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) 46

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 30 October 2024

CASE NO: CTFIC0026/2024

AKRAM HIDRI

1st Claimant

AND

CREATREA LLC

2nd Claimant

V

QATAR FINANCIAL CENTRE AUTHORITY

Defendant

JUDGMENT

Before:

Justice Fritz Brand

Justice Ali Malek KC

Justice Helen Mountfield KC

Order

1. The Defendant is granted summary judgment pursuant to article 22.6 of the Court's Regulations and Procedural Rules. Accordingly, the Claimants' claims are dismissed.

2. The Claimants shall pay the Defendant's reasonable costs, to be assessed by the Registrar if not agreed.

Judgment

Introduction

1. On 13 October 2024, we heard an application by the Defendant for summary judgment pursuant to article 22.6 of this Court's Regulations and Procedural Rule the ('**Rules**'). The Defendant was represented by Mr Conte. The First Claimant represented himself and the Second Claimant as a litigant-in-person. We are grateful to both Mr Conte and Mr Hidri for their assistance, and to Mr Conte for properly performing his obligations to the Court to assist a litigant-in-person in making sure that all the arguments he might raise were before the Court.

2. By a Claim Form dated 15 July 2024, the Claimants sought damages against the Defendant on the basis that it was said that the Defendant had negligently delayed processing a "*Controller Notice*" in connection with a share transfer, which delay it was said caused the Claimants loss. It was also said that the Defendant had been negligent in failing to intervene in subsequent legal proceedings brought by the Claimant against a company called KBF Trading and Contracting Co LLC ('**KBF**').

3. The Defendant responded by lodging on 1 August 2024 an application for summary judgment. In its application, the Defendant invited the Court to strike out the claim on the papers on the basis of the immunity set out in article 16 of the QFC Law (Law No. 7 of 2005, as amended). It also sought to defer the time for filing a response to the

claim, pursuant to article 20.1 of the Rules pending our decision on the application for summary judgment. At the time of the hearing, no timetable had been set for service of a response, and accordingly there was no need to make an order on the article 20.1 application.

4. The Defendant's key submission was that it has a general immunity provided in article 16 of the QFC Law which provides that the QFC Authority and all QFC Institutions shall not be subject to any civil liability in relation to all acts or omissions done or omitted to be done or negligence in good faith during the course of performing or trying to perform its duties, powers, responsibilities and tasks as prescribed in the QFC Law or regulations, or provisions thereof.

5. In their response to this application dated 26 August 2024, the Claimants asserted that the Defendant had acted not only negligently but with gross negligence and in bad faith in processing the documents required in relation to the controller notice, and also set out a number of new allegations of breaches of various statutory duties by the Defendant in connection with its dealings with the Claimants.

6. The Defendant responded to this on 5 September 2024, rebutting the new allegations and continuing with its application for summary judgment.

7. Because we were unaware of any caselaw on the scope of the statutory immunity in article 16 of the QFC Law (which raises an important point of principle), and none was cited to us, we decided to hold an online hearing before deciding whether to grant the application for summary judgment.

8. We have decided to grant summary judgment because, even taking the facts alleged by the Claimants at their highest, there was no arguable cause of action against the Defendant which could overcome the statutory bar in article 16. This judgment sets out our reasons for that conclusion.

Background

9. The First Claimant is a director of and 50% shareholder in the Second Claimant, a limited liability company incorporated and registered in the Qatar Financial Centre

('**QFC**') on 3 September 2019. The Defendant is the QFC Authority ('**QFCA**') whose statutory functions are set out in article 3 of the QFC Law. One of its functions is to supervise licensed firms operating in and from the QFC, pursuant to article 11 of the QFC Law.

10. By virtue of article 3 of the QFC Law, the QFCA has an independent legal personality and financial and administrative independence from the State. The objectives of the QFCA are set out in article 5 of the QFC Law, and its powers are set out in article 6 of the same. These include (in article 6(5)) the powers "*to approve, authorise and license persons, companies and other entities which may be authorised pursuant to this Law that wish to conduct their business at the QFC …*"

11. Article 7 of the QFC Law provides for the existence of a QFC Companies Registration Office which shall perform such duties and functions in relation to companies and other QFC entities as the QFCA shall think fit. Article 8 of the QFC Law provides for the existence of a QFC Regulatory Tribunal with jurisdiction to hear appeals raised by individuals and others against administrative decisions of the QFCA (and other QFC Institutions). It also provides for the existence of this Court, and for the jurisdiction of the Court over civil and commercial disputes in the QFC, governed by the QFC Law.

12. On 22 September 2021, the Claimants and KBF entered into a shareholder agreement pursuant to which the First Claimant agreed to sell 50% of his shares in the Second Claimant to KBF. At the time, in order to effect the share transfer, the Claimant needed to file and have approved by the Defendant a Controller Notice relating to the change of control in a licensed firm. This was an administrative function provided for by statute: the Defendant charged no fee for processing the Controller Notice.

13. As we have already observed, on 15 July 2024, the Claimants filed a claim with this Court alleging that the Defendant had delayed in approving the Controller Notice and thus in registering the share transfer; that this delay was negligent; and that the Claimants had thereby suffered loss. The Defendant sought summary judgment on 1 August 2024, denying negligence on the facts, but submitting that in any event article 16 of the QFC Law was an absolute bar to the claim. The Claimants effectively

amended their claim on 26 August 2024 by raising new allegations of "*gross negligence*" and "*bad faith*" in their answer to the application for summary judgment They also claimed that the Defendant had breached its statutory duties set out in articles 5, 6 and 11 of the QFC Law, and obligations under article 24(5) of the QFC Companies Regulations 2005 (the '**Regulations**'). The Defendant responded on 5 September 2024.

Legal Framework

The approach to granting summary judgment

14. Article 22.6 of the Rules read with Practice Direction No. 2 of 2019 provides that the Court may grant summary judgment against a claimant if (i) the claim has no prospect of success; and (ii) there is no other compelling reason why the case should be disposed of at trial.

15. The approach which the Court takes to this question is as follows:

    i. It will consider whether the claim has a realistic, rather than a fanciful, chance of success.

    ii. In considering this question, it will not conduct a 'mini-trial' – thus it will generally proceed on the basis of the facts as alleged by the claimant, and if determinations of contested facts are required this will generally occur at trial.

    iii. If the application concerns a short point of law, and if all evidence necessary to determine the point has been filed and the parties have had an adequate opportunity to address it, the Court will generally decide the point.

    iv. The Court will generally disregard bare assertions unsupported by evidence (see for example *CFH Clearing Ltd v Merrill Lynch* [2020] EWCA Civ 1064 at paragraph 21 and *Eversheds Sutherland LLP v Gulf Beach Trading & Contracting Company WLL* [2024] QIC (F) 13 at paragraph 35).

The scope of Article 16 of the QFC Law

16. Article 16 of the QFC Law provides as follows:

    1. Without prejudice to the provisions of Article 16(2) and (3), the QFC Authority; the Regulatory Authority; The Regulatory Tribunal; The Civil and Commercial

Court; all QFC institutions; all members of the Board of Directors of the QFC Authority including the Chairman and Director General; all the members of the Board of Directors of the Regulatory Authority; the chairman and Judges of the Regulatory Tribunal; the chairman and the judges of The Civil and Commercial Court; QFC position holders; the employees of the QFC Authority, the Regulatory Authority, The Regulatory Tribunal, The Civil and Commercial Court, and any QFC authority that may be later established, shall not be subject to any civil liability in relation to all acts or omissions done or omitted to be done or negligence in good faith during course of performing or trying to perform their duties, powers, responsibilities and tasks as prescribed in this Law or regulations, or provisions thereof.

2. *This Article does not relieve the QFC Authority or any member of the Board or officer of the QFC Authority from civil liability in relation to any commercial activities undertaken by the QFC authority.*

3. *The QFC Authority, the Regulatory Authority, The Regulatory Tribunal, The Civil and Commercial Court, or any QFC institutions, the heads, members and employees of those bodies, as the case may be, shall not be exempted from civil liability relating to any commercial contract to which any of those bodies is a party.*

Discussion

17. Counsel for the Defendant was at pains to explain that, were this claim to proceed to full trial, any negligent delay or other negligence on the part of the Defendant, and any loss causally linked to it would be denied. However, mindful of the observation that an application for summary judgment is not a mini-trial or a process to resolve disputed issues of facts; for the purposes of the application, we accepted that the correctness or otherwise of the assertions of negligence and loss could not be determined without further factual investigation, so we proceeded on the basis of an assumption for the purpose of this application only that there was negligence, and that this caused the Claimants to suffer loss.

18. However, it is plain that any claim based on negligence or indeed performance of any other duty, power, responsibility or task prescribed in the QFC Law or regulations is barred by the immunity conferred by article 16 on which is conferred on the QFCA as well as other QFC institutions.

19. Article 16 (1) provides that these bodies and their members:

... shall not be subject to any civil liability in relation to all acts or omissions done or omitted to be done or ***negligence in good faith*** *during course*

of performing or trying to perform their duties, powers, responsibilities and tasks as prescribed in this Law or regulations, or provisions thereof (**emphasis added**).

20. This exemption is similar to those which exist in several other institutions. For example, the Financial Conduct Authority in England is not liable for anything done or omitted in discharge of its functions unless the act or omission was "*in bad faith*" (Financial Services and Markets Act 2000, Schedule 1ZA), and the Dubai International Financial Centre (Dubai Law No. 5 of 2021) has a similar provision at article 29. The purpose of exempting such public bodies, including adjudicative bodies, from civil suit, is to avoid satellite litigation: *R (on the application of Idealing.Com Ltd) v FOS Ltd* [2024] EWHC 847 (Admin) at paragraph 21.

21. In the QFC, the remedy for challenging an alleged administrative failing by the QFCA is a challenge before the QFC Regulatory Tribunal (article 8(2)(c) of the QFC Law), not a civil claim for damages.

22. There are exemptions in articles 16(2) and 16(3) of the QFC Law for commercial activities undertaken by the QFCA and in relation to commercial contracts to which any of the QFC bodies is a party, but neither of these exemptions apply.

23. In their reply to the application for summary judgment, the Claimants sought to raise three new arguments. They sought first to augment the original claim for negligence by reference to various alleged breaches of duties under the Regulations. The Defendant responded by disputing that the Regulations could found the causes of action alleged. It submitted that articles 5, 6 and 11 of the QFC Law set out "objectives" and "powers" for the QFCA, not duties. It also claimed that these claims were unparticularised assertions of breaches of statutory duty – such as failures to process 'licences and approvals" in good time.

24. But it is plain from the language of article 16(1) that even if the Regulations had the effect or imposed the obligations alleged by the Claimants, these claims also fell within the general immunity, because the matters alleged would amount to negligence in the performance (or failure to perform) statutory functions.

25. Second, the Claimants submitted that the claims fell outside the statutory immunity because they amounted to "*gross negligence*", and this disqualified the Defendant from the immunity protections relating to mere "*negligence*".

26. We do not consider the concept of "*gross negligence*" – a term unparticularised and appearing to mean only "*really serious negligence*" – added anything to the concept of negligence. In our judgment, any claim based on any type of negligence would fall within the statutory immunity set out in article 16 as properly interpreted.

27. The third reason the Claimants submitted that the statutory immunity did not apply in this case was that, it was alleged, the Defendant had acted in "*bad faith*".

28. It is clear from the language of article 16 that this is in principle a valid exception to the immunity set out therein. Only actions "*in good faith*" fall within the statutory immunity. We went on to consider, therefore, whether there was an arguable case that the alleged failures by the Defendant could be said to have been "*in bad faith*".

29. Mr Hidri fairly acknowledged that there was no express or explicit evidence to support the Claimants' allegation of bad faith, but said that want of good faith could be implied on two bases. The first basis for implying bad faith was what he said was the egregious (i.e. gross) nature of the negligence – i.e. that no decision maker acting in good faith could have acted as negligently as the Defendant had done. The second was the extent of the damage which he had suffered as a result.

30. We had to consider whether, on the factual allegation of very serious or egregious negligence, it could be said that this was sufficient to form a prima facie case of bad faith such as to enable the claim to proceed to a full trial of the facts. We also had to consider whether the seriousness of the harm which the Claimants claimed to have suffered as a result of the Defendant's alleged negligence was relevant to implying that the negligence must have been actuated by bad faith so that the Defendant's alleged failings fell, at least arguably, outside the article 16 immunity from suit.

31. We reminded ourselves that a Claimant alleging bad faith faces the substantial hurdle that such an allegation should only be made if there exists *prima facie* evidence

justifying the allegation, supported by cogent evidence or grounds to support it: *Melton Medes Ltd v Securities and Investments Board* [1995] Ch 137 at paragraph 147 (such allegations also have to be properly pleaded and particularised, but Mr Conte rightly disclaimed any reliance on a pleading point in recognising the difficulties faced by a litigant-in-person in presenting a case to the Court).

32. To decide whether there were "reasonable grounds" to allege bad faith, we needed to identify what has to be established to amount to bad faith.

33. The Defendant submitted that in the context of statutory immunities from suit, English courts and commentators have interpreted bad faith, or lack of good faith to mean one of three things. The first is malice, in the sense of personal spite or a desire to injure for improper reasons, or acting in the knowledge that the decision is one the decision-maker has no power to make. The second is acting for an ulterior purpose, specifically intending to harm the claimant or a class of persons of which the claimant is a member. The third is acting dishonestly, knowing or being recklessly indifferent to the fact that the act is illegal and will probably cause harm to the claimant or the claimant's class: see for examples *Melton Medes* at paragraph 147, *Jackson & Powell on Professional Liability (9th ed 2023)* paragraphs 14-006; and *Three Rivers DC v Bank of England (No 3)* [2003] 2 AC 1 HL, paragraphs 191, 193 and 231.

34. Mr Conte properly pointed out that in different contexts, in particular in public law, bad faith could be taken to have a different and narrower interpretation, of using a power for an improper purpose, without malice, intention harm or dishonesty. However, he submitted that the approach he advanced was the correct one in relation to limitations on liability for wrongful action or inaction in the exercise of a public power – i.e. as relate to claims for statutory immunity from suit.

35. We are inclined to consider that in the context of avoiding satellite litigation against public and adjudicative bodies, the correct interpretation of bad faith for the purposes of deciding whether a statutory immunity is excluded, is that generally applied in the regulatory context requiring it to be demonstrated that there has been abuse of power actuated by malice, some ulterior purpose or dishonesty. However, bearing in mind that so far as we are aware, this is the first case in this jurisdiction on the interpretation

of article 16, and that we had in front of us an unrepresented party, we would not wish to reach a final determination on this issue unless we required to do so.

36. We do not, however, need to reach a final determination on this question, because whichever definition of bad faith we adopt, we would need cogent evidence to support the allegation that QFCA's powers had been exercised as they had been for an improper purpose. Even taking the allegations made by Mr Hidri at their highest, we do not consider that the facts concerning the Defendant's actions even arguably support such an allegation, particularly where we are invited to imply improper purpose merely from the extent of delay in performance of a public function. The alleged failings are not of a scale or character that they could, even if proved, lead to an implication of misuse of power for an improper purpose. There is simply no evidence before the Court sufficient to support this allegation.

37. We consider the extent of damage is irrelevant to the issue of good faith. The consequences of the delay said to arise from negligent failure to act are irrelevant to the question of whether this failure was in good or bad faith in the absence of any extraneous evidence of abuse of power.

38. Accordingly, we do not consider that the Claimants have any reasonable prospect of establishing facts which could bring this claim outside the statutory bar in article 16 of the QFC Law.

Conclusion

39. The Court is satisfied that the Defendant is entitled to summary judgment under article 22.6 of the Rules, because on the basis of the facts alleged in the claim, the evidence before the Court shows that the Defendant has no prospect of successfully overcoming the legal bar to proceeding with the claim set out in article 16 of the QFC Law. Nor do we find any other compelling reason why the matter should be disposed of at trial. Accordingly, we award summary judgment against the Claimants and the claim is dismissed.

Costs

40. The Defendant is entitled to its costs as against the Claimants pursuant to article 33 of the Rules, 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 1st Claimant self-represented and also represented the 2nd Claimant as its authorised representative.

The Defendant was represented by Mr Carmine Conte of Counsel (Blackstone Chambers, London, United Kingdom), instructed by its in-house legal department.

DIGITALLY SIGNED AND VERIFIED
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