so. It cannot complain that it has not been given a fair opportunity to be heard.

The Present Application

8. In its application, the Applicant seeks the following orders:

   (a) that the interest rate payable on the judgment debt (or such parts of it as remain outstanding) be determined as 5% per annum, calculated daily and on a simple basis, in respect of the period from 9 September 2019 until 30 days after the date on which judgment is given in this amended application.

   (b) that an enhanced rate of 8% per annum simple (i.e., a margin of 3 percentage points above the prevailing compensatory rate) applies from the date falling 30 days after judgment is given in this amended application.

   The Applicant submits that the above is consistent with the judgment of the Appellate Division in *Horizon* and the Practice Direction of 16 August 2021.

Interest rate from 9 September 2019 to 30 days after the date of this judgment

9. In its judgment, the First Instance Circuit ordered that interest was to run from the date the Applicant's application in the proceedings then before the Court had been filed, which was 9 September 2019. That approach is at odds with the later decision of a differently constituted First Instance Circuit of the Court which, in *Qatar Financial Centre Regulatory Authority v Horizon Crescent Wealth LLC* [2020] QIC (F) 12, at para. 43, observed that:

   > "This Court respectfully considers that interest should be from the date of judgment on the application rather than from the date by which payment of the penalty was to be made or the date of the application to recover it as a debt. The reason is that the penalty is not converted into a "debt" until such judgment. As pointed out above, interest is not payable on the penalty per se. The commencement date of interest should therefore be from the date judgment is given on the application

under FSR Article 59(4) permitting the Regulatory Authority to recover the penalty as a debt."

10. It is not, however, for me to resolve this conflict. The judgment in the present case was not challenged and I am bound by the Court's decision as to the date from which interest should run, namely 9 September 2019.

11. As to the rate, the Applicant submits that the appropriate rate is one of 5%. I agree. The Practice Direction of 16 August 2021 states, at paragraph 6, that,

> "At present the compensatory rate of interest for judgments denominated in Qatari Riyals is ordinarily about 5%."

There is no reason to award anything other than the applicable compensatory rate for the period from 9 September 2019 to 30 days after the date of this judgment. Accordingly, I determine the applicable rate for this period to be 5%.

Interest from the date falling 30 days after the date of this judgment

12. The Practice Direction explains, at paragraph 4, that consideration should then be given to whether it is in the interests of justice to apply an enhanced level of interest in the event that a party fails to make payment in accordance with the terms of the judgment. A non-exhaustive list of relevant considerations is then set out at paragraph 5 as follows:

> "(a) The characteristics of the parties
> (b) The nature and circumstances of the case
> (c) In monetary or property claims, the amount or value involved
> (d) The contractual terms as to interest if any
> (e) The conduct of the parties
> (f) Any failure to comply with other orders of the Court."

13. Paragraph 6 of the Practice Direction provides that,

> "At present the compensatory rate of interest for judgments denominated in Qatari Riyals is ordinarily about 5%. The enhanced rate of post-judgment interest awarded to encourage compliance with the Order of the Court should, unless there are exceptional circumstances, be set at 2 percentage points above the compensatory rate of interest. If the compensatory rate of interest changes significantly, a further practice direction in respect of the enhanced rate may be issued."

Accordingly, having set the compensatory rate of interest in the present case at 5%, the enhanced rate, if it was in the interests of justice to impose such a rate, would ordinarily be set at 7%.

14. However, in its application the Applicant submits that there are "exceptional circumstances" warranting a higher enhanced rate of interest of 8%. The Applicant points out that it is an independent financial services regulator and that the Respondent is a multi-national financial institution headquartered in Abu Dhabi in the United Arab Emirates. The Applicant submits that, in the year prior to its application before the Court, the Respondent "had a market capitalisation of approximately 42 billion US Dollars, net assets of 28 billion US Dollars and net profits of 3.2 billion US Dollars." The amount that was the subject of the proceedings- QAR 200,000,000 (approximately 54 million US Dollars) is substantial, as will be the award of interest. Further, the Applicant submits that the conduct of the Respondent has been contemptuous throughout: it has, among other things, failed to cooperate with the Applicant, not engaged with the Court process, been held to be in contempt of court in related proceedings (see [2019] QIC (F) 8) and, to date, has still not paid the judgment debt which has been outstanding now for over two years. This, submits the Applicant, justifies an enhanced rate of 8%.

15. These criticisms of the Respondent's behaviour have gone unanswered. In my view, that is primarily because they are unanswerable. The conduct of the Respondent throughout the proceedings has been extraordinary. It is a major bank which has shown nothing but contempt for the process of the Court. If the Respondent continues to remain in default of the judgment debt it is in the interests of justice that an enhanced rate of interest should be applied. The circumstances set out above are, in my view, exceptional, such that a higher rate of interest than that envisaged by the Practice Direction should be imposed. The additional rate the Applicant seeks is, in the scheme of things, very modest, albeit that it will have not insignificant consequences for the ultimate amount owed to the Applicant by the Respondent if the judgment debt remains unpaid. However, if that situation arises, the Respondent has no-one to blame but itself. I find that it is in the interests of justice to award a rate of 8% should the judgment debt remain unpaid 30 days after the issue of this judgment.

Conclusion

16. For the reasons set out above, I make the following determinations in respect of the applicable rates of interest:

    (a) that the interest rate payable on the judgment debt (or such parts of it as remain outstanding) be determined as 5% per annum, calculated daily and on a simple basis, in respect of the period from 9 September 2019 until 30 days after the date of this judgment.

    (b) thereafter, if the judgment debt remains unpaid, an enhanced rate of 8% per annum, calculated daily and on a simple basis, will apply up until all outstanding sums have been paid.

By the Court,

[signed]

Mr. Christopher Grout
Registrar

A signed copy of this judgment has been filed with the Registry.

Representation:

Mr. Geoffrey Hills of the Qatar Financial Centre Regulatory Authority for the Applicant.

The Respondent was not represented and did not file any submissions.

DIGITALLY SIGNED AND VERIFIED
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