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) 37

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 8 August 2024

CASE NO: CTFIC0052/2023

COMSEC SERVICES AND COMMUNICATIONS COMPANY WLL

Claimant

V

BUSE DENISE CALLI

1st Defendant

AND

ROYAL EMPIRE MARBLE AND STONES TRADING QFZ LLC

2nd Defendant

JUDGMENT

Before:

Justice George Arestis

Justice Fritz Brand

Justice Dr Yongjian Zhang

Order

1. The claims and defence are struck out.

2. No order as to costs.

Judgment

1. It is in brief the case for the Claimant that in early 2022 "*it entered into a contract with the first defendant in her capacity as the representative*" of the Second Defendant, whereby the Claimant "*had to finalize the customs clearance procedure in the ports, airports and free-zone… for quantities of marble and stones brought from Turkey*…". It is further the case of the Claimant that it performed the work undertaken for which the amount of QAR 333,528 should have been paid, but that the Defendants have never paid. The Claimant claims the above amount plus the amount of QAR 200,000, "*as compensation for the material damages resulting from the delay in paying the claim amount*…"

2. The Defendants' defence is that they never entered into a contract with the Claimant but that the other parties to the contract were Qatar Foundation and Redco Almana, to which the imported goods were to be delivered, and that any documents that might show that they owed money to the Claimant are nothing but a fabrication.

3. The case has an unfortunate history before the Court due to the fact that both parties have failed, refused or neglected to follow the proper procedure prescribed by the Regulations and Procedural Rules (the '**Rules**') and practices of this Court and to comply with the directions and orders issued by the Court, despite the significant and sustained assistance from the Registry. As a result, the Court on 18 July 2024 issued an order in the following terms:

*The parties are to file and serve written submissions no later than **16.00 on 25 July 2024** to show cause as to why the Court should not strike out claims/ counterclaims in the entirety on the basis of the repeated non-compliance by the parties of the orders of the Court.*

4. Such submissions were filed by both parties within the above prescribed period of time to which we shall refer at a later stage in order to examine and decide if cause has been shown why both the claims and counterclaims should not be dismissed or struck out. At this stage we find it pertinent to cite the reasoning of the Court which led to this order.

5. On 4 April 2024, the Court fixed the trial for 19 May 2024. The order was sent to the parties electronically with the following notes:

> *However, prior to the trial, the Court will potentially require further information from both parties as it as it has been extremely difficult in this case clearly to understand the respective parties' cases as there have been changing versions and cases put forward.*
>
> *Cases such as this usually take a short period of time from filing to trial. Unfortunately, this case has been challenging due to the parties' conduct; hence the much greater length of time to get to this stage than usual.*
>
> *Therefore, please find attached a directions order: parties **must** comply with the directions.*
>
> *Parties must confirm, **no later than 16.00 on Sunday 7 April 2024**, whether they require an interpreter for the hearing, and in what language.*

6. On 7 April 2024, the Defendants indicated that a Turkish interpreter would be required. On 8 April 2024, the Court informed the Defendants that they must bear the costs of that interpreter as the Court only provides English-Arabic interpretation free of charge. On 10 April 2024, the Claimant indicated that it required an Arabic interpreter.

7. On 15 April 2024, the Claimant made a disclosure request; the Defendants provided various documentation in response on 21 April 2024.

8. On 25 April 2024, the Claimant provided what purported to be a witness statement. This was non-compliant as it simply contained the name, contact and personal details of the witness, along with the names of relevant documents and areas of knowledge. This was communicated to the Claimant by the Registry, but no proper witness

statement was subsequently received.

9. On 9 May 2024, reflecting the concern that directions were not being followed, the Registrar wrote to the parties as follows (in both English and Arabic):

> *I write to follow up regarding the pre-trial matters and remind all parties of their responsibilities in adhering to the Directions issued by this Court. It is crucial for the Parties to understand that these Directions are* ***mandatory*** *and that they are required proactively to inform the Court of any issues that may arise.*
>
> *Please bear in mind that, if it gets to the hearing and you appear to be in breach of the provisions of the Order and the hearing has to be postponed, the Court has the power to order a party/the parties to pay wasted costs.*
>
> *Parties must familiarize themselves with the procedures of the Court, as outlined in the User Guide EN, and AR particularly those contained within Chapters 12 (Directions), 13 (Disclosure), 14 (Witness Evidence), 15 (Trials), 16 (E-bundles) and 19 (Virtual Hearings).*
>
> *Dear Claimant, please note that the Witness Statement must be provided as instructed in the Directions Order.*
>
> *Dear Defendant, please inform us about the details of the "Certified" interpreter you were supposed to arrange for and share his details.*
>
> *Should you have any questions, please don't hesitate to contact the Registry.*

10. Reflecting the loose approach of the parties in the litigation, the Defendants wrote to the Court on 9 May 2024 querying whether the trial would be in-person or remote, despite this being the first direction in the order sent out on 4 April 2024 (namely that it would be a remote trial).

11. On 16 May 2024, the Court communicated the following to the parties:

> *The trial on Sunday 19 May 2024 is* ***vacated*** *– in other words it is* ***cancelled****.*
>
> *Neither party has complied with the directions issued in the attached order and therefore the case is not ready for trial.*
>
> *Kindly provide an explanation as to why the directions have been ignored, and send in your proposals for the future conduct of the case by no later than* ***16.00 on 24 May 2024****.*

12. No satisfactory explanations were provided by the parties as directed in the order

noted at paragraph 11, above, except protestations that the matter was ready for trial. The responses provided by the parties belied a complete lack of understanding of how litigation progresses before this Court, despite the significant assistance that the parties were given by the Registry.

13. On 19 May 2024, the Registry sent the following to the parties:

> *...*
>
> *However, following the issuing of directions in this case - attached and dated 4 April 2024 - this case was clearly not ready to go to trial:*
>
> a. *No disclosure was made or sought (see paragraph 2 of the directions order): now, parties do not have to request disclosure, but this has a bearing on how the trial takes place (see below).*
> b. *Neither party filed or served any witness statements, which means that there was going to be no oral evidence and no witnesses for either side appearing (see paragraph 3 of the directions order and the warning at paragraph 4).*
> c. *Neither party provided an eBundle, let alone tried to agree with each other what documents should be provided to the Court (see paragraph 5 of the directions order).*
> d. *Neither party provided any written submissions (see paragraph 6 of the directions order).*
>
> *...*
>
> *I remind all parties that these directions are mandatory. Parties must follow them. They are not optional.*
>
> *I also remind parties of the further instruction at paragraph 7 of the directions order:*
>
> i. *Parties **must** familiarize themselves with the procedures of the Court, and particularly those contained within Chapters 12…*

14. There was then a back-and-forth between the parties which was difficult to follow, but that yet again belied their complete lack of understanding of the litigation process before the Court.

15. On 27 May 2024, the Registry sent the following to the parties:

I would suggest that language between the parties and the Court is kept temperate at all times. This must also extend to telephone conversations. Repeated accusations that the Court is favouring one side over the other - allegations that the written communications between the parties and the Court simply do not bear out - are fantastical. Parties should bear in mind that the Registry can decline to communicate with persons who are acting in an improper manner, and that we will not hesitate to do so if parties are behaving in a way so as to make that course of action appropriate. The Court, and all its officials, acts impartially at all times, and indeed goes much further than simply being a passive conduit for communications - particularly in this case - by providing very significant and time-consuming assistance to parties over very many months. Parties must ***read*** *communications from the Court carefully to understand what the situation is at any given time, and not simply jump to (grossly) incorrect conclusions. If there is any confusion at this stage, I would suggest that parties read the email from the Court of 19 May 2024.* ***This first paragraph particularly applies to the 1st Defendant in this case.***

I attach a further directions order. Please ***read it carefully****. These directions must be followed. If there are queries, please in the first instance read the Court's User Guide (links to English and Arabic are in the attached directions order). If there are further queries, kindly refer to Ms. Lakiss.*

I add a further note of warning: this Court typically would expect to complete a case of this nature well within three months. This has not happened in this case - and the blame falls squarely on the parties. I will not allow any further delay to these proceedings and having given parties multiple chances to progress this case, the Court will now be much more robust with deadlines and will simply not allow further procrastination.

16. The directions alluded to above were as follows:

Disclosure

1.

*i. If either party wishes to make disclosure requests pursuant to article 26.2.2 of the Regulations and Procedural Rules of the Court (the '**Rules**'), these must be done no later than* ***16.00 on 3 June 2024****.*

ii. If either party wishes to object to a request made pursuant to article 26.2.2 of the Rules, such objection must be communicated to the other party no later than ***16.00 on 10 June 2024****.*

iii. To the extent to which the parties cannot agree on disclosure under article 26.2.2 of the Rules in light of such objections, the

*Court must be provided with a list of outstanding objections no later than **16.00 on 13 June 2024**. The Court will rule on the objections as soon as possible.*

Witness statements

2. *Witness statements must be filed and served no later than **16.00 on 27 June 2024**. Unless ordered otherwise, witness statements shall stand as the evidence-in-chief of the witness at trial. Each witness statement must:*

    i. *Give the full name and address of the witness.*

    ii. *Be in the witness's own words, if practicable, and drafted in the witness's own language and in the first person (**an English translation must be provided if this language is not English**).*

    iii. *Explain the relationship – if any – of the witness to the Claimant or Defendant.*

    iv. *Set out the witness's direct knowledge of matters relevant to the issues in the case.*

    v. *Refer to all relevant documents, although the text of the relevant document should not be included unless this is appropriate.*

    vi. *Include the following statement of truth: "I confirm that the contents of this statement are true."*

    vii. *Be dated with the date upon which the witness signed the statement.*

eBundles

1. *By no later than **16.00 on 11 July 2024**, the parties are to provide the Court with an agreed list of documents in the form of an eBundle, containing all of the documents that either party wishes to use at trial (all documentation must be translated into English by a professional translator). The eBundle should be in the format provided for in Chapter 16 of the Court's User Guide: User Guide - QICDRC EN.pdf [English] & QICDRC [Arabic].*

Written submissions

2. *The parties are to file and serve skeleton arguments (see Chapter 17 of the Court's User Guide) – limited to 5 pages (A4, Times New Roman, font size 12, with 1.5 sized-spaces between each line) – no later than **16.00 on 11 July 2024**. The skeleton arguments must:*

    i. *Make it clear what is sought.*

ii. Identify concisely:

a. The nature of the case generally and the background facts only insofar as they are relevant to the particular matter before the Court.

b. The propositions of law relied upon with references only to the necessary and relevant authorities.

c. The submissions of fact to be made with references to the evidence.

3. *Parties **must** familiarize themselves with the procedures of the Court, and particularly those contained within Chapters 12 (Directions), 13 (Disclosure), 14 (Witness Evidence), 15 (Trials), and 19 (Virtual Hearings) of the Court's User Guide to proceedings before the Court (Legislation, Regulations, Procedures, and Forms | QICDRC – English; QICDRC – Arabic).*

17. All that was received from the parties was a fresh defence from the Defendants. None of the other directions above were followed.

18. As we have already mentioned, both parties filed their respective submissions within the time limit ordered by the Court. The crucial question to answer is whether these submissions satisfied what was expected by the Court; that is, to explain in a satisfactory way why there had not, up to the day of the order, been compliance with the previous orders and directions of the Court.

19. We have carefully considered both submissions. We have no difficulty to reach the conclusion that none of the parties has persuaded the Court that they had any good reason for their dismal failure to comply. Both submissions consisted of vague and general arguments. In fact, they repeated to a large extent (i) the allegations of fact in the statements of claim and of defence, and (ii) the legal bases upon which their cases were founded. They also contained arguments seeking to persuade the Court why they should be the successful litigant as if they were addressing the Court at the end of the hearing of the case.

20. Having reached this conclusion it follows that we now have to decide what the fate of the claims and the defence must be, in accordance with the Rules of the Court. Absent

any counterclaim, it would be enough if we were to decide the fate of the claim only. If we decide that the claim must be dismissed, the defence automatically falls to be struck out as the purpose for which it was filed ceases to exist. We believe, however, that in the circumstances, we have to reach a decision on both as this might have a bearing on the order for costs that we will make.

21. The consequences of non-compliance are covered by the provisions of article 31 of the Rules which are as follows (to the extent relevant for the present case):

> *Where a party has, without reasonable excuse, failed to comply with a direction or order of the Court or a provision of these Regulations and Procedural Rules, the Court may*:
>
> > *31.1.1 make a cost order against that party in accordance with article 33 below;*
> > *31.1.2 where that party is the claimant or applicant, dismiss the claim or application wholly or in part;*
> > *31.1.3 where that party is the defendant or respondent, strike out the whole or part of the defence or response to the application and, where appropriate, direct that the defendant be debarred from contesting the proceedings or application.*

22. It is clear from the wording of the above provisions bearing particularly in mind the operative terms "*may*" at the end of the introduction in article 31.1 of the Rules that the Court has a discretion when deciding to apply the said provisions. A discretion that also stems from the option the Court has to apply either the provisions of article 3.1.1 or those of article 3.1.2 of the Rules, depending on the facts the particular case.

23. The Court had the opportunity to interpret the above provisions in *Mohamed Al-Emadi v Horizon Crescent Wealth LLC* [2021] QIC (F)12 in which, however, it also stressed that (at paragraph 8):

> *Article 31.1 must be read subject to Article 4 of the Rules which provides under the rubric "the overriding objective" that*
>
> > *"4.1 The overriding objective of the Court is to deal with all cases justly.*
> > *4.2 The Court must seek to give effect to the overriding objective when it exercises its functions and power given by the QFC*

law, including under these Regulations and Procedural Rules and under QFC Regulations"

And, so the Court held, in applying Article 31.1 "the first question is therefore: would it be fair and just in the circumstances of this case, to strike out the Defendant's defence either in whole or in part?"

24. In this particular case, we are in a situation where both parties failed to comply both with the Rules of the Court and with its orders and directions. So, it is not a case where we have to weigh whether it would be just and fair in the circumstances to strike out or dismiss the pleadings bearing in mind the interests of the other party. Both parties flagrantly failed to comply to the extent that their behaviour shows nothing less than contempt of court. There is no room in this case to apply the provisions of article 31.1.1 of the Rules. We came to the conclusion that we have no other option but apply the provisions of articles 31.1.2 and 31.1.3 of the Rules.

25. We, therefore, have decided to exercise our discretion by dismissing the claim in its entirety and strike out the defence.

26. In the circumstances there will be no order as to costs.

27. We end with a note of caution and warning to parties. It is simply unacceptable for parties to engage in litigation in this Court not just being completely unfamiliar with its procedures, but thereafter continuing to ignore orders and directions of the Court well after the litigation has started, despite great assistance from the Registry. In this case, there were numerous emails from the Registry to the parties which made it very plain what needed to be done, how things needed to be done, and by when they were required. The Court has also published comprehensive guidance on its proceedings – in both English and Arabic – the Maroon Book, which is available on the Court's website. If, despite all of this assistance, parties continue to breach directions and orders of this Court without good reason, significant consequences may follow including strike out – as in this case – adverse costs orders against a party, or wasted costs orders against either or both parties.

By the Court,

Justice George Arestis

Representation

The Claimant was represented by Abdulla Al-Khulaifi (Advocate & Legal Consultant, Doha, Qatar).

The Defendants were self-represented.

DIGITALLY SIGNED AND VERIFIED
موقّع رقمياً ومعتمد