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: [2024] QIC (F) 13

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 30 March 2024

CASE NO: CTFIC0056/2023

EVERSHEDS SUTHERLAND (INTERNATIONAL) LLP

Claimant

V

GULF BEACH TRADING & CONTRACTING WLL

Defendant

JUDGMENT

Before:

Justice George Arestis

Justice Ali Malek KC

Justice Helen Mountfield KC

Order

1. The Defendant is to pay to the Claimant the sum of QAR 111,809.65 and interest thereon as specified in paragraph (2) below within 14 days of the date of this order.

2. The Defendant is to pay to the Claimant interest on the late payments at the contractual rate, being the base rate of the Bank of England plus 2.5%, as calculated below, which amounts to QAR 8,270.42 (as at 30 March 2024), and continuing at a total of QAR 19.49 per day.

3. The Defendant is to pay the Claimant's reasonable costs of these proceedings to be assessed by the Registrar if not agreed.

Judgment

Introduction

1. The Claimant, Eversheds Sutherland (International) LLP ('**Eversheds Sutherland**'), filed a Claim Form on 21 September 2023 to claim unpaid fees against the Defendant, Gulf Beach Trading & Contracting WLL, of QAR 191,809.65, as a result of the provision of legal services by the Claimant for which invoices remained unpaid by the Defendant. This claim was also served on the Defendant via Qatar Post on 1 October 2023.

2. On 2 October 2023, the Claimant notified the Court by email, copied to the Defendant's representative Mr Ender, that the documents had been duly served by Qatar Post registered delivery to the Defendant's registered or principal office address, in accordance with articles 18.2 and 18.3 of the Regulations and Procedural Rules of the Court (the '**Rules**'). The email attached all relevant documents including proof of postage and a witness statement from Mr Alexander Whyatt, the head of Eversheds Sutherland's Doha litigation department, in which he confirmed that the documents had been duly and validly served.

3. The Defendant originally failed to defend these proceedings within the time limit, and accordingly on 30 October 2023, the Registrar notified the Claimant that it could proceed to seek Summary Judgment pursuant to Practice Direction No. 2 of 2019.

4. However, by an email to the Court of the same day, the Defendant put the Claimant to proof that it had properly served the documents at its principal address in accordance with article 18.3.2 of the Rules.

5. On 7 November 2023, the Claimant made an application for Summary Judgment on the basis that the Defendant had failed to respond to the Claim Form or to contest the jurisdiction of the Court under article 20.1 of the Rules.

6. On 8 November 2023, the Claimant notified the Court that the application for summary judgment and associated exhibits had been sent to the Defendant by registered post, again attaching proof of postage and a witness statement from Mr Whyatt confirming valid service of the documents.

7. On 11 December 2023, the Registrar notified the parties that the Court had received correspondence from the Defendant making a late application for an extension of time to respond to the Claim Form. The Court granted the Defendant time until close of business on 17 December 2023 to seek an extension of time to file and serve a defence/counterclaim, which "*must include an explanation as to why no defence and no response to the summary judgment application had been filed and served to date*" and "*must also outline what defence and/or counter-claim it wished to assert to the claim*".

8. On 17 December 2023, the Defendant submitted a response. It did not directly engage with the directions in the Registrar's communication of 11 December 2023. However, it asserted that the Summary Judgment application and Claim Form had not been validly served; that the Defendant had what it described as "*a good prospect*" of successfully defending part of the Claim; and finally, that the Claimant had failed to carry out its duties of care and skill when representing the Defendant in proceedings before the Qatar Courts.

9. On 7 January 2024, the Registrar invited the Claimant to respond to the Defendant's submission. This was superseded by settlement negotiations. On 17 January 2024, the Claimant opened discussions with the Defendant's representative during which (according to the Claimant) the Defendant's representative agreed to pay QAR 91,000 in full and final settlement of all claims and counterclaims associated with these proceedings. This was recorded in an email from Mr Whyatt to Mr Ender of the same date, in which Mr Whyatt informed Mr Ender that he would invite the Court to stay the proceedings pending receipt of payment and confirmation that the Defendant had confirmed to the Court that all counterclaims were also withdrawn. Mr Ender emailed in response that he confirmed the agreement "*as per your email below*". Accordingly, Mr Whyatt notified the Court of this position and sought a stay of the proceedings.

10. However, on 7 March 2024, the Claimant notified the Court that the settlement payment had not been made, and requested that the stay be lifted, with a Reply to the Defendant's notice to be lodged before 21 March 2024. A Reply was filed and served on 18 March 2024.

Did the Defendant's submission comply with the Order of 11 December 2024 or provide adequate grounds for granting an extension of time for filing a defence and counterclaim?

11. The Defendant was ordered that, if it wished to resist the Claimant's claim, it must:

    i. apply for an extension of time;

    ii. explain why it had failed to respond to the Summary Judgment application and Claim Form; and

    iii. outline the defence and counterclaim that it wished to assert.

12. The Defendant failed to comply with this Order. It has not made any formal application for extension of time.

13. In any event, its explanation for its failure to respond to both the Claim Form and to the subsequent application for Summary Judgment was to repeat the position asserted by it in an earlier email to the Court:

    i. that the hard copies of the Claim Form and Summary Judgment application were not validly served, as they were posted to an office which the Defendant claims to have left; and

    ii. to repeat an assertion that the Defendant had not received the documents served by email, which had gone into a spam folder.

14. Consequently, the Defendant claimed it had been unaware of the claim until notified by the Court of a Summary Judgment application.

15. We reject that explanation. First, the duty of the Claimant under article 18.3.3 of the Rules is to prove that documents were sent to the Defendant to its registered office by registered post, not to prove that they were received. The duty on the Claimant is to establish postage, not receipt. The Court is satisfied by the evidence of Mr Whyatt and the proofs of posting supplied by him that the Claim Form and application for Summary Judgment were properly served to an address which the Defendant had given to the Claimant as its registered address.

16. We are satisfied by the explanation given in paragraphs 4.21-4.26 of the Claimant's Reply that the address to which service was made was the Defendant's registered or principal address, and that it was reasonable of the Claimant, on the basis of its past dealings with the Defendant and open sources of information about the Defendant's address, to believe that it continued to be a correct and current address.

17. Moreover, we reject the assertion that the documents were not received by the Defendant. We note that on 30 October 2023, the Court received email correspondence from the General Manager of the Defendant in which he confirmed that the case had been served on the Defendant via registered post; Mr Ender wrote to the Claimant that "*Till now*" it had not received papers in this respect – i.e. that by then the papers had been received.

18. In the light of the 30 October 2023 correspondence, the email from the Defendant received by the Court on 6 December 2023 which claimed that the Defendant had not received the registered files "*from the court*" was irrelevant, because the Defendant had already confirmed to the Court that it *had* received the registered files from the Claimant.

19. Moreover, since Mr Ender was copied into correspondence between the Claimant and the Court which contained the Claim Form and application for Summary Judgment and responded to these, on no view can it be said that the Defendant was unaware of the fact or substance of the claim. If and to the extent that we need to rule that service by email was also valid service, we are prepared to do so retrospectively, because we are satisfied that the documents so served were in fact received by the Defendant, and the Defendant can properly be taken to have been aware of the existence and content of the Claim Form. Our power to validate a form of service retrospectively is supported by this Court's judgment in *Bank Audi Company LLC v Abdulla Ahmed Al-Semaitt* [2023] QIC (F) 1 at paragraphs 17-19.

20. On that basis, we reject the submission in the Defendant's notice that it had a good excuse for failing to serve a Response within the relevant time limit (we note, too, that in any event the submission made no formal application to extend time for serving a Defence and Counterclaim). That being so, we are satisfied that no valid Defence has been served and we can proceed to consider the Claimant's application for Summary Judgment.

21. Accordingly, while we note as a point of information that the Defendant asserts that it has a good prospect of defending the claim and alleges that it has a basis for a counterclaim based on breach of duty and care and skill (which allegations are unspecified), we refuse it permission to lodge a Defence and Counterclaim out of time, and proceed to determine this claim on the basis of the Claimant's Claim and the further facts and matters set out in its Reply.

22. We note from the Reply that part of the Claim has been withdrawn, and we proceed accordingly. We also note that the Reply asserts that the Claimant's case now rests in part (or in the alternative to the original pleaded basis for the Claim)

on the fact that parts of the claim are admitted by the Defendant. This assertion is made by reference to settlement negotiations and the email exchange of 17 December 2023 which appears to indicate that a settlement had been reached. However, there is not – at least not yet – any separate claim lodged with the Court to sue on the settlement agreement as an alternative basis for a claim, and so we have couched our judgment by reference to the original basis for the claim.

The Claim

23. The claim as originally lodged related to the Defendant's failure to pay the Claimant monies owed to it in the total amount of QAR 191,809.65, which arose from the provision of legal services to the Defendant in respect of a construction dispute against Sinohydro Corporation (Qatar) in which the Claimant represented the Defendant in a claim commenced in the national courts of the State of Qatar.

24. The Claim Form set out the services that were provided on the terms of the Claimant's Letters of Engagement which incorporated the Claimant's "*Standard Terms of Engagement Qatar*". These stipulated that any invoices which are not paid within 14 days of their issuance are subject to interest at the base rate of the Bank of England plus 2.5%.

25. The Claim Form contains a statement of truth and is supported by a witness statement dated 2 October 2023 from Mr Alexander Whyatt who has the care and conduct of proceedings on behalf of the Claimant.

26. The Claim Form sets out multiple attempts by the Claimant to recover the sums owing.

27. The total amount originally claimed as being owed to the Claimant by the Defendant together with disbursements amounts to QAR 191,809.65. We should say that on our calculation, the total outstanding sums are QAR 80,000 on the first invoice (the '**First Invoice**'); QAR 100,209.65 on the second invoice (the '**Second Invoice**') and disbursements of QAR 12,200 on the second invoice, which is a total of QAR 192,409.65. These sums were in respect of work carried out by the Claimant in accordance with what is described in the Claim Form as the First Letter of Engagement and Fee Proposal, and the Second Letter of Engagement.

28. In paragraph 5.4 of its Reply, the Claimant withdrew its claim for QAR 80,000 which was said to be the outstanding sum for work arising under the First Letter of Engagement without any admissions in respect of the Defendant's asserted basis for defending that part of the Claim. Accordingly, in the rest of this judgment, we focus on claims made for work arising under the Second Letter of Engagement. References to the First Letter of Engagement are included for the sake of completeness only.

29. As set out in the Claim Form, the Defendant originally agreed to pay QAR 100,000 for work under the First Letter of Engagement as varied by the Fee Proposal. This work was conducted by the Claimant, carried out, and invoiced on 30 June 2020 (the First Invoice). However, notwithstanding various requests for payment, only QAR 20,000 has been paid, which was paid on 12 October 2021. Another sum amounting to QAR 49,790.35 was transferred by the Defendant to the Claimant on the same date, but this related to a different scope of work.

30. On 21 January 2021, the Claimant and Defendant entered a separate letter of engagement to initiate court proceedings on its behalf. This provided for a fixed fee of QAR 190,000 and an additional QAR 40,000 if experts were appointed by the Court. The fixed fee under this letter of engagement was met in full by the Defendant.

31. On 24 February 2022, the Claimant and Defendant signed a further letter of engagement for the Claimant to represent the Defendant in the Court of Appeal in Qatar (the Second Letter of Engagement). The agreed fee for this work was QAR 150,000. This work was invoiced on 21 December 2022. It has remained unpaid. At some stage, unspecified, the Claimant allocated the QAR 49,790.35 which the Defendant had paid to them on 12 October 2021 to the debt under the Second Letter of Engagement.

32. There were also associated disbursements outstanding of QAR 12,200 comprising court translation and expert fees.

33. The Claimant's Claim Form and witness evidence set out multiple attempts to collect this outstanding payment, all without success.

34. As noted above, we are satisfied that this claim was duly served on the Defendant via Qatar Post on 1 October 2023; that the Defendant failed to respond to within the timeframe prescribed in Practice Direction No. 2 of 2019; and that it failed thereafter to make a proper application for service of a Defence out of time or to provide adequate reasons for its failure to reply in time.

Decision

35. The Court is satisfied that the Claimant is entitled to Summary Judgment under article 22.6 of the Rules. This is because the Claimant has verified the facts alleged in the claim and the evidence before the Court shows that the Defendant has no prospect of successfully defending the claim and has not sought to do so by means of lodging a valid Defence in time, or making a valid application to lodge a Defence and/or Counterclaim out of time. Moreover, there is no other compelling reason why the case should be disposed of at a trial. We add that the allegation that the Defendant has a Counterclaim is nothing other a bare assertion unsupported by any evidence.

36. We note that the Claimant has amended its claim for Summary Judgement, so the amount now claimed is now only QAR 91,809.65 (in paragraph 5.4 of the Reply, it is suggested that the part of the claim withdrawn is for QAR 80,000 under the First Letter of Engagement, but in paragraph 7 concerning the Relief Sought, the claim is reduced from the original sum claimed by QAR 100,000. We are awarding the sum claimed under paragraph 7.1.2 of the Reply).

37. Accordingly, the Claimant is entitled to judgment in the sum claimed as amended in paragraph 7.1.2. of its Reply, namely QAR 91,809.65, based on sums outstanding under the Second Invoice only.

38. The Claimant is also entitled to interest on the invoiced sum from the 15th day after they have been invoiced, pursuant to contract at the base rate of the Bank of England plus 2.5% pursuant to the Claimant's Standard Terms of Engagement applicable to this work.

39. The Bank of England base rates have changed on a number of occasions since the invoice was rendered.

40. Interest is due on this sum from the 15th day after the second invoice, ie from 6 January 2023, at the contractual rate above, namely:

6% from 6 January 2023 until 1 February 2023: QAR 407.48

6.5% from 2 February 2023 until 22 March 2023: QAR 801.13

6.75% from 23 March 2023 until 10 May 2023: QAR 831.95

7% from 11 May 2023 until 21 June 2023: QAR 739.51

7.5% from 22 June 2023 until 2 August 2023: QAR 792.33

7.75% from 3 August 2023 until 30 March 2024: QAR 4,698.02 (continuing at QAR 19.49 per day until payment).

Costs

41. The Claimant is entitled as against the Defendant to its costs of these proceedings pursuant to article 33 of the Rules (including the application for Summary Judgment) to be assessed by the Registrar if not agreed.

By the Court,

[signed]

Justice Helen Mountfield KC

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

Representation

The Claimant was self-represented.

The Defendant was self-represented.

DIGITALLY SIGNED
AND VERIFIED
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