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) 14

IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT

14 August 2022

Case No. CTFIC0018/2021

(1) DARUNA FOR REAL ESTATE BROKERAGE CO. LLC

(2) SHEIKH NASSER BIN ABDULRAHMAN BIN NASSER AL THANI

Claimants

v

QATAR FIRST BANK LLC

Defendant

JUDGMENT

Before:

Justice Arthur Hamilton

Justice Fritz Brand

Justice Muna Al Marzouqi

ORDER

1. The Defendant shall pay to the Claimants the sum of Thirteen Million Seven Hundred and Twenty Two Thousand, Nine Hundred and Forty Nine Qatari Riyals (QAR 13,722,949) as damages for breach of contract.

2. The Defendant shall pay to the Claimants their reasonable costs in raising and pursuing this action, these costs if not agreed to be assessed by the Registrar.

JUDGMENT

1. The First Claimant ("Daruna") is a corporate entity established in Qatar but outside the Qatar Financial Centre ("the QFC"). The Second Claimant ("Sheikh Nasser") is the Chairman of the Board of Directors of Daruna and a majority shareholder in it. His appearance in this action is consistent with the practice in the national courts of Qatar, in accordance with which the manager of a litigating corporate body appears with it in court proceedings in a representative, rather than in a personal, capacity. The Defendant ("the Bank") is a corporate entity incorporated and established in the QFC. It has since June 2010 been authorised by the QFC Regulatory Authority to carry on various activities including Dealing in Investments, Providing Credit Facilities and Arranging Credit Facilities.

2. In response to the claim form and accompanying memorandum the Bank filed an application contesting the jurisdiction of this Court to entertain the claim. That application was by judgment dated 23 December 2021 dismissed ([2021] QIC (F) 27). Thereafter the Bank filed a defence to the claim to which the Claimants responded. The Claimants filed with the claim form 38 documents and, with its response to the defence, a further 3 documents; with its defence the Bank filed 3 documents. By a procedural order dated 7 April 2022 the Court directed parties to file and serve such witness statements and any additional documents as they respectively sought to rely on. Both parties subsequently advised that they had no witness statements and no additional documents to file.

A hearing on the substantive case took place on 22 May 2022. As no witness statements had been filed, no oral testimony was adduced and the evidence before the Court was restricted to the documents which had earlier been filed.

3. In or about 2015 the State of Qatar, acting through the Ministry of Municipality & Urban Planning (later known as the Ministry of Municipality and Environment), decided that a site at Umm Slal (Plot 4) owned by it should be developed for the accommodation of guest workers. It entered into a Development Agreement with Gulf Systems for Contracting & Services Co ("Gulf Systems") for such development. Gulf Systems in turn entered into a sub-contract with Daruna. That sub-contract provided, among other things, that Daruna would be responsible for its own financing (clause 3.b.ii). Thereafter discussions took place between Daruna and the Bank. The latter expressed a strong interest in the project but had certain concerns, including that, as the land in question was owned by the Government, it would not be available as collateral. These concerns were expressed in a letter dated 15 March 2016 from the Chief Executive Officer of the Bank to the Chief Executive Officer of Daruna.

4. On 14 August 2016 the same Officer of the Bank wrote on official Bank notepaper to Sheikh Nasser (in his capacity as Chairman of Daruna) in the following terms:

> "We are pleased to inform you that the Executive Committee of the Board of Directors of Qatar First Bank has approved our equity investment of a seventy percent (70%) stake in the Umm Slal Plot 4 Project with Daruna.
>
> This approval allows us to assure you that pending the satisfaction of conditions precedent and documentation, the funds are approved, segregated and ready for distribution.

We have discussed at length with your management team the next steps in satisfying the conditions precedent and documentation and have formed a team to fast track this process.

This is a milestone in our relationship and we reiterate our commitment to this partnership, and are working towards a rapid closing of the transaction as soon as possible."

5. No evidence, oral or documentary other than the letter of 15 March, was placed before the Court as to the factual context in which the letter of 14 August was sent. However, various steps followed it. A Shareholders Agreement (dated only "2016") was prepared by the Bank ("the 2016 Shareholders Agreement") to be entered into between Daruna and an entity named First For Real Estate Development LLC ("FRED") which had been nominated by the Bank. The primary object of this Agreement was to establish a subsidiary company to execute the works for the Umm Slal Plot 4 Project ("the Project"). FRED was to hold 70% and Daruna 30% of the shares in that subsidiary. Investment to the extent of QAR 180,000,000 (including QAR 78,000 in the share purchase) was envisaged in the same proportions. FRED was to appoint four of the five Managers for the Board of the subsidiary, the fifth to be appointed by Daruna. The business of the subsidiary was to be conducted in accordance with Sharia principles, as determined by the Sharia Supervisory Board of the Bank (clause 3.2). That Board also had powers in relation to the law to be applied (clause 29). This Agreement was executed by both parties. Although, for reasons not fully explained in evidence, it was not taken forward, its terms are consistent with the taking forward of the joint venture proposed by the Bank in its letter of 14 August 2016.

6. In August 2017 a memorandum of association was entered into between Kuthban Real Estate LLC ("Kuthban"), a partly-owned subsidiary of the Bank, and Daruna for the establishment of a company named Umm Slal Four Accommodation ("USFA") in which in due course Kuthban subscribed for 70% of the share capital and Daruna for 30%. USFA was to execute the works for the Project. The managers for the Board of USFA were again to be five in

number, four nominated by the Bank's subsidiary and the fifth by Daruna (Article 10). Again, Sharia principles were to be applied. Although the Shareholders Agreement between Kuthban and Daruna is not before the Court, an email of 15 January 2018 from Mr Strachan (referred to below) indicates that in substance it replicated the terms of the equivalent agreement between FRED and Daruna. The terms were again consistent with the joint venture proposed by the Bank in its letter of August 2016. In furtherance of that arrangement a subcontract was in December 2017 entered into between Gulf Systems and USFA.

7. The 70% interest of the Bank in the Project was publicly recorded in its annual report for 2017. In its Interim Condensed Consolidated Financial Statement published as at 31 March 2021 it was stated that the Bank "had the following subsidiaries" as at that date and as at 31 December 2020, there being included in the following table "UMM Slal for Accommodation" with effective ownership of 70%. Its public statements for the periods between 2018 and 2019 are not before the Court in English form. Work proceeded, including the carrying out of ground works. Tenders for certain aspects of the construction works were sought from specialist companies. Certain funding was provided. Senior employees of the Bank, including Mr Ali Abousaleh ("Mr Abousaleh"), Director Alternative Investments, and Mr Scott Strachan ("Mr Strachan"), an Executive Director, were closely involved in the advancement of the Project.

8. By about March 2018 it was clear that more funds were required than had already been advanced. Mr Strachan recommended that the Bank make such funds available (proportionate to its 70% interest in the Project). In the end, notwithstanding support from its Chief Executive Officer for that recommendation, the Bank's Board declined to authorise the provision of such funds. Daruna, on the other hand, made clear that it would advance further sums proportionate to its 30% interest. It tendered a cheque for the relevant amount.

9. In the absence of further funds the project could not proceed as envisaged. In the end, by letter dated 11 December 2018 the Ministry by then responsible for the Project terminated its engagement with Gulf Systems. Daruna's expenditure to date on the project was wasted.

10. Before consideration can be given to the legal issues arising, it is necessary to consider and decide which system of law the Court should apply to the dispute. Under paragraph 8 of Schedule 6 to the QFC Law this Court is required to apply the QFC Law and regulations issued by virtue of that Law on the subject of the dispute "…unless the parties have explicitly agreed to apply another law…". The parties were directed by the Court to identify in their final written submissions the system of law which they respectively contended should be applied.

11. The Claimants complied with that direction, stating that they relied on the rules and regulations of the QFC, adding that they also relied "on the general rules of contractual and tort liabilities established under Qatari National laws…". The Bank did not in its written submission make any statement as to the applicable law. At the hearing the Claimants, while initially repeating their position as stated in their written submission, then indicated orally that they wished the Court to apply Qatari national laws. The Bank's representative, on being pressed, indicated orally that his client also wished the Court to apply Qatari national law.

12. So far as the Court is concerned, this situation is highly unsatisfactory. It is obliged by QFC law to apply that law "unless the parties have explicitly agreed to apply another law". Any such explicit agreement should, as a matter of good practice, be recorded in writing and filed well in advance of the hearing, especially when the Court has expressly made a direction in that regard. The Court has decided to deal with the matter by addressing, with respect to the substantive dispute, both QFC law and Qatari national laws. In the event, as shall be seen, the same result would follow under both systems. QFC law is addressed first.

13. The first legal issue for consideration is whether such losses, if any, as Daruna sustained as a result of the Bank's non-provision of further funds were caused by breach of contract by the Bank. Central to that issue is whether a legally binding contract had been concluded directly between Daruna and the Bank. The position adopted by the Bank is that there was no such contract. When, in April 2018, an extrajudicial claim was first made by Daruna against the Bank, the latter sought to redirect it against Kuthban, asserting that the Bank had no responsibility for the acts or omissions of its subsidiary.

14. Crucial to this first issue is the legal character of the communication of 14 August 2016. That letter is addressed by the Chief Executive Officer of the Bank to Sheikh Nasser as Chairman of the Board of Directors of Daruna. There is no suggestion that that Chief Executive Officer did not have the authority of the Bank to issue that communication in the terms in which it was issued; nor is there any suggestion that the effective addressee was other than Daruna as a legal entity. The first paragraph is in unqualified terms. It informs the addressee that the Executive Committee of the Board of Directors of the Bank "has approved our equity investment of seventy percent (70%) stake in the Umm Slal Plot 4 Project with Daruna". The second paragraph advises the addressee that the foregoing approval "allows us to assure you that pending the satisfaction of conditions precedent and documentation, the funds are approved, segregated and ready for distribution".

15. Neither the "conditions precedent" nor the "documentation" are identified in the communication. No evidence was adduced to identify these. However, a "fast track" to complete that process is referred to in the next paragraph and there is no doubt that the Project went forward, with the Bank investing a 70% stake. Its annual reports broadcast that investment. So, whatever conditions precedent there may have been, they were by implication satisfied (or dispensed with). Documentation did follow, see discussion in paragraphs 19 and 21, below.

16. The language of the letter does not suggest that matters remained at a negotiating stage; and it concludes by stating that "a milestone in our relationship" had been reached and with a reiteration of "our commitment to this partnership".

17. The Court has considered whether the letter might be construed as being merely an assurance of a non-obligatory character: what has on occasion been referred to as a "letter of comfort". Such a letter has been used, for example, where a contract is proposed between two companies, one of which is of uncertain financial worth but has a parent company which is financially sound. In such circumstances the parent may issue to the third party prospective contractor a letter assuring it that it will support its subsidiary but not legally obliging itself to do so. However, the letter of 14 August 2016 does not, on a fair construction, appear to be of that character. There is no suggestion in its text that it was so intended. Rather, the language used points to an assurance of an obligatory character: it refers to "conditions precedent" (a concept familiar where a contractual obligation is in contemplation), to a "partnership" (a relationship with rights and obligations) and to the "rapid closing of the transaction". As at August 2016 no question had, on the evidence, arisen as to the use by the Bank of a subsidiary for the purpose. The letter was issued in a commercial context. While at that stage conditional, its language points to an intention, objectively assessed, that it be of a legally binding nature.

18. The letter of 14 August 2016 is a unilateral communication. It is not of itself a binding promise to enter a future contract. However, under Article 15 of the QFC Contract Regulations, a contract is concluded "...either by the acceptance of an offer or by conduct that is sufficient to show agreement". Under Article 16 "A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance".

19. Following the letter of 14 August each of the Bank and Daruna acted in furtherance of it. The whole detail of that conduct is not in evidence but at least a broad picture can be identified. The 2016 Shareholders Agreement was signed by Sheikh Nasser on behalf of Daruna and by Mr Makkawi (the Bank's senior officer who had signed the letter of 14 August) on behalf of FRED. The funding arrangement of 70/30 percent reflected that in the letter. The memorandum of association subsequently entered into by the Bank's subsidiary (Kuthban) and Daruna reflected the same proportionate investment. USFA was duly incorporated on the same basis. The works went forward, including advancement of funds beyond those expended in the purchase of the shares in USFA.

20. In the whole circumstances the letter of 14 August can properly be construed as an offer by the Bank to Daruna to enter into a binding contract directly with it (in the nature of a joint venture) to fund, in the identified proportions, the carrying out and completion of the Project. It is a sufficiently definite proposal and indicates an intention of the Bank to be bound in case of acceptance. There is nothing in the evidence to suggest that the Bank at any stage withdrew or modified that offer. Nor is there anything to suggest that Daruna thereafter sought finance from any other source. Consistently with that, Sheikh Nasser stated at the hearing that, the Bank's offer being acceptable to it, Daruna terminated discussions with other potential financiers; that statement was not challenged.

21. In these circumstances the proper inference is that, by signing the 2016 Shareholders Agreement with FRED, Daruna accepted the Bank's offer of 14 August 2016, that acceptance being subsequently confirmed by its signing the 2017 memorandum of association with Kuthban. The detailed provisions of that Agreement and subsequent memorandum also gave executive effect, in so far as they went, to the direct contract constituted by the Bank's offer and Daruna's acceptance of it.

22. Alternatively, the conduct of both parties (including that of the Bank through its nominee and its subsidiary) concluded a contract between them in terms of the letter of 14 August 2016. The subsequent direct involvement of the Bank (referred to below) supports that conclusion.

23. On either of these bases a legally binding contract, in the nature of a joint venture, was concluded directly between the Bank and Daruna. It is immaterial that certain of the conduct was, on its face, conduct by a nominee or subsidiary of the Bank. This is not a matter of a parent company being held liable for the acts or omissions of its subsidiary. It is rather a matter of the Bank as principal acting, consistently with its letter of 14 August 2016, in causing its nominee or subsidiary to act as it did. These companies were, in effect, creatures of the Bank, acting in implement of its directions.

24. The letter of 14 August did not put a financial ceiling on the amount of the joint investment. That did not preclude the agreement being legally binding. There are indications (as in the 2016 Shareholders Agreement) that a maximum investment of QAR 180,000,000 may have been discussed but the evidence before the Court is inadequate to demonstrate that that figure was agreed to be the financial limit of the joint venture. In any event, that figure was not reached.

25. A direct contract between Daruna and the Bank was in accordance with the financial realities. The subject matter of the Project was a development which, on any view, would involve the expenditure of many millions of Qatari riyals; and no doubt involve some risk. The offeror was an entity with very substantial resources, being one of the leading banks in Qatar. By contrast, the resources of Kuthban in 2017, when it entered the Shareholders Agreement with Daruna, are on the evidence unknown; the same is the case as regards FRED in 2016. The alternative to a direct contract would be that Daruna relied solely on a relationship with a nominee or subsidiary of unknown means. Such reliance was, in practical terms, most unlikely.

26. The Bank continued to be directly involved with the Project as matters progressed. For example, in an email dated 25 October 2017 Mr Abousaleh, writing on the Bank's stationery, to Mr Mabrouk of Daruna, stated: "…we as the shareholders of USFA (QFB and Daruna) need to make a decision on a contractor". In an email to Sheikh Nasser dated 14 March 2018, Mr Strachan, in the context of the issue of further funding, referred to "the senior management team at QFB, including the CEO, having a meeting to discuss our options…". That email later referred to an invitation to meet "our CEO" (that is, the Bank's Chief Executive Officer). Mr Strachan, in the context of the resignation of Mr Abousaleh, by email dated 8 March 2018, stated: "I will continue in charge of the project on behalf of QFB…". Communications by email were sent exclusively from email addresses of the Bank. Only as late as 22 March 2018 was a communication received purportedly from Kuthban. In the event, the decision to refuse further funding was made not by Kuthban but by the Board of Directors of the Bank itself. Regard being had to these direct dealings in the context of what had preceded, the mutual conduct points to the constitution of a direct contractual relationship between the Bank and Daruna.

27. The next issue is the scope of the legal obligation undertaken by the Bank. The letter of 14 August 2016 refers to approval of an equity investment of a 70% "stake in the Umm Slal Plot 4 Project" with Daruna. In the event, the Bank did not invest directly in USFA, the company formed to execute the works, but indirectly by arranging for its subsidiary, Kuthban, to subscribe for 70% of USFA's shares; Kuthban subscribed by the purchase of 140,000 shares at 1 QR per share, Daruna to 60,000 shares at the same price. That subscription by Kuthban was, however, merely a mode of implementing, in so far as it went, the Bank's undertaking to take a 70% stake in the Umm Slal Plot 4 Project. There is nothing to suggest that, by using that mechanism, the Bank wholly performed its direct contractual obligation to Daruna (or that Daruna agreed to accept that mechanism as constituting complete performance of the Bank's contractual obligation). There is no documentary evidence that the Bank's contractual obligation was thereby superseded by the arrangement between Daruna and Kuthban. Nor is there a proper basis in the evidence for implying such supersession.

28. Accordingly, the investment by the Bank's subsidiary did not necessarily exhaust the financial scope of the Bank's obligation. The Project, if it was to be carried to a successful conclusion, clearly required substantial investment of funds. In his letter dated 15 March 2016 referred to above the Bank's Chief Executive Officer referred to a financing requirement "in excess of QR1.4 Billion". As at January 2018 Kuthban and Daruna had respectively advanced QAR 24,177,806.74 and Daruna QAR 13,722,949.00 (including their respective subscriptions for shares).

29. As mentioned above, the letter of 14 August 2016 did not expressly limit the financial extent of the investment which was being undertaken. No doubt, some limit might be implied. If, for example, it subsequently became plain that the Project was incapable of being completed without significant loss to the parties (such that further financial investment would be an obvious waste of resources), a situation might arise in which one of them would be entitled to withdraw from the joint venture unilaterally. However, no evidence was placed before the Court to explain the basis on which the Bank's Board of Directors decided that it would not accept its Chief Executive Officer's recommendation that further funds be made available. Nor is there any evidence that the Bank gave notice on any grounds of an intention to bring the joint venture to an end. In that state of the evidence the proper inference is that the Bank was not contractually entitled to refuse to provide its contribution to the additional financial support required to advance the Project. That refusal constituted, as a matter of QFC law, a breach of contract by the Bank.

30. As to Qatari national laws, the Bank's representative at the hearing maintained that, under that legal system, (1) a parent company was not responsible for any obligation of any subsidiary of it (Qatar Commercial Companies Law, Article 228) and (2), while the Qatari Civil no 22 of 2004 ("QCC") Code provided (by Article 96, as interpreted by the Court of Cassation) for an enforceable promise to contract, the conditions for that were not met by the letter of 14 August 2016.

31. However, the Claimants' case is not that the Bank is liable for Kuthban's obligations; rather, it contends that in the circumstances there is a direct contractual liability of the Bank towards Daruna. Further, the Claimants do not rely on any unilateral promise by the Bank to contract (in the future) but on an obligation constituted by mutual agreement between Daruna and the Bank. The QCC (by Article 65) recognises that a contractual intention may be expressed by conduct as well as orally or in writing. For the reasons earlier expressed, there was mutual consent, contractually enforceable, that the Bank contribute 70% (and Daruna 30%) to the funding of the Project. The Bank breached that contract.

32. Accordingly, if the law to be applied by the Court to the substantive issues in dispute is Qatari national law rather than QFC law, the Bank is for the reasons earlier expressed liable to compensate Daruna for such proved losses as it sustained by reason of that breach.

33. It was not in the end disputed by the Bank's representative that, if there was a direct contract between Daruna and the Bank in the terms contended for, the Bank had by its refusal to contribute to the advancement of further funds breached that contract, whichever of the two legal systems was applied.

34. As liability has been established on the basis of breach of contract, it is unnecessary to say much about Daruna's alternative claim in tort. However, as this case may go further, it is appropriate that the Court express, briefly, its view on that matter. That claim is not easy to understand. While it is not disputed that, under QFC law and under Qatari national law, liability in tort may in appropriate circumstances arise, the basis for any such liability in this case is far from clear. It appears to be founded essentially on an alleged failure by the Bank to disclose to Daruna its status as an entity established in the QFC rather than elsewhere in the State of Qatar. An immediate and complete answer to that allegation is that the very letter on which the Claimants found (the letter of 14 August 2016) states at the bottom left-hand corner "Authorised by the QFC Regulatory Authority", a clear indication of the Bank's QFC status. Words to the same effect appear in Arabic immediately above. The same disclosure is

given in the Bank's letter of 15 March 2016, addressed to Mr Murphy, the Chief Executive of Daruna. Any person properly reading either of these communications would immediately have recognised that the Bank was an entity established in the QFC and that its constitutional position and powers were accordingly regulated by QFC law.

35. Under that law the Bank was authorised by the QFC Regulatory Authority to carry on certain activities, including dealing in investments. It was entitled to establish or acquire, in whole or in part, by way of investment subsidiaries such as Kuthban. In these circumstances it is unnecessary to attempt to explore how the Bank may, under either system of law, have been in breach of a duty in tort owed to Daruna or how any such breach may have damaged it. The case in tort is dismissed.

36. As to measure of compensation or damages for the established breach of contract, no question of Qatari national law arises, procedurally or otherwise. Matters of procedure and assessment of compensation or damages are, at least ordinarily, for the law of the court before which the proceedings are brought. It was expressly accepted on behalf of the Claimants at the hearing that it was for the Court to assess compensation /damages on the basis of the evidence before it and applying QFC law. The proposal in the pleadings that assessment of compensation/damages be remitted to an expert or a panel of experts was departed from.

37. Article 100 of the QFC Contract Regulations provides that, where a party's breach of contract has caused the other party loss, the aggrieved party has a right to damages "provided that only loss arising directly from the breach or other loss which can fairly or reasonably have been within the contemplation of the parties at the time the contract was made can be recovered".

38. The Claimants seek damages, per their memorandum, under three heads: (1) QAR 15,318,949 "as the value of the direct damage incurred to 04/02/2019", (2) QAR 142,086,937 "as the value of the damage, lost profits and incurred losses due to the loss of the project" and (3) QAR 700,000,000 "as compensation…for the loss of reputation of [Daruna] and its loss of the market credit and the projects".

39. The evidence before the Court on damages is scant notwithstanding its Direction dated 9 May 2022 that parties file and serve "such witness statements and any additional documents (**whether concerned with liability or quantum of damages/compensation or both**) as they respectively seek to rely on" (emphasis added). No application was made for the late introduction of further evidence.

40. As to head (1) the sum of QAR 15,318,949 appears in evidence in one place, namely, in a letter dated 5 December 2017 addressed by Sheikh Nasser to Mr Abousaleh and Mr Strachan. That figure is stated under reference to a "latest financial statement" described as "Invested Capital" by Daruna. That financial statement is not itself in evidence nor is the make-up of that figure otherwise vouched. In his address to the Court Sheikh Nasser stated that that figure included expenditure on matters not directly incurred on the Plot 4 works. The Bank has not conceded that this figure can be taken as a true measure of the expenditure incurred by Daruna. Loss in that amount has not been proved to have been caused to it by the breach.

41. On the other hand, in an email dated 15 January 2018 from Mr Strachan to Mr Murphy a different figure is given. The context was a discussion between the Bank and Daruna about further funding of the Project. Reference is made to updated accounts, which are not themselves in evidence but which, according to Mr Strachan, showed "the capital injections for the shareholders to date". The figure given for Daruna is QAR 13,722,949 (including its purchase of shares in USFA at QAR 60,000 and subject to a pending audit for expenses).

42. The claim made under head (1) is in substance one for reimbursement of the financial outlay of Daruna on the Project, which outlay was rendered fruitless by the Bank's breach of contract. It was in the event conceded at the hearing by the Bank's representative that, if the Court were to find it liable in damages, it could not be disputed (regard being had to Mr Strachan's email and to the absence of contrary evidence) that the sum of QAR 13,722,949 represented a proper measure of damages. The Court is prepared to hold that damages to that extent have been proved.

43. Head (2) is in effect for loss said to have been incurred by reason of the Plot 4 Project not having been carried to successful conclusion, with consequent loss of realisation of profit or other advantage on such conclusion. There is, however, no evidence before the Court which would allow it to hold it proved that such loss had been sustained. There is no oral evidence to support it. The only documentary evidence is an undated "Term Sheet" between Daruna and Qatar Insurance Company ("QIC") which envisages that, on three villages (presumably including Umm Slal Plot 4) being constructed by Daruna, QIC will purchase the development in phases at a total price not exceeding QAR 400,000,000. An elaborate formula for calculating a "camp price" (presumably for purchase of a phase) is made. There is also provision for Daruna to manage the property and for certain income to be split evenly between QIC and Daruna. It is stated in the Term Sheet that Daruna and QIC intended to finalise and sign a Purchase & Sale Agreement, within 21 days after signing the Term Sheet.

44. The first difficulty is that the assessment of any loss of profit or other advantage to Daruna under this head depends on proof that, on a balance of probabilities, the Plot 4 Project would, but for the Bank's breach of contract, have been successfully completed. There is no evidence before the Court as to the prospects of such completion. The Bank's refusal to advance further funds occurred at a stage when no building contractor had been identified and engaged and the only works apparently already carried out were earthworks. The Court is not satisfied, on the evidence placed before it, that it has been proved to the requisite standard (the balance of probabilities) that, but for the Bank's breach of contract, there would have been successful completion. Secondly, no oral or

other testimony was led to explain what net gain (income and other receipts less expenditure) Daruna might reasonably have expected to make if the development had been successfully completed and the envisaged arrangement with QIC put into effect. There is no basis in the evidence to support the claim of QAR 142,086,937 (or any other figure) under this head, which must accordingly be rejected.

45. It may be noted, with regard to head (2), that a draft feasibility study, apparently prepared on behalf of the Bank in March 2016, is among the papers filed; however, no attempt was made to use it to demonstrate what net gain Daruna might have expected to have made had the Project been carried to a successful conclusion.

46. As to head (3), there is no evidence whatsoever that, if the Project had been successfully completed, it was, on a balance of probabilities, likely that Daruna would have been engaged to carry out other projects and, if so, with what financial gain. Nor is there any general evidence that Daruna's commercial reputation or credit was damaged by the failure of the Project and, if so, with what consequential loss. This claim is wholly speculative and must be rejected.

47. There was a suggestion in the Claimants' oral submissions that Sheikh Nasser had personally sustained damage to reputation in the commercial community as a result of the Bank's conduct. However, as can be seen from the terms of head (3) as pleaded, it concerns compensation only for damage "**for the loss of reputation of Daruna Real Estate Brokerage,** as well as **its** loss of the market credits and the projects" (emphases added). There is no claim in this action for any personal loss which Sheikh Nasser may have sustained. Accordingly, it is not open to the Court to make any award in his favour in this process.

48. For the avoidance of doubt, we note that no claim for interest of any kind is made in this action. Sheikh Nasser explained orally in the hearing that, for religious reasons, that course was deliberately taken.

49. It was accepted at the hearing that costs should follow success. Accordingly, as the Claimants have been successful, albeit only to a limited extent, they are entitled to recover from the Bank their reasonable costs in raising and pursuing this action. These reasonable costs include those of and incidental to the earlier hearing on jurisdiction.

By the Court,

[signed]

Justice Arthur Hamilton

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

Representation:

The Claimants were represented by Mana Law Firm, Doha, Qatar.

The Defendant was represented by Hamad Al Yafei Law Firm, Doha, Qatar.

DIGITALLY SIGNED AND VERIFIED
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