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) 40

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 31 August 2023

CASE NO: CTFIC0044/2023

MARILON QFZ LLC

Claimant

v

DALBA ENGINEERING & PROJECTS CO LIMITED

1st Defendant

AND

IYAD SHAMMA

2nd Defendant

JUDGMENT

Before:

Justice Dr Rashid Al-Anezi

Justice Fritz Brand

Justice Yongjian Zhang

Order

1. The claim against the First Defendant is struck out on the grounds of res judicata.

2. The Claimant should file a fresh claim if it wishes to pursue its claim against the Second Defendant.

3. The Claimant is ordered to pay the reasonable costs of the proceedings, if any, incurred by the First Defendant and Second Defendant, such costs if not agreed to be assessed by the Registrar.

Judgment

Facts

1. The Claimant is Marilon QFZ LLC ('**Marilon**'), a Qatar Free Zone company. The First Defendant is Dalba Engineering & Projects Co. Limited ('**Dalba**'), a Brazilian company whose address is outside the State of Qatar. The Second Defendant is a former partner in Marilon, as well as a manager and an authorised signatory thereof.

2. The First Defendant last year brought proceedings against Marilon. Dalba had contracted for Marilon to provide a quantity of bitumen for the sum of $400,000. Dalba paid $200,000 in advance, but Marilon did not provide the bitumen provided for in the contract. As a result, Dalba eventually issued proceedings against Marilon. Marilon did not respond to the Claim Form. Dalba made an application for summary judgment. Marilon did not respond to that application, despite the fact that it was legally served with the application. As a result, and on 7 December 2022, summary judgment was given in Dalba's favour in the sum of $200,000 plus costs ([2022] QIC (F) 27).

3. Marilon sought permission to appeal out of time on the ground that no documentation was never served upon it. In response, Dalba provided the Court with slips from Qatar Post demonstrating that, in accordance with our service provisions, the Claim Form, summary judgment application, and enforcement application, were all sent via registered post to the business address of Marilon. Service had therefore been effected in accordance with article 18.3 of our Regulations and Procedural Rules. Permission to appeal was refused in a judgment dated 4 July 2023 ([2023] QIC (A) 7).

4. The judgment has still not been satisfied and the matter is presently in the enforcement process of the Court.

5. Subsequently, Marilon initiated these proceedings against both Dalba and Mr Shamma (the Second Defendant) – who was, supposedly, the former authorized signatory, director, and 33% shareholder of Marilon – "*jointly and severally*".

6. These new proceedings appear to relitigate the matter against Dalba arguing, among other things, that (i) the individual who signed the contract for Marilon did not have authority to do so (i.e. the 2nd Defendant, even though he was an authorized signatory, director and 33% shareholder), (ii) that Dalba has been unjustly enriched, and (iii) there was no consideration in relation to the initial contract.

7. The Claimant requested the Court to rule as follows:

    i. Fair compensation for the lost profit and for the losses incurred by the Claimant as a result of the judgment issued in favour of the First Defendant, which resulted in its suspension from trading and damages to its reputation and the unlawful enrichment of the First Defendant at the expense of the Claimant.

    ii. Order the First and Second Defendants, jointly and severally, to compensate the Claimant in the sum of QAR 5m or its equivalent in US dollars for the losses it incurred as a result of its license suspension due to the execution of the judgment issued against it in favour of the First Defendant.

Analysis

8. This case was referred to the First Instance Circuit by the Registrar to consider summary dismissal prior to any defence being required, as it appeared to him that the issue of res judicata might apply. We agree and dismiss the claim against the First Defendant for the following reasons.

9. This application and the documents of the previous case filed by Dalba against Marilon last year reveal that there is a res judicata issue in relation to the case against the First Defendant.

10. Although res judicata is not explicitly referred to in this Court's Regulations and Procedural Rules, it does not mean it is inapplicable in this case. Res judicata is in fact a general principle of law that no legal system can function without. There would otherwise be no finality in litigation.

11. Most legal systems follow this doctrine. In Qatar, the doctrine is specifically mentioned in articles 74 and 300 of Qatar's Civil and Commercial Procedural Law (Law No. 13 of 1990). The two articles clearly consider res judicata as part of public order (ordre public).

12. Article 74 states that:

> *The defense of inadmissibility of a lawsuit due to res judicata shall be decided by the court of its own motion.*

13. According to article 300:

> *Judgments that constitute res judicata shall be deemed decisive towards a settlement of the dispute and no evidence contrary to such judgment may be produced. However, such judgments shall not be binding and decisive except in a dispute that arises between the litigants themselves, provided that their identities remain unchanged and that the dispute has relevance to the same right with respect to both subject and cause. The court shall rule independently on res judicata.*

14. In England and Wales, the courts have dealt with the doctrine extensively. For example, the House of Lords in *Arnold v National Westminster Bank plc* [1991] 2 AC 93 and *Virgin Atlantic Airways Limited v Zodiac Seats UK Limited* [2013] UKSC 46, [2014]

AC 160, to mention but a few. English courts have distinguished various issues as falling out of res judicata, none of which apply to this case.

15. Courts and jurists have outlined a clear case of res judicata where the following conditions apply (these appear to be the same in most if not all jurisdictions):

    i. a previous final judgment in litigation;

    ii. between the same parties;

    iii. for the same relief; and

    iv. based on the same cause of action.

16. All the four conditions are satisfied in the current case. Marilon and Dalba were the same parties in both cases; the subject matter is exactly the same in both cases; the relief sought is the same in both cases (in this case, the same monies already ordered in a judgment already issued); and both cases are based on the same agreement. Ultimately, the case was settled by a final judgment of the Appellate Division when permission to appeal was refused. Marilon brought this case, after failing in its appeal, in another attempt to overturn the previous judgment. Hence res judicata applies.

17. Finally, Marilon claims that the agreement with Dalba was signed by its manager without proper authorization. Needless to say, all of the Claimant's pleas ought properly to have been raised at First Instance (or indeed as fresh arguments in relation to permission to appeal). There is no room for any legal argument once res judicata applies. However, res judicata does not prevent Claimant from filing a case against its manager, if it wishes to do so, since he was not party to the first case.

Conclusion

18. To sum up, the claim against the First Defendant is barred by res judicata. Given that the current claim against the Second Defendant is inextricably linked to that against the First Defendant as pleaded in the Claim Form, it is impractical to attempt to sever the

Defendants. We therefore direct that should the Claimant wish to pursue the Second Defendant, a fresh claim must be filed.

By the Court,

[signed]

Justice Dr Rashid Al-Anezi

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

Representation

The Claimant was represented by Mr Mohsin Al-Haddad of Mohsin Al-Haddad Legal Consultants and Advocate of Excellence (Doha, Qatar).

The First Defendant did not appear and was not represented.

The Second Defendant did not appear and was not represented.

DIGITALLY SIGNED AND VERIFIED
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