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) 15

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 4 April 2024

CASE NO: CTFIC0071/2023

AMBERBERG LIMITED

Claimant

v

PRIME FINANCIAL SOLUTIONS LLC

1st Defendant

AND

THOMAS FEWTRELL

2nd Defendant

AND

NIGEL PERERA

3rd Defendant

AND

SOUAD NASSER GHAZI

4th Defendant

AND

REMY ABBOUD

5th Defendant

AND

MARC REAIDI

6th Defendant

AND

INTERNATIONAL BUSINESS DEVELOPMENT GROUP WLL

7th Defendant

AND

QATAR GENERAL INSURANCE & REINSURANCE COMPANY QPSC

8th Defendant

JUDGMENT

Before:

Justice Fritz Brand

Justice Ali Malek KC

Justice Yongjian Zhang

Order

1. The jurisdictional challenge raised by the Fifth and the Sixth Defendants are upheld, and in consequence the claims against them are dismissed for lack of jurisdiction.

2. The Claimant is to pay the reasonable costs incurred by the Fifth and the Sixth Defendants in defending themselves against its claims, to be determined by the Registrar if not agreed.

Judgment

1. This judgment is confined to a jurisdictional challenge by the Fifth and Sixth Defendants (the '**Defendants**'). The Claimant in this matter, Amberberg Limited, is a company incorporated in the British Virgin Islands. The Fifth Defendant is Ms Remy Abboud and the Sixth Defendant is Mr Marc Reaidi. Both Defendants are Lebanese nationals. At present, the Fifth Defendant resides in the United States of America while the Sixth Defendant is resident in the United Arab Emirates; formerly, they both resided and were employed by the First Defendant (Prime Financial Solutions LLC) in the State of Qatar. The First Defendant, a corporate entity, is established and licenced to do business in the Qatar Financial Centre ('**QFC**').

2. In November 2023, the Claimant instituted action against eight Defendants. Its Statement of Claim runs over 49 pages. It relates to various disputes between the Claimant and the various Defendants arising from its acquisition of the shares and consequent shareholding in the First Defendant between November 2019 and August

2022. All this renders the background facts rather complicated. But, because the present dispute is confined to a jurisdictional challenge by two of the Defendants only, we shall limit ourselves to background facts which are strictly necessary for a proper understanding of our conclusion with regard to this confined dispute and our underlying reasoning. In doing so, we are bound by the nature of this application (save in exceptional circumstances) to accept the Claimant's version of the facts.

3. The Claimant's case against some of the Defendants, including the Fifth and the Sixth Defendants, is that, (i) while they were employed by the First Defendant in responsible positions of control over the affairs of the company; (ii) they owed a duty of care to the Claimant as an investor and shareholder in the First Defendant; (iii) to comply with the rules and regulations of the QFC Regulatory Authority ('**QFCRA**'); (iv) that they had failed the Claimant in that duty; and (v) that in consequence of this breach, the Claimant suffered damages which it now seeks to recover from the Defendants jointly and severally. With regard to the Fifth Defendant, the Claimant specifically pleads that she was employed by the First Defendant as its Chief Financial Officer, while the Sixth Defendant was employed as the Compliance Officer, the Money Laundering Reporting Officer and the Company Secretary of the First Defendant during a period when it was penalised by the authorities and suffered severe harm through non-compliance with various statutory regulations and QFCRA rules.

4. In support of its contention that this Court has jurisdiction to determine its dispute with all eight Defendants, the Claimant's allegation in its original Statement of Claim appears on the face of it to be twofold. First, on the basis that the First Defendant is a QFC entity as contemplated in article 9.1.3 of the Court's Regulations and Procedural Rules (the '**Rules**') because its "*business activity (purchase and sale*) [presumably of the shareholding in the First Defendant] *was* a *part of regulated activity carried on by the first defendant… under the QFC Regulations*…". Second, on the basis that this Court has previously accepted jurisdiction in litigation between the Claimant and some of the other Defendants in *Amberberg Ltd v Prime Financial Solutions LLC (formerly International Financial Services Ltd* [2022] QIC (F) 3.

5. On 13 February 2024, the Registrar invited both parties, with specific reference to the judgment of this Court in *Manwara Begum v Gulf Insurance Group* BSC [2023] QIC (F) 34, to comment on the potential applicability of article 9.1.4 of the Rules. In

response to the invitation, the Claimant brought an application to amend its Statement of Claim. The amendment sought was primarily to introduce a new paragraph 109 into its Statement of Claim in the following terms:

> *Furthermore, the Article 9.1.4 of the Court's Regulations and procedural Rules provide an additional comfort to this case based on the legal explanation in paragraph 9 of the judgment in the case of Manwara Begum v Gulf Insurance Group BSC [2023] QIC (F) 34….*

6. After the parties filed their papers in the jurisdictional challenges, they were invited to address the Court at a remote hearing on Sunday 17 March 2024, which was preceded by the filing of skeleton arguments by all three parties. At the hearing, the Fifth and the Sixth Defendants appeared in person while the Claimant was represented by its sole director, Mr Rudolfs Veiss. Mr Veiss' objected that the jurisdictional challenge by the Fifth Defendant was filed late. The Fifth Defendant requested an extension for the late filing of her jurisdictional challenge; she explained that the Statement of Claim was served at her address in Qatar while she had been abroad since 22 August 2023. The Statement of Claim was served via "*WeTransfer*" to her email address in Qatar after she had departed the country. She explained that when she eventually sought to access the link, she discovered that it had expired 7 days from being sent. The Court accepts this explanation. The Claimant does not argue that the late filing of her application caused any prejudice, nor did it materially delay the proceedings. Consequently, the extension requested by the Fifth Defendant is granted. The Court notes that it could be contended that a late jurisdictional challenge cannot be disregarded. In other words, if the Court in fact lacks jurisdiction it does not matter whether a timely objection to jurisdiction was made. But, since we have granted the Fifth Defendant's application for an extension of time, it is unnecessary to delve further into this matter.

7. As a creature of statute, this Court has no inherent jurisdiction. Its jurisdiction is circumscribed by article 8.3(c) of its creating statute, the QFC Law (Law No. 7 of 2005), and confirmed by the identical provisions of article 9.1 of the Rules. Article 9.1.1 contemplates a dispute arising from contracts, arrangements or transactions between entities established within the QFC. Article 9.1.2 envisages a dispute between two QFC entities. Since the Fifth and Sixth Defendants are not QFC entities, it is clear that these two articles can find no application.

8. Article 9.1.3, upon which the Claimant seeks to rely, envisages a contractual dispute where at least one of the parties is a QFC entity. So, in the present context the article can only find application if the Claimant can be said to be a QFC entity. But, the Claimant's contention that it qualifies as such an entity flounders on the previous decision of this Court in Amberberg *Ltd v Aycan Richards* [2021] QIC (F)1 (which was confirmed on appeal with reference number [2021] QIC (A) 3) that it is not). The reason for this finding appears from the following succinct statement in the judgment of the First Instance Circuit (at paragraphs 9 and 10 per Justice Her Honour Frances Kirkham CBE):

> *The Claimant is a separate legal entity. It has not explained the legal basis for its claim that, by reason of its being the sole shareholder of IFSQ, the Claimant has any right to enjoy the jurisdiction of the Court, nor has the Claimant provided any authority to support its case.*
>
> *The Claimant is not an entity established in the State of Qatar or in the QFC. The fact that the Claimant is the sole shareholder of a QFC company does not bring it within the scope of Article 9.*

9. The Claimant's second ground relies on the proposition that this Court has accepted jurisdiction in disputes between the Claimant and some of the Defendants, other than the Fifth and Sixth Defendants, in previous cases. But, we find this ground is equally unsustainable. Unlike the rules of some courts in other jurisdictions, our Rules make no provision for assuming jurisdiction over all Defendants in the same case on the basis that the Court has jurisdiction over one or some of them. Nor, as we have said, does this Court have any discretion to assume jurisdiction because it will be expedient or convenient to do so. On the contrary, while article 9.4 affords this Court a discretion not to exercise jurisdiction it may have in a particular case, it does not afford the Court a discretion to exercise jurisdiction that it does not have in terms of the Rules.

10. This brings us to Claimant's reliance on article 9.1.4 by way of recent amendment to the Claimant's Statement of Claim. This article provides that this Court has jurisdiction in relation to:

> *Civil and commercial disputes arising from transactions, contracts or arrangements taking place between entities established within the QFC and residents of the State, or entities established in the State but outside the QFC unless the parties agree otherwise…*

11. In the case of *Manwara Begum and others v Gulf Insurance Group BSC* [2023] QIC (F) 34, this Court held (at paragraph 9 per Justice Fritz Brand):

> *As we see it, the Defendant's argument is founded on a misinterpretation of article 9.1.4 of the Rules. On a proper construction of the article, it is clear that it does not require a contract between the parties to the litigation. Where, as in the instant case, a third party derives a benefit from a contract between the Defendant and another, a dispute concerning a claim by that third party based on the contract clearly arises from that contract. Nor does the article require that the Claimant should be a resident in the State of Qatar. What it requires is that the one contracting party, other than the one established in the QFC, must reside or be incorporated in the State of Qatar, which the insured under the policy, the owner of the motor vehicle involved in the accident, clearly was. It follows that the fact the Claimants are not resident in Qatar is of no consequence…*

12. In its response to the jurisdictional challenge, the Claimant also sought to rely on the following statement by this Court in *Waqar Zaman v Meinhardt BIM Studios LLC and another* [2024] QIC (F) 5 (at paragraph 10 per Justice Fritz Brand):

> *Accordingly, in order for this Court to have jurisdiction* [by virtue of article 9.1.4] *neither party to the litigation needs to be a QFC entity. As long as the dispute arises from a transaction, a contract or an arrangement where (i) one of the parties was a QFC entity and (ii) the other resided or was established in the State of Qatar.*

13. The only QFC entity amongst the parties in the present picture is the First Defendant. It is common ground that there was an employment contract between the First Defendant and the Fifth Defendant, and that the relationship between the First Defendant and the Sixth Defendant was initially governed by a consultancy agreement which was then replaced by an employment contract. It also appears that at the time of those contracts the Fifth and Sixth Defendants were resident within the State of Qatar. On the construction of article 9.1.4 which was upheld in the authorities relied on by the Claimant, the key question is therefore whether it can be said that the dispute between the Claimant and the Fifth and Sixth Defendants arose from those contracts between the First Defendant, on the one hand, and the Fifth and Sixth Defendants, on the other.

14. The key question must be answered with reference to the Claimant's case as formulated in its Statement of Claim. According to the Statement of Claim, the Claimant's claim is one in tort based on a breach of duty of care owed, by the Defendants as employees and officials of the First Defendant, to the Claimant as shareholder of that company. If

the further allegation in the Statement of Claim was that the duty of care relied upon arose from the Fifth and Sixth Defendants' contracts with the First Defendant, there might be an argument that the dispute between the parties essentially arose from those contracts. We express no view on this. But the Statement of Claim does not rely on the terms of these contracts. In fact, the Statement of Claim does not even refer to those contracts at all. On the face of it, the Claimant's complaint is instead that the Defendants had failed to comply with their obligations imposed by the rules and regulations of the QFCRA upon officials in the capacities in which they were employed. On this basis article 9.1.4 does not apply and the Court lacks jurisdiction.

15. Any doubt that may have existed in this regard was removed by Mr Veiss on behalf of Claimant during the oral hearing. When asked whether the Claimant's case is that the alleged duty of care on the part of the Defendants upon which it relies arose from their contracts with the First Defendant, his answer was "*no*". The Claimant's case, so Mr Veiss pertinently stated, is that the Defendants' duty arose from the rules and regulations of the QFCRA. This confirms that the Court lacks jurisdiction under article 9.1.4 .

16. We therefore hold that the challenge to this Court's jurisdiction must be upheld and that in consequence the Claimant's claims against the Fifth and Sixth Defendants should be dismissed by this Court for lack of jurisdiction. Although the Defendants both appeared in person, we find that in so far as any costs have been incurred by them in pursuing their defences against the claims against them, they are entitled to those costs.

17. These are the reasons for the order 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 self-represented.

The Fifth Defendant was self-represented.

The Sixth Defendant was self-represented.

DIGITALLY SIGNED AND VERIFIED
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