



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 (C) 4**

IN THE QATAR FINANCIAL CENTRE  
CIVIL AND COMMERCIAL COURT

Date: 8 June 2023

**CASE NO: CTFIC0015/2021**

**BANK AUDI LLC**

**1<sup>st</sup> Claimant**

v

~~AL FARDAN INVESTMENT COMPANY LLC~~

**1<sup>st</sup> Defendant**

~~ALI HUSSAIN IBRAHIM HASSAN AL FARDAN~~

**2<sup>nd</sup> Defendant**

~~FAHAD HUSSAIN IBRAHIM AL FARDAN~~

**3<sup>rd</sup> Defendant**

~~OMER HUSSAIN IBRAHIM HBASSAN AL FARDAN~~

**4<sup>th</sup> Defendant**

~~AL FARDAN GROUP LLC~~

**5<sup>th</sup> Defendant**

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## COSTS JUDGMENT

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**Before:**

**Mr Umar Azmeh, Registrar**

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**Order**

1. The Third Defendant is to pay the Claimant the sum of **QAR 1,145,472.26** within 14 days of the date of this judgment.

**Judgment**

**Introduction**

1. Judgment was originally handed down in this case on 16 January 2022 ([2022] QIC (F) 2) whereby the Court ordered summary judgment against the First, Second, Fourth and Fifth Defendants/Respondents. Summary judgment was not ordered against the Third Defendant/Respondent (henceforth the '**Third Defendant**'). Following directions, a hearing/trial took place between the Claimant and the Third Defendant in October 2022 concerning a counterclaim made by the Third Defendant.
2. On 24 November 2022, the Court (Justices Her Honour Frances Kirkham CBE, Lord Hamilton, and Fritz Brand) handed down its judgment ([2022] QIC (F) 20) dismissing the Third Defendant's counterclaim and ordering that he pay the costs of the Claimant to be assessed by me if not agreed. No such agreement has been achieved.

**Background**

3. In December 2016, the Third Defendant and the Claimant's General Manager met in Doha and discussed an investment opportunity that was being offered by Banque du Liban. The Bank Audi Group was sharing this opportunity with their valued clients (see paragraph 14 of the judgment). The putative investment involved, inter alia, a deposit of USD 20m (the '**Investment**') transferred in foreign currency from outside Lebanon (see paragraph 16 of the judgment). The transaction also involved the use of a fiduciary,

although the precise identity of the fiduciary was disputed at trial (the Court found in favour of the Claimant on this point – see paragraph 51 of the judgment).

4. Ultimately, the Third Defendant was not able to deal with the Investment in the manner in which he wanted (see paragraphs 5 and 36-41 of the judgment). He thus claimed as follows:
  - i. The Claimant was in breach of contract for refusing to repay him the Investment.
  - ii. The Claimant was liable to him in damages for negligent misstatement.
5. The Third Defendant had initially pursued a claim under article 27 of the Qatar Financial Centre Contract Regulations 2005, but this claim was expressly not pursued by his counsel. He also pleaded claims in agency and in mistake, but neither were pursued either in his skeleton argument or closing submissions (see paragraphs 63-65 of the judgment).
6. The Third Defendant was unsuccessful in all of his claims against the Claimant (see paragraphs 51-55, 60 and 62 of the judgment). The Court concluded as follows at paragraph 70: *“Mr Al Fardan’s claims against BAQ fail. Mr Al Fardan is therefore liable to pay BAQ’s reasonable costs of and in connection with this Court case.”*

### **Approach to costs assessment**

7. Rule 33 of the Court’s Regulations and Procedural Rules reads as follows:

*33.1 The Court shall make such order as it thinks fit in relation to the parties’ costs of the proceedings.*

*33.2 The general rule shall be that the unsuccessful party pays the costs of the successful party. However, the Court can make a different order if it considers that the circumstances are appropriate.*

*33.3 In particular, in making any order as to costs the Court may take account of any reasonable settlement offers made by either party.*

*33.4 Where the Court has incurred the costs of an expert or assessor, or other costs in relation to the proceedings, it may make such order in relation to the payment of those costs as it thinks fit.*

*33.5 In the event that the Court makes an order for the payment by one party to another of costs to be assessed if not agreed, and the parties are unable to reach agreement as to the appropriate assessment, the necessary assessment will be made by the Registrar, subject to review if necessary by the Judge.*

8. In *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (C) 1, the Registrar noted that the “... *list of factors which will ordinarily fall to be considered*” to assess whether costs are reasonably incurred and reasonable in amount will be (at paragraph 11 of that judgment):

- i. Proportionality.
- ii. The conduct of the parties (both before and during the proceedings).
- iii. Efforts made to try and resolve the dispute without recourse to litigation.
- iv. Whether any reasonable settlement offers were made and rejected.
- v. The extent to which the party seeking to recover costs has been successful.

9. *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* noted as follows in relation to proportionality, again as non-exhaustive factors to consider (at paragraph 12 of that judgment):

- i. In monetary ... claims, the amount or value involved.
- ii. The importance of the matter(s) raised to the parties.
- iii. The complexity of the matters(s).
- iv. The difficulty or novelty of any particular point(s) raised.

- v. The time spent on the case.
- vi. The manner in which the work was undertaken.
- vii. The appropriate use of resources by the parties including, where appropriate, the use of available information and communications technology.

10. One of the core principles (elucidated at paragraph 10 of *Hammad Shawabkeh v Daman Health Insurance Qatar LLC*) is that “*in order to be reasonable costs must be both reasonably incurred and reasonable in amount.*”

### **The parties’ submissions**

11. I have received and reviewed the following documentation:

- i. Claimant’s submissions on costs, an appendix thereto and email exhibit, dated 10 January 2023.
- ii. Third Defendant’s response to (i), above, dated 7 February 2023.
- iii. Claimant’s reply to (ii), above, along with exhibits thereto, dated 7 March 2023.
- iv. Third Defendant’s submissions in response to the Claimant’s submissions at (iii), above, with an exhibit thereto, dated 23 March 2023 (entitled ‘rejoinder submissions’).
- v. Claimant’s response to (iv), above, dated 9 April 2023 (entitled ‘surrejoinder’).
- vi. Pleadings, witness statements, and applications.

### Claimant’s submissions (10 January 2023)

12. The Claimant claims its full costs of this tranche of the litigation, which amount to QAR 1,481,782.26. These are broken down in this submission as follows:

- i. Partner: QAR 338,080.00.
- ii. Associate: QAR 953,615.00.
- iii. Paralegal: QAR 11,080.64.
- iv. Counsel: QAR 179,006.62.

13. The Claimant's primary submissions in this document are as follows:

- i. The costs claimed are proportionate considering:
  - a. The value of the claim was USD 20m.
  - b. The case was complex, requiring analysis of claims in contract, tort, along with litigation in other jurisdictions and a regulatory investigation.
  - c. The division of work within the legal team was appropriate, with the bulk of the work conducted at associate level with minimal partner input.
- ii. The conduct of the Third Defendant resulted in significant costs which were "*wholly avoidable*", for example:
  - a. An application for specific disclosure on 5 October 2022.
  - b. An abandoning of the claim contrary to the QFC Contract Regulations 2005 on 23 October 2022.
  - c. An application for permission to amend the counterclaim and to adduce another witness statement on 29 October 2022.

- iii. A rejection of an offer made by the Claimant to the Third Defendant on 24 May 2022 (without prejudice save as to costs), which the Claimant contends was “*unreasonable*”. The offer was, in essence, an invitation for the dispute to end at that stage with each side bearing its own costs. The Claimant invites me to award it costs on the indemnity basis – from the date of the offer – as a result of the Third Defendant’s rejection of this offer.
- iv. The Claimant was successful in each aspect of its defence to the counterclaims.

Third Defendant’s submissions dated 7 February 2023

14. These primarily submitted, inter alia, as follows:

- i. The fees incurred by the Claimant’ solicitors, Eversheds Sutherland (International) LLP (‘**Eversheds**’) are unreasonably incurred and unreasonable in amount.
- ii. The fees incurred by the Claimant’s counsel, Mr Laurence Page (4 Pump Court, London, United Kingdom) are “*not disputed*”.
- iii. Eversheds’ fees are “*approximately 64% higher than the combined fees of Clyde & Co and Al Tamimi & Company in respect of the Counterclaim*” (excluding counsel’s fees).
- iv. There was no ledger or breakdown of the figures put forward by Eversheds and therefore it is difficult to make comment, although the fact that there is no breakdown warrants a significant reduction.
- v. The case was a “*relatively simple*” dispute – evidenced by a short trial and the bundle being 343 pages, along with the length of pleadings and witness statements – and in light of this the fees charged are disproportionate and unreasonable.

- vi. The Third Defendant's conduct cannot have increased the Claimant's costs significantly.
- vii. The offer made by the Claimant to the Third Defendant was only valid for five days including a weekend, and had expired before the Claimant had filed a Statement of Defence; the Counterclaim of the Third Defendant was not vexatious or without merit, was of considerable importance, and was managed appropriately.

Claimant's submissions dated 7 March 2023

15. These primarily submitted, inter alia, as follows:

- i. The Third Defendant's costs are not a benchmark by which to assess the Claimant's costs; the Third Defendant changed legal teams and so had a period – between legal teams – where no costs were incurred; no narrative has been provided by the Third Defendant to substantiate its submission on the difference between the two sets of costs; the difference in costs can be largely explained by the difference in hourly rates and also the different number of hours allocated to pleadings, applications, witness statements, and hearing preparation (and the structure of the Claimant's legal team was entirely proportional and reasonable); and a disparity between the fees of each party is not an indication of unreasonable fees on the part of the Claimant.
- ii. In relation to a ledger provided with this submission, the Claimant submits that the resources of its firm were in proportion to the complexity of the case and the hourly rates used are in line with the professional rates in the marketplace.
- iii. The Third Defendant's conduct during the dispute has been consistently disruptive and has resulted in significant costs that the Claimant would not have occurred (for example the late and unsuccessful application for specific disclosure; the late concession of the claim under the QFC Contract Regulations 2005; the late application to amend the

Counterclaim; and the late application to adduce another witness statement), and this includes the rejection of the offer of settlement. The Claimant points out that the offer to settle was not – as asserted by the Third Defendant – valid for five days only, but had its validity extended (by a further 14 days) at the request of the Third Defendant.

- iv. The Claimant also maintains that this matter was one of complexity, requiring consideration of issues that included: breach of contract; breach of agency; mistake; a breach of QFC laws; regulatory breaches; negligent misrepresentation; litigation in other jurisdictions; criminal investigations by the Public Prosecution Office; and an investigation by and findings of the QFC Regulatory Authority.

#### Third Defendant's 'rejoinder' submissions dated 23 March 2023

16. The 'rejoinder' submissions noted, inter alia, as follows:

- i. The Third Defendant's position is that following the Claimant's submissions dated 7 March 2023 which included the ledger, the costs are self-evidently unreasonable for the reasons noted in paragraphs 3.5-3.12 of the Third Defendant's submissions dated 7 February 2023.
- ii. The Third Defendant's costs are not a benchmark but are noted so that the Court can have an overview and also so that the Court can compare costs.
- iii. The difference in fees between the parties is due to the excessive time spent by Eversheds on various matters (with some suggested examples provided).
- iv. Eversheds' fees were not significantly impacted by applications made on behalf of the Third Defendant.

#### Claimant's 'surrejoinder' submissions dated 9 April 2023

17. The 'surrejoinder' submissions noted, inter alia, as follows:

- i. The Claimant's costs are at the level at which they are claimed due, among other things, to the fact that Eversheds had to prepare litigation strategy and pleadings for a relatively large bank with affiliates around the world, meaning that Eversheds were tasked with reviewing submissions in litigation in different parts of the world with different subject matters.
- ii. The Third Defendant has not substantiated its claim that the costs of the Claimant are "*self-evidently unreasonable*".
- iii. The Claimant maintains that the Third Defendant's conduct drove up costs.

18. Both parties also made submissions on various authorities (*Obayashi Qatar LLC and another v Qatar First Bank LLC* [2021] QIC (C) 1; *Oussama Assad v Nomura International Plc* [2019] QIC (C) 3; *Nasco Qatar LLC v Misr Insurance (Qatar Branch)* [2021] QIC (C) 4; *Fadi Sabsabi v Devisers Advisory Services LLC* [2022] QIC (C) 1; *Associated Newspapers Ltd v Buckingham Group Contracting Ltd* [2022] EWHC 2767 (TCC); *GSK Project Management Ltd (In Liquidation) v QPR Holdings Ltd* [2015] EWHC 2274 (TCC); *Monex Europe Ltd v Potheary and another* [2019] EWHC 2204 (QC)). I have taken account of these submissions and bear them in mind.

## **Analysis**

### Basis for costs assessment in this case

19. The Claimant submitted that the costs ought to be awarded on the indemnity basis (that is, unqualified by a proportionality constraint). The Third Defendant submitted, inter alia, that there is "*no reference in the Judgment nor provision in the Rules for 'indemnity costs'*"; the Third Defendant also submits that the Court has never made an order for costs on the indemnity basis (see paragraph 3.16 of its 7 February 2023 submissions). Whilst the Third Defendant is correct that there is no specific reference in the Rules to awarding costs on the indemnity basis, it is clear to me that the Court has the power to award costs on whatever basis it deems fit (see articles 10.3 and 33.1 of the Court's Regulations and Procedural Rules).

20. The language of “*standard*” or “*indemnity*” costs appears in the Civil Procedure Rules (‘**CPR**’) applicable in the United Kingdom, most relevantly in Part 44 (Rules 44.3 and 44.4). Those Rules provide some guidance on assessment of costs under either basis, making it clear that unreasonable costs are not recoverable under either basis (which is the same principle in this jurisdiction: see, for example, *Amberberg Ltd and another v Thomas Fewtrell and others* [2023] QIC (C) 2 at paragraph 19).
21. Rule 44.3(5) of the CPR provides guidance as to whether or not costs incurred are proportionate (being proportionate if they bear a reasonable relationship to (a) the sums in issue, (b) the value of any non-monetary relief, (c) the complexity of the litigation, (d) any additional work generated by the conduct of the paying party, (e) any wider factors involved, and (f) any additional work undertaken or expensive incurred due to the vulnerability of a party or any witness), which by implication notes factors that an assessment need not take into account if costs are being assessed on the indemnity basis. Rule 44.4(3) also notes general factors that must be taken into account when making a costs order.
22. Cook on Costs notes that costs on the indemnity basis have traditionally “*only been awarded where there has been some culpability or abuse of process*” (examples of potentially relevant scenarios being – significantly unreasonable conduct: *National Westminster Bank plc v Rabobank Nederland* [2007] EWHC 1742 (Comm); underhand tactics: *Caliendo v Mischon De Reya*, unreported (Ch) 14 March 2016; hopeless defences constituting unreasonable conduct: *Lifeline Gloves Ltd v Richardson* [2005] EWHC 1524 (Ch); failing to comply with a duty of full and frank disclosure: *U&M Mining Zambia Ltd v Konkola Copper Mines plc* [2014] EWHC 3250 (Comm); continued pursuit of hopeless claim: *Wates Construction Ltd v HGP Greentree Allchurch Evans Ltd* [2005] EWHC 2174 (TCC); abuse of process: *A v B (No. 2)* [2007] EWHC 54 (Comm); the tendering of unjustified defences: *Cooper v P&O Stena Line Ltd* [1999] 1 Lloyd’s Rep 734, QB (Admiralty Ct); reliance upon large volumes of unnecessary evidence: *Digicel (St Lucia) Ltd (a company registered under the laws of St Lucia) v Cable & Wireless plc* [2010] EWHC 888 (Ch); and where there is another motive for the litigation: *Amoco (UK) Exploration Co v British American Offshore Ltd (No. 2)* [2002] BLR 135; Cook on Costs 2017, paragraphs 24.1-24.18).

23. Although academic taking account of my findings below, had I been required to decide whether or not to award costs on the indemnity basis, I would have agreed with the Third Defendant that costs ought not to be awarded on the indemnity basis in this case. It is true that the Third Defendant was unsuccessful in all of his claims against the Claimant. However, I give weight to the fact that the Court did not make any comment concerning the Third Defendant's conduct in the course of its judgment. It is true that the Third Defendant did not accept the offer of settlement dated 24 May 2022 but, as it is pointed out on his behalf, the Claimant had not yet filed its Statement of Defence to the Counterclaim prior to the expiry of that offer which did not give the Third Defendant an opportunity to review the case against him prior to considering the offer to settle. Furthermore, on the material that I have before me, I am unable to identify any conduct that is so unreasonable that it strays into the realms of indemnity costs.

#### Rates and complexity

24. Given the concession made by the Third Defendant in relation to the fees incurred by the Claimant's counsel – Mr Page – at paragraph 3.2 of its submissions dated 7 February 2023, and that in any event they seem to me to be reasonably incurred and reasonable in amount, I allow those in full in the sum of QAR 179,006.62.

25. The rates charged by Eversheds are as follows (to the nearest QAR): associate (QAR 2,300/hour); partner (QAR 3,100/hour); trainee associate (QAR 1,750/hour); and paralegal (QAR 1,139/hour). The Third Defendant in its submissions dated 23 March 2023 has explicitly noted that the "*unreasonableness of Eversheds' fees is in the amount of time spent...*" and also notes in the same submission, although this is disputed by Eversheds, that the hourly rates of the three firms involved (Eversheds, Clyde & Co and Al Tamimi and Company) "*... are in fact similar.*" It is also my experience that the rates charged by Eversheds are in line with those charged by similar firms in the jurisdiction. I am satisfied that the rates are reasonable and make no deduction at this stage. At paragraph 4.4 of its 7 March 2023 submission, the Claimant provides a helpful breakdown of the volume of work conducted by each member of team as follows (to the nearest percent and hour): associate – 77% (420 hours); partner – 20% (111 hours); trainee associate – 2% (10 hours); and paralegal 1% (7 hours). There is no challenge from the Third Defendant as to the hourly rates or the division of work.

26. The parties are of differing views as to the complexity of this case. The Claimant is of the view that the matter was a complex one (see paragraph 3.2(b) of the submission dated 10 January 2023, paragraphs 6.1-6.4 of the submission dated 7 March 2023, and paragraphs 5.1-5.3 of the submission dated 9 April 2023). The Third Defendant's view is that this case was "*relatively simple*" (see paragraph 3.8 of the submission dated 7 February 2023), and that this lack of complexity is "*demonstrated both in the brevity of the documents and length of trial*" (see paragraph 6.1 of the submission dated 23 March 2023).

27. It is not necessarily the case that the length of pleadings, the number of pages in a bundle, or the length witness statements or trial is a suitable proxy for the complexity of a matter. Indeed, exceptionally complex matters of law can be discussed in well under a day. As noted by Mitting J in *R (on the application of Noone) v Governor of Drake Hall Prison & another* [2008] EWHC 207 (Admin) (albeit in a very different context and for illustration purposes only):

*... These proceedings show that, in relation to perfectly ordinary consecutive sentences imposed since the coming into force of much of the Criminal Justice Act 2002, that task is impossible, Indeed, so impossible is that it has taken from 12 noon until 12 minutes to 5, with a slightly lengthier short adjournment than usual for reading purposes, to explain the relevant statutory provisions to me, a professional Judge. The position at which I have arrived and which I will explain in detail in a moment is one of which I despair.*

28. Having reviewed the judgment, pleadings and skeleton arguments, I cannot agree with the Third Defendant that this was a "*simple*" claim. There were a large number of issues raised by the Third Defendant as part of his Counterclaim (indeed, his own skeleton argument has some 45 footnotes), and it is clear that a significant number of diverse legal areas required attention (see paragraph 6.3 of the Claimant's submission dated 7 March 2023). The Statement of Counterclaim itself, dated 17 April 2021, and the Third Defendant's Statement of Reply dated 8 September 2022 raise among other things: obfuscation of legal identities, breaches of QFC Regulations, exceeding the scope of a banking licence, contract, misrepresentation, agency and mistake. In my view, these are not simple matters.

#### Ledger breakdown of fees

29. The analysis below will address – in no particular order – the submissions made by the Third Defendant at paragraph 4 of its submissions dated 7 March 2023. That paragraph submits that specific items claimed are unreasonable on the grounds that excessive amounts of time have been spent.

#### *Attendance at hearing*

30. The Claimant had four separate individuals attending the trial, either in person or remotely: two partners, the associate, and counsel. Whilst it is in my view perfectly reasonable for an advocate to be attended by another lawyer during a trial, it is not reasonable in this case for a party to recover costs from the other party in circumstances in which multiple individuals attend upon the advocate (I must stress that as a matter of practice and case strategy it is perfectly acceptable for multiple individuals to attend a trial, and indeed can be very beneficial for a client; however, it is not reasonable in my view to order the other party to pay for multiple lawyers to attend the same hearing in this case).

31. Bearing in mind the complexity of the case as noted above, that the amount in contention was USD 20m, and that this was a case for a significant bank, I am of the view that it was reasonable for a partner to attend court on both of the days of the hearing. With the attendant preparation and work that comes with a hearing day, I am of the view that 10 hours at partner level for each day of the hearing is reasonable. I therefore make a deduction to the 51 hours claimed on 30 and 31 October 2022 of 31 hours which comprises **QAR 82,100**.

#### *Hearing preparation*

32. Having reviewed the ledger, it seems to me that what can broadly be categorized as ‘trial preparation’ started around 29 September 2022 and ended on 29 October 2022. Some of this work entailed reviewing and responding to the application made by the Third Defendant.

33. Following a review of the ledger, I can identify a maximum of approximately 32 hours of work undertaken by Mr Mousavi (associate) that concerned the application for disclosure, and some 2 hours on the part of Mr Whyatt (partner). The application, whether classified as “late” or not, was made shortly before the hearing, on 5 October 2022, and also included an application to vacate the trial date. The Court considered the

matter on the papers and refused the first application, with the second application therefore not requiring consideration on the basis that the Third Defendant had “*not demonstrated that the documents he was seeking would (if they existed) be relevant to the issues...*” (paragraph 3 of the judgment; although the second application would have necessitated work on the part of the Claimant). The Reply drafted by Mr Mousavi is detailed and carefully constructed and ultimately was successful on the papers. Time is also spent considering the Response of the Third Defendant. The Third Defendant complains that this is an excessive amount of time to have spent on responding to their application. I must also take account of the fact that these 32 hours also included: discussions with counsel; discussions with the client; communications with the client via email in relation to counsel. I also take account of the fact that this application came shortly before the hearing, would have been unexpected, and was an application made by the Third Defendant that necessitated immediate work on the part of the Claimant. This was ultimately – given the fact that the Court ruled against the Claimant – unnecessary work generated by the Third Defendant in the lead up to the trial. Taken as a whole and bearing those factors in mind, I am of the view that a reasonable amount of time for this tranche of work is 25 hours and therefore I make a deduction of 7 hours in the sum of **QAR 11,100**.

34. There appears to have been work in providing advice to the Claimant in the lead up to the hearing, which included witness preparation/familiarisation (28 October 2022, 24 October 2022, and 18 October 2022). The total claimed for these items amounts to QAR 25,460 (circa 2.5 hours for Mr Whyatt and 7.7 hours for Mr Mousavi). It may well be that a client would ask for specific advice to be delivered in a tranche at this stage (18 October 2022), but it is axiomatic that the client would have been receiving ongoing advice and therefore I am not of the view that this item is reasonable in full. Witness familiarisation is good practice, but I am only prepared to allow two hours for this – one each for Mr Whyatt and Mr Mousavi. Therefore, I deduct **QAR 20,000** from these items.
35. There appears to be a little under 6 hours of time recorded specifically and solely relating to bundle preparation, with the majority of that being done at paralegal level. This is entirely reasonable in my view. I make no deduction in respect of these items

(29 September 2022, 6 October 2022, 7 October 2022, 12 October 2022, and 13 October 2022).

36. Other preparation for the hearing conducted from 29 September 2022 to 29 October 2022 includes: (i) instructions to counsel; (ii) planning/meetings; (iii) review of submissions; (iv) making notes for the hearing; (v) reviewing submissions; (vi) review of skeleton arguments; (vii) cross-examination preparation; (viii) liaising with clients; and (ix) liaising with opposing counsel.

37. As a starting point, trial preparation is a critical part of the litigation process so that parties are able to strategise, pose their arguments, and test and refine those arguments in anticipation of the position of the other party. It is also axiomatic that there will be inevitable discussions between client and lawyer which may increase in frequency as a significant piece of litigation approaches. Furthermore, I do not think it unreasonable for solicitors to assist counsel in preparing skeleton arguments or cross-examination: solicitors are often – as occurred in this case – heavily involved in a dispute prior to the involvement of a barrister, and will therefore be more familiar with the history and detail of a dispute. That knowledge can be very valuable to a barrister who is instructed shortly prior to a trial, and assisting the barrister with the opening/closing submissions, skeleton arguments, and cross-examination is perfectly proper. Of course, it is worth repeating that for these items to be recoverable, they must be reasonable.

38. I am satisfied that the items at paragraph 36 above are reasonably incurred items for the preparation phase. The Third Defendant has sensibly not suggested that no degree of trial preparation is necessary or reasonable. In terms of specific items there are, between 14 October 2022 and 21 October 2022, some rather broad review items and relatively generic hearing preparation entries in the ledger. These amount to a little under 50 hours across that week. Given the lack of specificity in relation to some of these items and the total for this particular task across one full week – effectively 7 hours of preparation per day – I am not of the view that it is reasonable for the other party to meet these costs in full. I therefore make a reduction of 15 hours at associate level in the sum of **QAR 34,500.**

*Early work to April 2022*

39. The Third Defendant has noted that there was up to 21.9 hours/QAR 52,770 in respect of preliminary work and ‘high-level’ reviews of the Counterclaim (see paragraph 4.1.1 of its submission dated 23 March 2023). Having reviewed the documentation I agree with the Third Defendant that it would be unreasonable to order these costs in full. Three lawyers were conducting this work, there may well have been an element of duplication in that reviewing work, and there were also calls with the Claimant – for example on 19 April 2022 – at which more than one lawyer was present (charging a combined QAR 5,400 per hour). The work done also seems to be at a more general and strategic level rather than being targeted work which would flow into work product. It would be appropriate in my view, at this stage of this type of litigation, for a partner to conduct approximately half the work. Therefore, I will allow approximately 12 hours split equally between the partner rate and Mr Mousavi. I therefore make a deduction in the sum of **QAR 20,000** for this phase of the work.

*Early work: offer, Defence to Counterclaim, and witness statement of Mr Zouk*

40. From 22 May 2022 to 26 May 2022, there are number of stand-alone items that refer to the settlement offer dated 24 May 2022. These comprise 2.9 partner hours for a total of QAR 8,990 and 5.4 hours from Mr Mousavi for a total of QAR 17,280 (a combined total of QAR 26,260).

41. Litigation strategy, including consideration of costs and how best to maximise costs protection, is a core part of modern litigation. Therefore, it is clearly reasonable for some time to be expended on a discussion of the offer, its drafting, and dissemination, including further discussions once a response was received from the Third Defendant.

42. However, the letter of 24 May 2022 is comfortably under two pages of A4. Its content does not suggest that it would have taken a particularly long time to draft. Furthermore, a discussion of this strategy at this stage of the litigation – prior to filing and serving the Defence to Counterclaim and obviously prior to receiving any Response to such a Defence from the Third Claimant – would not in my view have been particularly time-consuming for an experienced firm of lawyers accustomed to costs strategy. I also note that there are a number of entries that include compilation of the offer, discussion of costs strategy, and liaising with the client and opposing counsel on costs that are included within a particular cell on the ledger with other items. So, it stands to reason

that more time than 8.3 hours was spent on this item (it being impossible to ascertain a precise figure).

43. Taking account of the time that I am able to verify that has been spent on the offer, and also being mindful of the fact that there is further time that was expended on the offer but that I cannot specifically ascertain, I will allow three hours for this offer, one partner hour and two hours for Mr Mousavi. This results in a deduction of **QAR 18,650**.
44. I take note of the Third Defendant's submissions at paragraphs 4.1.2 and 4.1.3 of its 23 March 2023 document, in which it submits that the Claimant has appeared to have spent approximately QAR 270,000 on the Defence to the Counterclaim and the witness statement of Mr Zouk, and that is excessive.
45. Having studied the ledger, I have identified approximately 47.7 hours spent by Mr Mousavi on the Defence to Counterclaim only (circa QAR 110,000), 2.8 by Mr Kabbani (circa QAR 9,000), 2.7 by Mr Whyatt (circa QAR 8,000) and 3 by Orbil Federizo, a paralegal (circa QAR 4,000). In relation to the witness statement of Mr Zouk, I have also identified approximately 29.1 hours spent by Mr Mousavi on the witness statement only (circa QAR 67,000), 3.8 by Mr Kabbani (circa QAR 12,000), and 0.7 by Mr Whyatt (circa QAR 2,000).
46. There is also time on the ledger that relates to both the Defence to Counterclaim and witness statement of Mr Zouk, but in relation to which it is not possible to determine exact proportions: approximately 26 hours for Mr Mousavi (circa QAR 59,000). These figures (see also paragraph 47) amount to circa QAR 270,000: similar to the calculation performed by Al Tamimi & Company.
47. Addressing the Defence to the Counterclaim first. As noted above, I concur with the Claimant that this matter was not a simple one. There were a number of areas that needed to be addressed. It was a document that clearly needed to be drafted with some care, not least as the Third Defendant sought USD 20m. I take the primary points raised by the Third Defendant in its 23 March 2023 submission, namely that the document was just over 30 pages and comprised a small number of exhibits. I must also add that I am of the view that the division of work in respect of this document was appropriate,

with Mr Mousavi undertaking the vast bulk of the work. As to the witness statement of Mr Zouk, whilst it is relatively short, it deals with matters of importance to the Claimant and was a document that required some work. He was an important witness for the Claimant. Again, I take note of the points raised by the Third Defendant in its 23 March 2023 submission at paragraph 4.1.3.

48. Taking a step back to look at the matter in the round, I am of the view that a reasonable time to have spent on the Defence to Counterclaim is in fact the time identified in paragraph 45, above, less 7.7 hours for Mr Mousavi. I am of the view that a reasonable amount of time to have expended on Mr Zouk's witness statement is the time also identified at paragraph 45, above, less 4 hours for Mr Mousavi. I therefore disallow the time identified at paragraph 46, above, along with further reduction of 11.7 hours for Mr Mousavi, for a total reduction of **QAR 86,710**.

*Review of Reply, Rejoinder and witness statement of Mr Jaber*

49. The Reply to the Defence to Counterclaim is dated 8 September 2022. The Claimant's response – 'Statement of Rejoinder' – is dated as served on 29 September 2022. The Third Defendant complains in its 23 March 2023 submission that some 67.8 hours / QAR 165,155 was expended on reviewing the Reply to the Defence to Counterclaim and drafting the Rejoinder (paragraph 4.1.4). The narrative/ledger provided by Eversheds notes that the Reply and its exhibits are 120 pages in length (the Reply itself being a PDF of 21 pages). The Statement of Rejoinder is 24 pages in length, contains a number of exhibits and also 78 footnotes.

50. Mr Jaber's witness statement is within a PDF of 7 pages in length. His evidence did go to some important issues in the case. The Third Defendant complains in its 23 March 2023 submission that some 15.3 hours / QAR 36,790 was expended on that witness statement (paragraph 4.1.5) from 23 September 2022 to 28 September 2022.

51. Again, this matter was not a straightforward one and there were both issues of fact and a number of difficult legal issues that required a significant degree of thought and care. It is clear that both documents required liaising internally and also discussions with the Claimant: all of these are reasonably incurred items in the context of this case.

52. I agree with the Third Defendant that the time expended on the ledger for these items is just under 68 hours as a maximum. There is also the additional 15.3 hours logged for the witness statement of Mr Jaber (although some of the 68 hours also included work on his witness statement). In light of the manner in which the ledger has been compiled, the most sensible way is to look at the review of the Reply to Defence to Counterclaim, the drafting of the Rejoinder and also the compilation of the witness statement and judge whether 83 hours (to the nearest hour) is reasonable in the round. I am of the view that a reasonable time to have incurred for these tasks is the 68-hour figure and therefore I make a deduction of **QAR 36,790** in respect of the 15.3 hours noted as relating solely to the witness statement of Mr Jaber, along with a further deduction in respect of half of six hours of meetings concerning the Reply on 20 September 2022 and 21 September 2022 in the sum of **QAR 8,100**.

*Costs of this assessment*

53. Approximately 39 hours have been expended on these costs submissions on the part of the Claimant; this amounts to a little under QAR 90,000. The Third Defendant complains in its 23 March 2023 submission that these costs are unreasonable. It is worth noting that these are, in principle, recoverable in this Court (*Nasco Qatar LLC v Misr Insurance (Qatar Branch)* [2021] QIC (F) 17).

54. As noted above, the Claimant made three separate costs submissions, two of which were replies to counter-submissions made by the Third Defendant. Work included research, liaising internally, discussions with opposing counsel, and liaising with the client. The bulk of the work – approximately 24 hours (circa QAR 60,000) – was conducted as at the date of submission of the first costs document by the Claimant on 10 January 2023. That document is a short document, making well-taken clear points; but, those points would have been well-known to the team conducting this litigation for many months prior to this date. These points would have been at their fingertips. Therefore, I am not of the view that it is reasonable to order the Third Defendant to pay for 24 hours work up to the submission of this document and a further 15 hours thereafter.

55. Having reviewed all of the submissions on both sides, including the differing views of each party on the caselaw relating to costs, I am of the view that this 24-hour tranche is

the total time that it would be reasonable to order the Third Defendant to pay for the entirety of this costs assessment, less a further 8 hours at associate level. I therefore make a deduction of **QAR 48,400** in respect of the costs submissions.

### *General*

56. There are also items which are difficult to assess as they have been noted with a lack of specificity: QAR 310 on 2 June 2022, QAR 460 on 13 July 2022, QAR 1,380 on 29 August 2022 to 31 August 2022, QAR 3,100 on 9 October 2022, and QAR 13,950 on 29 October 2022: I disallow those items for a total of **QAR 19,200**.

### Reductions

57. I have therefore made reductions to the costs claimed by the Claimant by way of Eversheds' fees in the sum of **QAR 385,550**. I have also allowed Mr Page's counsel's fees in full in the sum of QAR 179,006.62. Set against the total costs claimed in the sum of QAR 1,531,022.26, the recoverable costs are **QAR 1,145,472.26**, comprising:

- i. Eversheds' fees: QAR 966,465.64
- ii. Counsel's fees: QAR 179,006.62.

### **Proportionality**

58. I must now review the matter in the round and decide whether or not to make a further reduction on the grounds that the amount at paragraph 57, above, is disproportionate. The parties have made extensive submissions summarised above with reference to a number of authorities.

59. It is trite that every case turns on its individual facts and therefore I have not found the lengthy back-and-forth on proportionality of great assistance. Ultimately, I must decide whether or not the overall sum is proportionate on the facts of this particular case (taking account of the *Hammad Shawabkeh* principles at paragraph 9 above; although I bear in mind that this is a non-exhaustive list).

60. The Third Defendant asks me to take account of his own solicitors' fees – approximately QAR 795,500 (excluding counsel's fees) – so that I might make a comparison in assessing the reasonableness of the Claimant's fees (see paragraph 3.3

of the submission of 7 February 2023 and paragraph 3.1.1 of the submission dated 7 March 2023).

61. The Claimant notes that a comparison of fees is inappropriate, for example due to the different circumstances, roles and responsibilities of the firms, and also given that the Third Defendant did not provide a ledger or detailed breakdown of its costs (see paragraphs 2.2 and 2.3.4 of the submissions dated 9 April 2023).
62. My view is that it is of some use, albeit limited use, to have the overall headline figure for the Third Defendant's costs. However, the use of which I can make of this figure is limited necessarily by a lack of information, including as to: (i) the structure of the engagement and where there was any special arrangement relating to fees for this litigation; (ii) information as to the structure of the legal team of the Third Defendant or the hours expended during the course of the litigation; and (iii) a ledger so that I might compare the time spent by each of the parties. As the Third Defendant cited in its submission (footnote 2) dated 7 March 2023 from *Monex Europe Ltd*:

*In my judgment, it is not appropriate for the Court simply to compare the two sets of costs and say that the defendants' costs were disproportionate because they were greater, or that elements of them were greater, than that of the claimant. It is necessary to look at the specific items for which costs were claimed.*

63. I also bear in mind that there is bound to be a variation in legal costs – such as the costs charged by the respective barristers of each party (QAR 238,000 for the Third Defendant versus QAR 179,000 for the Claimant, a 30% difference [rounded down to the nearest 100 QAR]) – but that without much more detail, these isolated figures are of limited assistance.
64. Having made various deductions to the Eversheds' legal fees – reducing the sum claimed to **QAR 1,145,472.26** (the 'Sum'), I am of the view that no further proportionality deduction is required for the following reasons:
- i. Taking the figure in dispute – USD 20m (circa QAR 72,820,000 according to the Claimant's submission dated 10 January 2023 at paragraph 3.2.3) – the Sum is well under 2% of the total figure claimed

by the Third Defendant in this litigation. This is clearly proportionate in my view.

- ii. This matter was clearly of great importance to the Third Defendant who was anxious to obtain judgment for a significant amount, and who raised a number of different bases upon which that sum ought to be awarded to him. He himself spent in excess of QAR 1m on legal fees (see paragraph 3.3 of the Third Defendant's submissions dated 7 February 2023). Similarly for the Claimant, it faced a claim for breach of contract, negligent misstatement, and – prior to the hearing – a claim under the QFC Contract Regulations 2005, and claims in agency and mistake. Had the Third Defendant been successful in his claims, particularly in negligent misstatement, this would have clearly been of significance to the Claimant bank. The Sum is clearly proportionate in these circumstances.
- iii. As noted above, the matter was of some complexity, with the Claimant having to answer a number of different claims in different legal areas and on that measure, and I am not of the view that the Sum is disproportionate on this measure.
- iv. Save for the hours that I have disallowed above, my view is that the time that the Claimant's solicitors spent conducting this litigation was proportionate to the peculiarities of the particular case.
- v. Having reviewed all of the documentation noted above, I am of the view that the Claimant's solicitors conducted the litigation appropriately, undertaking necessary tasks. I have made some time deductions above but that does not in any way suggest that any of the work undertaken was done in an inappropriate manner (for example, there was an appropriate level of partner input with the bulk of the work undertaken by an experienced associate).

## **Conclusion**

65. I assess the Claimant's reasonable costs in this matter to be **QAR 1,145,472.26**, and order the Third Defendant to pay that sum to the Claimant within 14 days of the date of this judgment.

**By the Court,**



**[signed]**

**Mr Umar Azmeh, Registrar**

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

## **Representation**

The Claimant was represented by Mr Dani Kabbani, Mr Alexander Whyatt and Mr Omid Mousavi (Eversheds Sutherland (International) LLP, Doha, Qatar), and Mr Laurence Page of Counsel (4 New Square, London, United Kingdom).

The Third Defendant was represented by Mr Jonathan Brooks (Al Tamimi and Company, Dubai, UAE), and Ms. Charlotte Eboral of Counsel (3 Verulam Buildings, London, United Kingdom).