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) 39

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 1 September 2024

CASE NO: CTFIC0071/2023

AMBERBERG LIMITED

Claimant/Applicant

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 Dr Yongjian Zhang

Order

1. The Claimant's claims against the 2nd and 3rd defendants (the '**Defendants**') are struck out.

2. The Claimant is directed to pay the costs incurred by the Defendants in opposing the claims against them as well as the costs of this striking out application, the quantum of such costs to be determined by the Registrar if not agreed.

3. The Defendants' application for the joinder of Mr Rudolfs Veiss to be joined as an additional party to the main proceedings and that he be ordered, jointly and severally with the Claimant, to pay the Defendants' costs in (2) above, will be the subject of further directions to the issued by the Registrar.

Judgment

1. This is an application by the Defendants for the striking out of the Claimant's claims against them by reason of the Claimant's failure to comply with this Court's Order dated 28 May 2024 compelling it to provide security for the Defendants' costs in the main proceedings in the amount of GBP 144 000 by way of a payment into Court the (the '**Security Order**'). Paragraph 2 of the Security Order further provides that, "*the sum in (1) is to be paid by way of 3 staged payments on dates and amounts to be agreed within 14 days of this Judgment or, failing agreement, by the Registrar*." The procedural background of the matter and the reasons for granting the Security Order appears from

the judgment in the security for costs application (the '**Security Judgment**'; [2024] QIC (F) 23).

2. On 11 June 2024 and before the dates and amounts of the staged payment contemplated in paragraph 2 of the Security Order had been determined, the Claimant brought an application that "*the case be stayed for six months whilst the funds are being raise* (sic.)*, or that the first payment of security should not be before 25 January 2025*". In motivating the application, the Claimant's authorised representative, Mr Rudolfs Veiss, inter alia stated that, "*due to existing arrangements and commitments that require cash flow that was carefully planned for 2024 in the previous calendar year*", the Claimant will be unable to provide the amount of security required within the next six months. That application was refused in a judgment dated 21 July 2024 ([2024] QIC (F) 27). The reasons for the refusal appear from that judgment. In the event, the parties failed to reach agreement on the amounts and dates of the staggered instalments of the security. In consequence the Registrar directed the Claimant on 21 July 2024 to pay the first instalment of GBP 50,000 by 16.00 on 31 July 2024.

3. When the Claimant failed to comply with that direction, the Defendants brought the present striking out application on 2 August 2024 on the basis that the Claimant had failed to comply with the terms of the Security Order as amplified by the directions of the Registrar. On 12 August 2024, the Claimant filed and served a 17-page opposition to the application. The Defendants indicated that they did not wish to reply. Both parties thereupon were content that we determine the application on the papers before us without the hearing of further evidence or argument.

4. Shorn of wide-ranging arguments and rhetoric, the Claimant's opposition essentially rests on the sole basis that neither the Claimant itself nor its only shareholder, Mr Veiss, is in a financial position to comply with the Security Order. Starting out from that premise, the opposition vacillates between two positions: that because the Claimant is unable to put up security, this Court must revisit and revoke the Security Order; alternatively, that because the Claimant is unable to put up security, this Court must simply pardon the Claimant from compliance as if the order was never granted.

5. In support of the first position the Claimant quotes extensively from the Security Judgment and more particularly from those passages in which the Court, in the exercise of its discretion, considers the risk that it may, by ordering security, preclude the Claimant from enforcing a legitimate claim because it is not in a financial position do so. But, at more than one level, the first position taken by Claimant is plainly misconceived. Absent an appeal, the Security Order became final and the Defendants are entitled to seek its enforcement. This Court is not in a position to set aside its own orders. The Claimant has not identified any change of circumstance that would entitle to Court to revisit its decision.

6. The further reason is that, as pointed out by the Claimant in its opposition, this Court clearly considered the risk that the Security Order may result in the Claimant being precluded from pursuing its claim, but decided, in the exercise of its discretion, that this consideration is outweighed by others. A factor which clearly weighed with the Court in arriving at that conclusion was that the Claimant had failed to show that its funders were unable to put up security. The Claimant's belated attempt to do so now cannot serve as a basis to set the Security Order aside.

7. The Court notes that there was no suggestion at the hearing at which security was ordered that the Claimant or Mr Veiss would be unable to put up security. Had the Claimant's claim been that its claim would be unfairly stifled this was a matter, that should have been the subject of evidence and argument. On the contrary, the position taken by the Claimant was that costs orders were always paid by Mr Veiss and therefore there was no risk that an order for costs in favour of the Defendants would be unsatisfied. In this way, the Claimant's own arguments contributed to the making of an order for security and it is simply too late to say that Mr Veiss' financial position was not as stated at the hearing and that his financial position was such that he was unable to put up security contrary to what was argued to the Court.

8. It is not open to the Claimant or to Mr Veiss to say that the order for security was wrongly made.

9. The second position taken by the Claimant, that the Court must pardon or excuse it from compliance with the order because it is not in position to comply, is notionally

capable of entertainment. At the same time, it seems clear that this route is only available in exceptional circumstances where, for example, there has been a change of circumstances. The clear inherent principle that orders of this Court are not to be negated lightly, coupled with the interest of the Defendants in compliance with that order, seem to dictate that this must be so.

10. The sole reason presented by the Claimant as to why it should be granted this exceptional indulgence is that it is financially unable to put up security itself and that Mr Veiss is not in a position to assist it in doing so. Our main difficulty with this plea ad misericordia is that the Claimant seems to make up its case as it goes along, changing its position at every further stage of the proceedings, often with reference to the reasons given by the Court in earlier judgments. During the application for security, as pointed out above, the Claimant did not contend that Mr Veiss was not in a financial position to put up security. On the contrary, it argued (albeit unsuccessfully) that security should not be ordered because Mr Veiss always pays costs orders against the Claimant. It was inherent in this submission that Mr Veiss was able to satisfy any costs order in favour of the Defendants.

11. Little is known about the financial position of the Claimant, but it is reasonable to infer that Mr Veiss is the person who will benefit if the Claimant is successful against the Defendants. It would be deeply unsatisfactory and wrong in principle where Mr Veiss had the benefit of a one-way bet. If the Claimant succeeded and recovered its costs against the Defendants, Mr Veiss would benefit. If, however, the Claimant lost, the Defendants would not recover their costs.

12. The application for an extension of time was brought on the basis that, due to the careful planning of its cashflow, the Claimant was unable to put up security within the next six months, with the clear implication that it would be able to do so after that period. Moreover, there was again no suggestion that Mr Veiss, who had retained an international firm of solicitors and London-based counsel on behalf of the Claimant, would also be unable to put up security within a reasonable period.

13. Now the position taken by the Claimant is that neither itself nor Mr Veiss will ever be able to put up any security or even to pay the Claimant's own legal representatives in

the future. It is to be noted that evidence about Mr Veiss' financial position is bare assertion on his part: no documentary evidence was adduced to set out his financial position.

14. If the Claimant's latest version is to be accepted, the irony is that the extension of time application was refused essentially on the basis that it would be unfair to the Defendants that they should have to wait for a further six months in the hope that the Claimant's position will improve. Now the Defendants are told that they must proceed to incur costs in defending themselves against the Claimant's claims with no hope of ever recovering any part of the costs so incurred, even if they were wholly successful in warding off these claims. Since these are the very concerns that led the Court to order security, we cannot allow this risk we sought to prevent by allowing the Claimant to proceed without providing any security at all.

15. In the light of Mr Veiss' submissions, we do not think that any purpose will be served in giving him more time to put up security. Nor do we think it appropriate to stay the proceedings rather than to dismiss them. The material before the Court suggests that there appears to be no prospect of the Claimant (or Mr Veiss) putting up security in the foreseeable future and manifestly not by a certain date. Moreover, it is unfair to the Defendants to have these proceedings hanging over their heads and it is right to bring them to an end now.

16. Coupled with its application for striking out, the Defendants brought an application for (i) an order joining Mr Veiss as a party to these proceedings, and (ii) that he be held liable, jointly and severally with the Claimant, for the Defendants' costs. In the light of this ruling, the Registrar will give directions for the exchange of skeleton arguments. There will be a virtual hearing of this application on a date to be identified with a time estimate of 2 hours.

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 2nd and 3rd Defendants were represented by Mr Thomas Williams of Counsel (King's Chambers, United Kingdom), instructed by Francis, Wilks & Jones (London, United Kingdom).