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 (A) 7

(on appeal from [2022] QIC (F) 12)

IN THE QATAR INTERNATIONAL COURT

APPELLATE DIVISION

Case No. CTAD0003/2022 (on appeal from CTFIC0026/2021)

Date: 7 September 2022

Between:

ADIL BASHIR AHMED

Respondent /Claimant

v

360 NAUTICA LLC

Applicant/ Defendant

JUDGMENT

Before:
Lord Thomas of Cwmgiedd, President
Justice Bruce Robertson
Justice Frances Kirkham

ORDER ON PERMISSION TO APPEAL

1. Permission to appeal against the decision of the First Instance Circuit is refused.

JUDGMENT

1. In a written Application made on 7 August 2022 the Applicant sought permission to appeal from the judgment of the First Instance Circuit (Justice Arthur Hamilton, Justice Fritz Brand and Justice Helen Mountfield QC) given on 17 July 2022: [2022] QIC (F) 12. In its judgment the First Instance Circuit ordered that the Respondent be paid QAR 405,591 by the Applicant as remuneration due under his contract of employment, together with interest and costs.

2. The Respondent's claim arose out of his employment with the Applicant, a QFC company, under a contract which the First Instance Circuit found was constituted by an offer letter from the Applicant to the Respondent dated 8 December 2019 which the Respondent accepted by signing on the last page on 9 December 2019.

3. There were two issues before the First Instance Circuit:

   (1) When for the purposes of remuneration under the contract the Respondent's employment began;

   (2) Whether the Respondent had been paid his full entitlement to remuneration under the contract.

   The First Instance Circuit held that the employment commenced on 1 February 2020 which was the date set out in the contract. On the second issue, it held that the Respondent was entitled to be paid at the rate of QAR 45,000 per month as set out in the contract without any deduction by reason of an arrangement made between the parties. He had not been paid in full for the period from 1 February 2020 until his employment ended at the end of March 2021. He was therefore entitled to be paid QAR 405,591 by way of outstanding remuneration.

4. The Applicant appeals on two grounds:

   (1) The First instance Circuit was wrong in its conclusion that the Respondent's employment commenced on 1 February 2020;

   (2) The First Instance Circuit was wrong in its determination that no deduction could be made from the Respondent's monthly salary.

5. Two other issues are also raised by the Applicant in the written Application for permission to appeal which were not raised before the First Instance Circuit.

6. In our judgement there are no substantial grounds for considering that the judgment of the First Instance Circuit was erroneous and would result in serious injustice, as set out in Article 35 (1) of the Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules and paragraph 27 of *Leonardo v Doha Bank Assurance Company* [2020] QIC (A) 1.

Ground 1

7. The Applicant contended that the Respondent's employment did not commence until the Respondent could actually be employed by working for the Applicant. He could not actually work and be employed by the Applicant under the terms of the offer letter until the documents required for a change in sponsorship had been provided; that process was not completed until 18 March 2020. That provision of the contract aligned with Qatari Immigration Regulations and therefore prevailed over the date of 1 February 2020 set out in the contract for the commencement of the Respondent's employment.

8. We do not consider that this provides any basis for an argument that the decision of the First Instance Circuit was erroneous. The contract provided that the Respondent's appointment "will be effective on your joining date which is **February 1 2020"** (bold in original). The contract was subject to the QFC Employment Regulations which provide by Article 17(1) that the employer has to give each employee a written contact

that includes the date of the commencement of the employment. The Respondent had contended that he had joined earlier than 1 February 2020 and his employment had commenced at that earlier date. The Applicant had contended that the Respondent had worked for a third party for some weeks after 1 February 2020 and therefore could not have commenced his employment with the Applicant until he was in a position to work for the Applicant. The First Instance Circuit held that the express terms of the contract set out the effective date of the Respondent joining the Applicant as 1 February 2020; this was determinative.

9. There is no basis in our view for contesting the decision of the First Instance Circuit that the Regulations were designed to avoid any uncertainty as to the date of the commencement of employment and neither party was entitled to take any other position. The fact that there may have been a breach of other provisions was irrelevant; in any event, as the First Instance Circuit held, there was no proof before it of any such breach.

Ground 2

10. Although the contract set out the monthly remuneration as QAR 45,000, there was an arrangement between the parties that the Respondent would pay the Applicant QAR 20,000 every month. The First Instance Circuit accepted that an exchange of WhatsApp messages on 25 November 2019 could constitute an agreement in writing under Article 27 (2) of the QFC Employment Regulations that would permit a deduction from the agreed salary, but held that the exchange of messages did not constitute an agreement to a deduction from the salary, but simply to a deferment of the salary.

11. The Applicant contends that the First Instance Court was wrong in the conclusion it reached on that arrangement. The Applicant relies on a further WhatsApp exchange between the parties on 29 April 2020 in support of its contention that the arrangement was in fact an agreement under which the Respondent would pay the Applicant QAR 20,000 each month.

12. We do not consider that this provides any basis for contending that the First Instance Circuit was wrong in its conclusion. As the First Instance Circuit pointed out, there was no counterclaim. The issue before it was whether a deduction could be made from the agreed monthly salary of QAR 45,000. Article 27 (2) of the QFC Employment Regulations provides no deduction can be made unless it was agreed in writing. The further exchange of WhatsApp messages on 29 April 2020 provides no basis for contesting the decision of the First Instance Circuit that there was no agreement for the purposes of Article 27 (2). As the First Instance Circuit made clear the burden of proof on this point rested on the Applicant.

The Applicant's further contentions

13. The Applicant also contends that it was entitled to withhold the salary due in March 2021 because (1) of the Respondent's conduct (including making no proper handover, deleting some information and failing to answer questions), and (2) his breaches of contract by his failure to serve his notice period and his taking certain material from the Applicant.

14. These are matters that cannot be raised in any appeal. The Applicant agreed that the issues before the court were the two we have set out. There is no basis on which the further issues raised in the Application for permission to appeal can be advanced on an appeal. As this court has made clear all the issues in a case must be advanced before the First Instance Circuit. Neither of the issues set out in paragraph 13 was before the First Instance Circuit; no grounds are put forward as to why exceptionally this court should consider them.

Conclusion

15. The Application for permission to appeal against the decision of the First Instance Circuit is accordingly refused.

By the Court,

[signed]

Lord Thomas of Cwmgiedd, President

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

Representation:

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

The Respondent represented himself.

DIGITALLY SIGNED AND VERIFIED
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