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: [2023] QIC (F) 10

IN THE QATAR INTERNATIONAL COURT

FIRST INSTANCE CIRCUIT

Date: 2 April 2023

CASE NO: CTFIC0001/2023

FAT CAT CAFÉ LLC

Claimant

v

AHK ENTERPRISE LLC

Defendant

JUDGMENT

Before:

Justice George Arestis

Justice Fritz Brand

Justice Dr Rashid Al-Anezi

Order

1. The Claimant's claims are dismissed.

2. The Claimant is directed to pay to the Defendant an amount of QAR 37,500.00.

3. The Defendant is entitled to recover its reasonable costs in defending the Claimant's claim and in pursuing its Counterclaim, as assessed by the Registrar if not agreed.

Judgment

1. The Claimant Fat Cat Café LLC, and the Defendant, AHK Enterprise LLC, are both incorporated and licensed in the Qatar Financial Centre ("**QFC**"). The Claimant's claim is in the main for repayment of the sum of QAR 37,500.00 which it had paid to the Defendant pursuant to a temporary lease agreement (the "**Lease Agreement**") between the parties dated 18 September 2022.

2. The dispute presented for determination therefore arises from a contract between two entities established within the QFC. Thus, this Court has jurisdiction in the matter by virtue of article 9.1.1 of the Regulations and Procedural Rules of the Court. Because of the sum and the nature of the issues involved, the claim was allocated by the Registrar to the Small Claims Track of this Court under Practice Direction No.1 of 2022 (the "**Practice Direction**").

3. As contemplated by the Practice Direction, the Claimant filed its claim with supporting documents to which the Defendant responded with a Defence and Counterclaim whereupon the Claimant filed its Reply. While the Claimant was unrepresented when it filed its claim, it was subsqeuently legally represented by Dr Fahad Al-Thani's office when it filed its Reply. The Defence and Counterclaim were filed on behalf of the Defendant by its legal representatives Ahmad Ali Al-Hail.

4. The Defendant, through its legal representatives, also utilised the opportunity afforded by the Practice Direction to file further evidenciary material consisting mainly of video footage of the leased premises which are not, in my view, of any real assistance in determining the issues arising on the papers. Having regard to the pleadings and the written material before us we have decided, in accordance with the Practice Direction, to

determine the matter on the basis of the material thus placed before us and without the hearing of oral evidence or argument.

5. In the terms of the Lease Agreement, the Claimant leased an area of 25 square metres, referred to as a cabin or kiosk, within the Arabian Village Project (Lusail City) from the Defendant for the purpose of selling beverages to spectators during the Qatar FIFA World Cup 2022 event. In terms of clause 5 of the Lease Agreement, the contract term was for 80 days, commencing on 29 September 2022 and ending on 20 January 2023. The same clause stipulated a rental of QAR 75,000.00 for the term of the lease, of which 50% was payable in advance, and with the balance becoming payable upon the handover of the leased space. The Claimant's case is that the location of the kiosk was agreed upon and that it would be made available to the Claimant in terms of clause 3 of the Lease Agreement, namely by no later than 1 November 2022.

6. Further terms of the Lease Agreement relied upon by the Claimant are embodied in clause 8 which essentially provides, in relevant part, that in the event that the Defendant fails to comply with its obligations on time, the Claimant would have the right (a) to terminate the contract without the need to resort to the Court; and (b) to claim compensation for damages and other losses incurred.

7. Broadly stated, the factual basis relied upon by the Claimant for its claims is that, while it performed its obligations under clause 5 of the Lease Agreement by paying QAR 37,500.00 representing 50% of the rent in advance, the Defendant has failed to meet its obligations in a number of respects. Pertinent amongst these are:

    i. the Defendant failed to handover the leased premises on 1 November 2022; instead the handover took place on 17 November 2022 which was the opening day of the Arabian Village;

    ii. the Defendant modified the location of the entrances to the Arabian Village leading to the kiosk which is the subject matter of the Lease Agreement; and

    iii. the specifications of the kiosk are different from those indicated on the maps and the drawings contemplated in clause 3 of the Lease Agreement.

8. On this basis, the Claimant claims: (a) repayment of the amount of QAR 37,500.00; (b) compensation for the loss suffered by it as a result of the Defendant's breach; and (c) payment of the fees and expenses incurred by it in pursuing this claim. The Defendant filed both a Defence and a Counterclaim. According to the Defence, it admits that the Claimant had paid the rent of QAR 37,500.00. Its defence is essentially a denial that it breached the Lease Agreement in any of the ways alleged by the Claimant and its Counterclaim is for the balance of the rent in an amount of QAR 37,500.00. As to the Claimant's complaint of late delivery of the leased premises, the Defendant relies on an email addressed by it to all tenants of kiosks, including the Claimant, on 2 November 2022. The relevant part of this email which is underscored by the Defendant, reads as follows:

> *Greetings from Arabian Village!*
>
> *The World Cup is upon us and we are so excited to have you as one of our partners! You can finally start to set-up your kiosks and have your equipment and appliances ready (fit outs and other electrical set ups).*
>
> *We're going to have a soft opening, the 11th of November, so please make sure everything is in place and have submitted all requirements. ...*
> *After we have opened the village to public, you will not be allowed to renovate or to do a construction activity, so please make sure everything is in place.*
> *On the 17th of November 2022, we will hold a grand opening for the Arabian Village ...*

9. The inference that the Defendant seeks to draw from the email appears from the following passages in its Defence:

> *The foregoing indicates that all the tenants to whom the aforesaid email was sent, had received the kiosks prior to the email correspondence date, i.e. before 2/11/2022, which proves the invalidity of the allegation made by the Claimant that the delivery took place on 17/11/2022 rather than on 1/11/22 as it is established in the aforesaid email correspondence that the Claimant was amongst the tenants to whom the email correspondence was sent on 2/11/2022 which establishes and asserts that the Claimant has received the kiosk....prior to the email date, that it was instructed in the email to complete the set up before 11/11/2022 and that it would not be permitted to perform any fitout works in the kiosks as of 12/11/2022.*
>
> *It is noteworthy that Article 3 which the Plaintiff claims that the Defendant has violated does not relate to the project opening date at all. Rather it concerns the the kiosk handover date to the tenant. It is established to the Court through*

the aforesaid email that the kiosk was handed over to the Plaintiff prior to 2/11/2022. Accordingly the Plaintiff's allegation that the Defendant has breached this Article is groundless and contravenes the facts established in the submitted email correspondence.

10. The Claimant's response to this defence is encapsulated by the following statement in its Reply:

> *Here we draw the attention of the Honourable Court to a fundamental and important fact, which is the Defendant's acknowledgment that the date of the official opening and actual operation was 17/11/2022. Also, the purpose of the lease contract was the sale of beverages: what is the benefit of receiving the place without an audience (customers) before such date, as the Defendant claims!! How would the Plaintiff company carry out its activities when the place is actually closed until the beginning of the launch of FIFA World Cup tournament and its principle activity is the sale of its products to an audience of fans inside the Arabian Village.*
>
> *Additionally there is the fact that all activities ended with the end of Qatar FIFA World Cup 2022 on 18/12/2022. It was also decided in advance by the Defendant that the activity of the entire Village would be completed on 1/1/2023.*

11. With regard to the Claimant's second and third complaints regarding the relocation of the Arabian Village entrances and the location of the rented cabin, the Defendant responded as follows in its Statement of Defence:

> *It is noteworthy that the first part of this claim concerning the alteration of the Village entrances affirms the invalidity of this claim, in view of the fact that the Defendant company lacks the authority to alter the locations leading to the Village as this authority falls within the jurisdiction of the State, which is represented by the Public Works Authority, the Municipality and the General Directorate of Traffic. The Defendant has no authority to adjust public roads leading to the Village.*
>
> *Assuming for argument that the Defendant company had the authority to change the positions of the Village entrances where is the evidence of this claim in the case papers?*
>
> *In addition, alterations of kiosk location as alleged by the Plaintiff is invalid for two reasons. Firstly the Plaintiff received the kiosk without any objection on their part which indicates the presence of the kiosk within the agreed site. If the kiosk site had been altered, the Plaintiff would not have received it at all and it would have objected to its location which did not happen. Furthermore, the papers contain no evidence that there was any disagreement over the kiosk location upon receiving the kiosk and they contain no indication that the Plaintiff objected to the kiosk location upon receipt thereof."*

12. In the Reply filed on behalf of the Claimant, no further reference is made to these complaints apart from the late delivery. Hence there is no response to the Defendant's answers to these grounds of the claim and in consequence these answers effectively stand uncontroverted.

13. The question arising for determination is whether on these papers the Claimant has established any breach of contract on the part of the Defendant upon which it can rely for temination of the Lease Agreement? The answer to that question must in our view be 'no'. We say this for the following reasons. Although the Claimant started out by relying on three different grounds, only one of these grounds eventually prevailed in its Reply. Hence we find no basis to reject the Defendant's answer to the two other complaints pertaining to the alleged relocation of entrances to the Arabian Village or of the kiosk itself.

14. The only remaining ground for termination upon which the Claimant persists in Reply relates to the alleged late delivery of the kiosk. In this regard the complaint, as originally formulated in the Claim Form, was that the Defendant had failed to deliver the kiosk on 1 November 2022 as stipulated in the Lease Agreement. The Defendant gave a conclusive response to that objection in its Statement of Defence. In its Reply the Claimant then changed its tack to a complaint which no longer relied on the late delivery or hand over of the leased premises, but relied instead on the allegation that the opening of the FIFA World Cup 2022 was only on 17 November 2022. But the Lease Agreement does not refer to or stipulate any agreed date for the opening of the FIFA World Cup 2022 at all. We are prepared to accept that the whole purpose of the Lease Agreement was to afford the Claimant the opportunity to sell beverages at the tournament, as contended by the Claimant. But the Lease Agreement does not stipulate, as the Claimant seems to suggest, that the period of the lease would correspond with the duration of the tournament. On the contrary, according to the express terms of the Lease Agreement, the lease was to endure for 80 days from 18 September 2022, which would clearly overlap with the duration of the tournament, but would not exactly correspond to it.

15. In its Reply, the Claimant underscores the fact that all the festivities ended on 18 December 2022 with the final of the FIFA World Cup 2022. But I think we can accept that the parties always knew that. So the Claimant's real complaint seems to be that the

opening of the FIFA World Cup 2022 was later than the date anticipated by the Claimant, which would presumably shorten the lucrative part of the lease period it had in mind. But there is no suggestion on the papers as to why the Defendant should be held responsible for the late opening of the tournament whenever it occurred. Stated somewhat differently, the Defendant clearly did not take responsibility for the opening date of the tournament in terms of the Lease Agreement. In short, the Claimant received delivery of the lease premises on the date and for the period agreed in the lease. Accordingly it had failed, on the papers before us, to establish any breach of the contract by the Defendant. Hence, it was not entitled to terminate the Lease Agreement pursuant to the provisions of clause 8 thereof and its claim for repayment of the contract price therefore has to fail.

16. The Counterclaim is (a) for an amount of QAR 37,500.00 being the outstanding balance of the rent payable by the Claimant under the lease, and (b) for an amount of QAR 10,000.00 allegedly representing the costs incurred by the Defendant in defending itself against this claim. As to the claim for the outstanding rent, it follows from what we have said that the Claimant has no answer to this claim. Hence we propose to grant the order sought by the Defendant under this heading.

17. As to the the claim under the heading of costs, the Defendant is, in our view, entitled to no more and no less than the standard costs order in its favour that 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 Claimant was represented by Dr Fahad Al-Thani (Doha, Qatar).

The Defendant was represented by Ahmad Ali Al-Hail (Doha, Qatar).

DIGITALLY SIGNED
AND VERIFIED
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