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) 51

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 11 November 2024

CASE NO: CTFIC0016/2024

MOHAMMED AMIN HAMZA

Claimant

V

MASTERS BUSINESS CONSULTANCY LLC

Defendant

JUDGMENT

Before:

Justice Fritz Brand

Justice Ali Malek KC

Justice Dr Muna Al-Marzouqi

Order

1. The Claimant's claims are dismissed.

2. The Claimant is directed to pay all reasonable costs incurred by the Defendant in opposing these claims, the quantum of such costs to be assessed by the Registrar if not agreed.

Judgment

1. The Claimant, Mr Mohammed Amin Hamza, is a citizen of the United States of America. The Defendant, Masters Business Consultancy LLC, is an entity established and licenced to do business in the Qatar Financial Centre (the '**QFC**').

2. It is common ground (i) that the parties entered into an employment agreement on 23 August 2023, and that from that date the Claimant was subject to the sponsorship of the Defendant in the State of Qatar; (ii) the employment relationship was terminated on 25 October 2023 pursuant to a Termination of Service Agreement (the '**Termination Agreement**'); and (iii) that, after the termination of his employment relationship with the Defendant, the Claimant sought to transfer his sponsorship to a non-QFC entity, Mavericks Business Consultancy WLL ('**Mavericks**'). It appears that the employment relationship was preceded by a joint cooperation agreement between the parties which was concluded on 7 March 2023.

3. The jurisdiction of this Court was initially challenged by the Defendant. But at the hearing it was formally conceded on its behalf by its fresh counsel that this Court has jurisdiction to determine the dispute in terms of article 9.1.3 of its Regulations and Procedural Rules (the '**Rules**'). We believe that the concession was fairly and rightly made, in that article 9.1.3 confers jurisdiction upon this Court to determine "*civil and commercial disputes arising between entities established in the QFC and… employees thereof".*

4. Proceedings commenced when the Claimant filed its Claim Form in May 2024. Ex facie the Claim Form, his claims were essentially threefold. First, that the Defendant be ordered to provide him with what is referred to as a non-objection certificate or NOC.

Second, for damages in the sum of QAR 410,000 for the loss that the Claimant allegedly suffered because he was unable to close a property transaction in Dubai due to his inability to leave the State of Qatar resulting from the Defendant's failure to provide him with the NOC. Third, for damages in the sum of QAR 80,000 for every month during which he was precluded from taking up gainful employment with Mavericks because of the Defendant's failure to provide him with the NOC. The Claimant also sought $50,000 by way of legal fees incurred and any other damages the Court saw fit to award for hardship caused by the Defendant.

5. In terms of the Termination Agreement, the Defendant expressly stated that it "*is willing to prepare the required papers to transfer your sponsorship to any other entity which you desire to join*". But when the Claimant asked the Defendant in November 2023 to provide him with the NOC, it refused to do so.

6. In consequence, the Claimant invoked the assistance of the QFC Employment Standards Office (the '**ESO**') who requested the Defendant on 6 February 2024 to provide the Claimant with an NOC. On the same day, however, the Defendant responded to the ESO that it was not prepared to do so. In motivating the position it took, the Defendant inter alia said that during the 30 days' notice period following the Termination Agreement, the Claimant had "*revealed some confidential information related to a VIP customer to some of his friends*" and that "*in addition to that, there is an amount he needs to be returned back to the company which is still pending till today with him*".

7. In addition, the Defendant informed the ESO that it had brought criminal charges against the Claimant and a civil claim in the Investment and Trade Court. In consequence, so the letter to the ESO concluded, "*we decided not to issue the NOC till the court cases attached [that is both the civil and criminal proceedings] are resolved*."

8. In the event, the evidence shows that the Public Prosecution Department decided on 29 April 2024 not to proceed with the criminal case against the Claimant "*due to insufficient evidence*." The civil ligation against the Claimant proved to be equally unsuccessful in that the Defendant's claims against him were dismissed by the Investment and Trade Court in July 2024.

9. It appears that upon termination of the criminal and civil litigation against the Claimant, he succeeded in successfully transferring his sponsorship. Hence, the claim for an order compelling the Defendant to issue the NOC is no longer claimed. Only the damages claim for his loss allegedly resulting from the Defendant's refusal to provide him with the NOC remain.

10. At the hearing, which was conducted remotely on 27 October 2024, both parties were legally represented, and we thank both counsel for their able assistance. The Claimant himself was called to testify whereafter his friend and former business partner, Mr Donald Jordan, also testified on his behalf. No evidence was led on behalf of the Defendant. Although we are prepared to accept the evidence of the Claimant and Mr Jordan unreservedly, it turned out that for reasons that will presently transpire, their testimony has little, if any, influence on the outcome of the case.

11. From the Skeleton Argument filed on behalf of the Claimant prior to the hearing it was clear that the Claimant's whole case was based on article 10 of the QFC Employment Code 2010, and on the interpretation of that article by the judgment of the First Instance Court in Arwa *Zakaria Ahmed Abu Hamdieh v Lesha Bank LLC* [2022] QIC (F) 17.

12. Article 10 provides:

> *Obligation to Permit Transfers of Sponsorship: Employers must take all steps necessary to permit their Employees, whether Sponsored or not, to transfer to another employer in the State, whether in the QFC or not. This includes providing all documentation required under State or QFC requirements, including all non-objection*
>
> *letters and consents.*
>
> *a. Disputes regarding the terms of termination, any alleged breach by the Employee of the terms of the Employment Contract and/or the amount of the financial settlement must be delinked from the Sponsored Employee's right to seek new employment in the State, whether in the QFC or not.*
>
> *b. In the event of a dispute regarding the termination, Including the amount of the financial settlement the Employer may NOT withhold the non-objection letter pending resolution of such Issues.*
>
> *i. If there is dispute regarding amounts owed to the Employer, or an alleged breach of the Employment Contract, by the Employee the Employer may file a claim with the ESO or seek legal redress as provided for in the Employment Contract.*

ii. If there is a dispute regarding amounts owed to the Employee, the

Employee may file a claim with the ESO or seek legal redress as provided for in the Employment Contract. However, if the Employee signs a document agreeing to the final settlement and waiving all further rights against the Employer such document may constitute acceptance by the Employee of the final settlement amount.

13. The fundamental difficulty with this argument is, however, as was rightly pointed out in the Skeleton Argument filed on behalf of the Defendant, that the judgment of the First Instance in the *Hamdieh* case was set aside by the Appellate Division of this Court (the '**Appeal Court**') in *Arwa Zakaria Ahmed Abu Hamdieh v Lesha Bank LLC* [2023] QIC (A) 1.

14. As appears from the judgment of the Appeal Court (at paragraph 13), it heard evidence on appeal from a representative of the Ministry of Labour (the '**MoL**') with particular reference as to how, after the reforms to the labour and immigration laws in Qatar in 2020, changes of employment and sponsorship actually take place in practice.

15. With reference to the legal framework after 2020, the Appeal Court then summarised the position as follows (at paragraph 40 of the judgment):

In summary:

I The consent of the ex-employer is not necessary when the application for transfer to a non- QFC entity is made to the MOL or MOI.

Ii There is no requirement under the legislation for an NOC when transfer is to a non-QFC entity. A former employer has limited grounds of objection to change of employment and the transfer of sponsorship; any objection must be documented or the MOL will have no regard to it. The MOL can override any objection.

16. With regard to the practical framework the Appeal Court held (at paragraph 45 of the judgment):

The critical point to stress is that the former employer of the transferring employee has no role in the transfer. This follows once it is appreciated that one of the vices of the pre-2020 system in Qatar was that a former employer cause abuse. The reforms made in 2020 meant that the change of employment and the transfer of the sponsorship to a non – QFC entity does not require, either as a matter of law or of practice, the consent of or release by, or any signature of the current employer of the employee; no consent and no document is required from the current employer. A NOC is therefore not required.

17. At paragraph 46 of the judgment, the Appeal Court proceeded:

The Official from the MoL gave important information about the operation of the MOL portal. In particular, the following points are established in his evidence:

i. The MoL portal came into operation after the new law in 2020 and has not changed.

ii. The employee must apply for a change of employer; the intervention of the former employer in the process is not permissible.

iii. When the application is submitted, a text message (SMS) is received by the employee and the new employer, the former employer is also notified by text message of the requite period of notice. The former employer can at this stage submit a written objection supported by documentary evidence to the Employee Relations Department of the MOL. All objections to transfer by the former employer are scrutinised by an Objections Committee in the MoL comprised of legal experts. Only those objections which are deemed to be valid are placed on the file and prevent a transfer. If the objection is not justified , the MOL can override it and transfer the sponsorship if a new request to transfer is submitted.

iv. When a transfer application is rejected, the applicant (the employee) is notified by text message and told orally of the ground of objection if the employee makes enquiries of the MoL.

v. No NOC is required to transfer to a non-QFC entity …

18. With specific reference to article 10 of the QFC Employment Code, the Appeal Court held (at paragraph 39 of the judgment) that this article was dealing with the applicable procedure before 2020, and that it therefore no longer has any role to play.

19. It should immediately be apparent that the construction of article 10 of the QFC Employment Code relied upon by the Claimant is irreconcilable with the judgment of the Appeal Court in *Hamdieh*. In fact, it is patently clear that in the light of that judgment, the Claimant's case based on an alleged obligation on the part of the Defendant to provide him with an NOC is fundamentally unsustainable. This is so because the Appeal Court held in express terms that, in the post-2020 dispensation, the employer is under no obligation to provide its former employee with an NOC. This Court is bound to follow the decision of the Appeal Court.

20. Faced with this insurmountable obstacle, in argument, the Claimant's counsel changed tack. The transformed case she sought to rely on was that (i) the transfer of the

Claimant's sponsorship was refused by the MoL because of objections raised by the Defendant; and that (ii) on a proper interpretation of article 10 of the QFC Employment Code, the Defendant was under an obligation not to object to the transfer of the Claimant's sponsorship.

21. In support of the first leg of the transformed case, the Claimant testified that he was informed by those who applied for the transfer of his sponsorship on his behalf that the application was refused by the MoL on three occasions solely on the basis of objections filed by the Defendant. In cross examination, the Defendant's counsel unsuccessfully sought to persuade him that there could well be other reasons for the refusal. Despite the absence of any direct evidence as to the reasons for the MoL's refusal, we believe that on the probabilities, the Claimant's version should be accepted. As we see it, this is borne out, inter alia, by the fact that permission for the transfer of his sponsorship was granted when the criminal and civil proceedings brought by the Defendant finally proved to be unsuccessful.

22. That leads us to consider the validity of the argument in limb (ii) of the new case, namely, that the Defendant was under an obligation not to raise an objection to the transfer of the Claimant's sponsorship under any circumstances. In short, we believe that the answer to the question thus raised must be "no". Apart from the fact that this proposition was never relied upon by the Claimant in his pleadings, it is again in direct conflict with the tenor of the Appeal Court judgment in *Hamdieh.* As appears, for instance, from paragraphs 40 and 45 of the judgment that we have referred to, the Appeal Court accepted that, after being notified, the employer has the opportunity to object, and that the validity of such objection is then for the MOL to decide.

23. The counter argument raised by the Claimant was that the Appeal Court was wrongly informed in that, when an objection is filed by the former employer, the application for transfer is in practice refused by the MoL as a matter of course without even considering the validity of the objection. But that is not an argument that we can accept without any evidence to that effect. After all, the contention that the Appeal Court had been misinformed by the MoL is a serious allegation which cannot simply be accepted as a matter of course.

24. A further argument raised by the Claimant's counsel as to why a former employer should have no right to object was that such right can be abused by the former employer to frustrate the transfer of sponsorship. We do not believe that the notional possibility of abuse is enough to preclude the employer from raising an objection for consideration by the authorities. If the objection is regarded as invalid it will have no effect on the transfer. But that is for the authorities to decide, as noted in *Hamdieh* at paragraph 46(iii):

> *All objections to transfers by the former employer are scrutinised by an Objections Committee within the MoL comprised of legal experts. Only those objections which are deemed to be valid are placed on the file and prevent a transfer. If the objection is not justified, the MoL can override it and transfer the sponsorship if a new request to transfer is submitted.*

The answer to the problem of potential abuse may be, and we put it no higher than that, that if the former employer dishonestly raises a bogus objection with the purpose of frustrating the transfer, the former employee will be able to claim for the loss resulting from the refusal of transfer. But that is not the case we have to decide since that is not the case relied upon by the Claimant and it is unpleaded.

25. It follows that, in our judgment, the Claimant's claims for damages cannot be sustained. As to the matter of costs, we find that since the Defendant is the successful party, it is entitled to the costs incurred by it in opposing the claims, such reasonable costs to be determined by the Registrar if not agreed.

26. 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 represented by Aurore Deeb of D&C Legal Services LLC (Doha, Qatar).

The Defendant was represented by Assad Al-Assad of the Asma Al-Ghanem Law Firm (Doha, Qatar).

DIGITALLY SIGNED AND VERIFIED
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