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) 57

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 22 December 2024

CASE NO: CTFIC0036/2024

THE CHANCELLOR, MASTERS, AND SCHOLARS OF

THE UNIVERSITY OF CAMBRIDGE

Claimant

V

THE HOLDING W.L.L.

Defendant

JUDGMENT

Before:

Justice George Arestis

Justice Dr Muna Al-Marzouqi

Justice Dr Yongjian Zhang

Order

1. The Court declines jurisdiction and therefore the claim fails.

2. The Court makes no order as to costs.

Judgment

1. The Claimant, a nonprofit organisation, is a department of the university of Cambridge providing services on an international level for promoting the learning of the English language around the world. On 8 May 2019, the Claimant entered into a service agreement with Technolab for the provision of certain services which expired on 31 December 2022, which was the date of completion of the services.

2. Technolab failed to comply with its obligation to pay the amount of money as agreed for the value of the services provided, and on 27 January 2024 the Claimant and Technolab entered into an acknowledgement agreement by which both parties agreed as to the services provided and the outstanding amounts and accrued interest.

3. The Defendant is the parent company of Technolab. On 17 January 2024 the parties entered into a guarantee and indemnity with respect to amounts due under the agreement. Clause 12 of the guarantee and indemnity provides that the applicable law are the laws and regulations of the State of Qatar and clause 13 provides as to jurisdiction as follows:

> *The parties irrevocably agree that the Courts of the Qatar Financial Centre shall have exclusive jurisdiction to settle any dispute of claim arising out of, or in connection, this guarantee, its subject matter or formation (including non-contractual disputes or claims).*

4. None of the parties is an entity established in the Qatar Financial Centre ('**QFC**').

5. The Claimant filed the present action claiming against the Defendant an on-demand payment guarantee provided by the Defendant in favour of the Claimant as hereinabove stated, for the outstanding invoiced amounts of USD $1,684,315.26 and the sum of GBP £681,019.34, plus accrued interest of GBP £120,885.18 and USD $214,085.24 as of 26 May 2024, as revised and updated as of the date of judgment, plus costs. The Claim Form was served on the Defendant on 4 September 2024, but no Defence was filed. An application for Summary Judgment was then filed against the Defendant, which was served on the latter on 13 October 2024, to which there was no response or any other reaction on the part of the Defendant.

6. In spite of the fact that the case of the Claimant remains undefended, the Court thinks it crucial to turn its attention to the issue of jurisdiction as it is an issue of public interest to which an answer has to be given before examining the case on the merits. The Claimant, recognising the importance of this issue, analyses in its Claim Form the relevant provisions of the law and regulations of the QFC in an effort to persuade the Court that it must accept jurisdiction and determine the present case. They refer to the jurisprudence of this Court, but they mainly rely on a decision of the First Instance Circuit, in *Amberberg Limited and another v Thomas Fewtrell and others* [2022] QIC (F) 3.

7. The law and the rules providing for the jurisdiction of this Court are cited and analysed in the abovementioned case and we find it useful to cite them verbatim as follows – paragraph 12 of the judgment states:

> *The QFC Law provides by Article 8.1.c that this Court "shall have jurisdiction to hear the following disputes…". Originally, four classes of disputes were then identified (c/1, c/2, c/3, and c/4). Recently, the Law has been amended to add a further class (c/5). These provisions, both as originally enacted and as recently amended, are reproduced in Article 9.1 of this Court's Regulations and Procedural Rules ("the Rules"). Article 9 as a whole is headed "Jurisdiction of the Court". Article 9.1 opens: "The Court has jurisdiction, as provided by Article 8.3.c of the QFC Law, in relation to…". There then follow the classes of disputes referred to above.*

8. Paragraph 14 then states:

Article 9 of the Rules continues:

9.2 Consequently and in accordance with fundamental international principles and international best practice, the Court will take into account the expressed accord of the parties that the Court shall have jurisdiction.

....

9.4 ……. If the Court considers it desirable or appropriate, it may decline jurisdiction….

9. In the abovementioned case most of the parties were not entities registered in the QFC and the question of jurisdiction arose. The 1st Claimant and the Defendants were not entities registered in the QFC, while 2nd Claimant was such an entity. There were claims raised by the 1st Claimant against the Defendants relied mainly on a sales agreement and claims also raised by the 2nd Claimant against the Defendants. In the sales agreement there was a provision that "*Any dispute, controversy or claims arising out of or in connection with this agreement…shall be referred to and finally resolved by the competent courts of the QFC".*

10. The Defendants disputed the jurisdiction of the Court as regards 1st Claimant but they accepted it as regards the2nd Claimant. The 1st Claimant, in answer to the above defence of lack of jurisdiction, relied on the above provision of the sale agreement on jurisdiction to argue that the Court could accept jurisdiction.

11. As the Claimant in this case relies mainly on the abovementioned case inviting the Court to accept jurisdiction, we shall make extensive reference to it. In paragraph 15 of the judgment, the Court stated as follows:

Neither Article 9.2 nor Article 9.4 reproduces, in express terms, provisions in the QFC Law. However, the Rules, including these Articles, were enacted purportedly in furtherance of the power, conferred by Article 9 of the QFC Law, on the Minister of Economy and Finance to enact Regulations with the consent of the Council of Ministers. In Nazim Omar and Another v Al Mal Bank LLC [2011] QIC (A) 1 the appellants challenged as ultra vires the provision in the Rules which required that permission of the Court was required to appeal against a judgment or decision of the Court at first instance. The Appellate Circle of this Court rejected that challenge, noting that the Rules had been approved by the Council of Ministers. Article 9.2 is contained within the same rules, so approved. It was not contended by the Defendants in this case, either in written submissions or orally at the hearing, that Article 9.2 (or Article 9.4) was ultra vires. In the absence of any challenge of that kind we proceed on the well-established principle that a regulation made by a Minister under

delegated powers is to be treated as validly made unless and until duly challenged and set aside.

12. Having decided that article 9.2 of the Regulations and Procedural Rules is good law which the Court should take into consideration in determining the case, the Court proceeded in paragraph 20 of the judgment to define the exact meaning of it and how the Court should apply its provisions in every particular case. Paragraph 20 states as follows:

> *Article 9.2 of the Rules, in contrast to Article 9.1, does not identify classes of disputes over which the Court has jurisdiction. Rather, it provides that the Court "will take into account the expressed accord of the parties that the Court shall have jurisdiction". The implication is that, if the Court having taken any such expressed accord into account considers that in the circumstances it should give effect to it, it is entitled to accept jurisdiction. If it considers that in the circumstances it should not give effect to such accord, it may decline jurisdiction. It is unnecessary for present purposes to go so far as to hold that the Court is obliged to accept jurisdiction.*

13. It is clear from the above that the interpretation given to article 9.2 is that it empowers the Court to apply its provisions in a discretionary way taking into consideration the circumstances of each particular case.

14. In the above case the Court, in paragraph 18 of its judgment, ruled that

> *… in the present case all the defendants as well as the first claimant were parties to…an agreement with a choice of court provision…jurisdiction on the basis of that provision requires to be addressed*.

15. It proceeded in paragraph 22 to exercise its discretion. For the reasons stated in the said paragraph it decided to accept jurisdiction.

16. We find it useful to cite the said paragraph explaining the facts upon which the Court decided to give effect to the agreement for a choice of jurisdiction. It states as follows:

> *It is not disputed that this Court has jurisdiction to entertain and determine such claims as are made against the Defendants by the Second Claimant. The claims made by the First and Second Claimants, although distinct, are closely related. To reject jurisdiction to entertain the First Claimant's claims while entertaining those of the Second Claimant would, potentially, lead to multiple actions in different jurisdictions. Further, the SPA regulated the sale and purchase of the shares in IFSQ, an entity established in the QFC. Matters arising out of or in connection with it are thus closely related to this jurisdiction. It is accordingly proper that this Court accept jurisdiction*

to adjudicate on a dispute arising out of or in connection with the SPA. On these bases the Court holds that it has jurisdiction to entertain and decide the First Claimant's claims against the Defendants.

17. Bearing in mind all the above we have decided as follows:

    i. The Court has a discretionary power whether to give effect to the provisions of an agreement for a choice of jurisdiction or to decline jurisdiction bearing in consideration the particular facts of each case. This discretionary power is derived specifically from article 9.2 of the Court's Regulations and Procedural Rules.

    ii. This Court, therefore, has the power to examine whether the agreement of the parties in clause 13 of the guarantee and indemnity gives the Court jurisdiction to proceed and determine the substance of the case.

18. We have carefully examined the facts of the case before us. These facts are distinguished from the facts of the above case. The Court in the above case accepted jurisdiction bearing in mind the special circumstances of the case as described above.

19. We would like to note the provisions of article 9.4 of the Regulations and Procedural Rules which state that "*... if the court considers it desirable or appropriate it may decline jurisdiction*." It has not escaped our attention that in the initial agreement between the Claimant and Technolab there appeared no clause as to the jurisdiction. Neither did such a clause appear in the acknowledgement agreement signed between the Claimant and Technolab. The said clause was, for the first time, part of the indemnity and guarantee agreement signed between the Claimant and the Defendant. It was not therefore the intention of the parties initially involved in the case to accept the jurisdiction of this Court.

20. We do not find that in the present case any particular circumstances exist. There are no particular reasons which persuade us to exercise our discretion in favour of the Claimant. We therefore conclude that we shall decline to give effect to the provisions of clause 13 of the guarantee and indemnity and we decline jurisdiction.

By the Court,

[signed]

Justice George Arestis

A signed copy of this Judgment has been filed with the Registry.

Representation

The Claimant was represented by Crowell & Moring LLP (Doha, Qatar).

The Defendant did not appear and was not represented.

DIGITALLY SIGNED AND VERIFIED
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