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: [2025] QIC (F) 70**

**IN THE QATAR FINANCIAL CENTRE**

**CIVIL AND COMMERCIAL COURT**

**FIRST INSTANCE CIRCUIT**

**Date: 26 December 2025**

**CASE NO: CTFIC0042/2025**

**MOHAMED MUBARAK AL-HITMI**

**Claimant**

**v**

**CHARLES CROSS – LONDON LLC**

**1st Defendant**

**AND**

**AYMAN ABDELGHAFFAR**

**2nd Defendant**

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**JUDGMENT**

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**Before:**

**Justice James Allsop AC**

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**Order**

1. The parties are to make the submissions directed in paragraph 113 of the judgment below, within 28 days of the date of this judgment.

**Judgment**

**Introduction**

1. In these proceedings, the Claimant sues the Defendants substantially for monetary relief, alleging breaches of various contracts concerned with the construction and fitting out of a villa in Doha. The claim involves at least five contracts, which are discussed below. The Explanatory Memorandum to the Particulars of the Claim (the '**Claimant's Particulars**') to which more detailed reference is made below, sets out the allegations of defective, or lack of, proper performance under these contracts. As will be discussed in due course, the ascertainment of the connection or connections between particular damage and breaches of particular contracts is not easy to discern and, for the reasons that will become clear, that lack of clear discernment of resultant damage from alleged particular breaches is important.

2. The contracts in chronological order are as follows:

    i. contracts dated 28 January 2019 and 20 January 2020 (the '**First and Second Contracts**') concerned with the design and construction of the villa;

    ii. a contract dated 24 November 2020 (the '**Third Contract**') concerned with the implementation of mechanical, electrical and plumbing work ('**MEP**');

    iii. a contract dated 14 October 2021 (the '**Fourth Contract**') concerned with the implementation of exterior finishing works; and

    iv. a contract dated 14 September 2022 (the '**Fifth Contract**') concerned with the management and supervision of interior finishing.

3. These contracts and the outlines of the claims against the Defendants are discussed below.

4. The Defendants have filed a Memorandum of Defence (the '**Defence'**) which does not deal with the merits or detail of the Claimant's complaints, but rather raises one issue, being that the Court is said to have no jurisdiction by reason of the fact that there exists a valid and binding arbitration clause governing the resolution of the disputes, thereby requiring the Court to decline jurisdiction.

5. The Defendants rely upon article 8(1) of Law No. 2 of 2017, the Law of Arbitration in Civil and Commercial Matters (the '**Arbitration Law'**), which is in the following terms:

> *A Court, before which a dispute subject to an Arbitration Agreement is brought, shall decide not to accept the claim, if the Respondent upholds the existence of the Arbitration Agreement, before submitting any statement or defence on the subject-matter of the claim, unless the Court decides that the Arbitration Agreement is null and void, inoperative or incapable of being performed.*

6. Article 8(1) of the Arbitration Law brings into Qatari law the substance of article II(3) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the '**New York Convention**') which was acceded to by the State of Qatar by Decree No. 29 of 2003, and of article 8(1) of the UNCITRAL Model Law on International Commercial Arbitration (the '**Model Law**').

7. The Defendants argue that the Court is obliged not to accept the claim, which it expresses in terms of a lack of jurisdiction. The question is better characterised or described as a legal requirement not to exercise jurisdiction if the arbitration agreement is effective and applicable.

8. In his Memorandum of Reply and Defence (the '**Reply**'), the Claimant answers this contention in the Defence by asserting that he claims recission (referred to as "*termination*" in the Claimant's Particulars) on the grounds of "*fraud and deceit*" by the Defendant. This is articulated early in the Reply as follows:

> *The Defendant falsely represented that it was registered with the Qatar Financial Centre. Information was concealed from the Claimant; had he been*

> *aware of such fraudulent acts and misrepresentations, he would not have entered into any contract with the Defendant. It is established that the Defendant company misled the Claimant through multiple fraudulent representations, as evidenced by the contracts concluded between the parties. The Defendant induced the Claimant to believe that it was a company duly registered with the Qatar Financial Centre, enjoying a good reputation and extensive operations. Absent these fraudulent representations, the Claimant would not have contracted with the Defendant.*

9. It is less than pellucid from the Reply, but it can be taken to be the case that the Claimant pleads that the claim for recission of the whole contract or all contracts, on the ground of fraud and deceit, means that article 8(1) of the Arbitration Law is met by the arbitration agreement being "*null and void, inoperative or incapable of being performed*" for the purposes of article 8(1).

10. It is important to understand, for the purposes of later discussion, that there is nothing in the Claimant's pleading or explanation that alleges any misrepresentation directed at the dispute resolution clauses (the arbitration clauses) themselves, as opposed to fraudulent misrepresentation or deceit as to matters that affect the entry into the contract or contracts as a whole. Also, equally importantly, there is no allegation that the Claimant did not enter into or sign any contract: that it or they never existed. Rather, he claims that the contract (or contracts) should be rescinded or terminated by reason of the alleged fraudulent representations or deceit about the status of the First Defendant's registration.

11. It is important at the outset to identify several matters that may affect the resolution of the overall controversy between the parties.

12. First, it is necessary to identify the various contractual documents embodying the legal relationship between the parties. Some, but not all, of those separate, but related, contracts have dispute resolution clauses in them. None of the contracts expressly refers to the others that might link them as other than separate contractual agreements. Obviously, however, they have a contextual identity of subject matter: the building and fitting out of the villa.

13. Second, it is necessary to understand, as far as one can from the contractual documents and the pleadings, the extent to which the Claimant's claims arise from asserted breaches of one or more (and which) of the contracts entered into by the parties.

14. Third, it is necessary to understand what effect any termination or recission of any contract by reason of any fraud or deceit of the Defendant (if it occurred) would have on the binding character or effect of any arbitration clause. To this end, it is necessary to examine and apply, first, the principle of separability of any arbitration agreement from the overall agreement within which the arbitration agreement is found; and, second, the principle of competence (sometimes referred to as "*Kompetenz/Kompetenz*") and whether that question should be first decided by the arbitrator and not the Court. These principles of separability (or the independence of the arbitration agreement from the contract in which it is found) and competence of the arbitral tribunal to decide its own jurisdiction are both found within article 16(1) and (3) of the Arbitration Law, which are in the following terms:

> *1. The Arbitral Tribunal may determine pleas related to its lack of jurisdiction, including pleas based on the non-existence of an Arbitration Agreement, its validity, nullity, expiry or its inapplicability to the subject matter of the dispute. The arbitration clause shall be considered as an agreement independent of the other clauses of the contract. The nullity, recission or termination of the contract shall have no effect on the arbitration clause contained therein, as long as the clause is itself valid.*
>
> *...*
>
> *3. The Arbitral Tribunal may determine any of the pleas mentioned in this Article, prior to determining the subject matter of the dispute or in an arbitral award, which is issued on the subject matter of the dispute. If the Arbitral Tribunal dismisses the plea, the Party whose plea was dismissed may, within 30 days from the date of notification of the dismissal, submit an appeal before the Other Authority of the Competent Court, as the case may be, whose decision shall be final and not subject to any form of appeal. The aforementioned appeal shall not prevent the Arbitral Tribunal from continuing the arbitral proceedings or from issuing its award.*

15. Fourth, if the claims of the Claimant arise from asserted breaches of more than one contract, and not all such contracts have a binding arbitration clause to which article 8(1) of the Arbitration Law would be applicable, how should the Court deal with the

claims not covered by an arbitration clause to which article 8(1) would not be applicable?

16. Fifth, and perhaps as a fundamental question of construction at the outset, whether there is a series of separate contracts, or whether the contracts should be seen as the development of one overall contractual arrangement increasing in content (and perhaps complexity) as each new agreement is entered into.

17. The Court file contains two translations of each of the contracts below. I have used the pidgin translation unless otherwise indicated.

**The contractual documentation**

<u>The contract dated 28 January 2019 (the First Contract)</u>

18. By a contract styled "*Contract Agreement*" between the Claimant as "*First Party – the Owner*" and "*M/s Charles Cross – London LLC*" as the "*Second Party – the Contractor*" (the First Defendant) which was represented by the Second Defendant (described as General Manager and Head of the Qatar Branch), the parties agreed that the First Defendant would prepare preliminary and executive design drawings and specifications and illustrative perspective drawings for a villa to be constructed and that the First Defendant would construct and erect the villa (concrete works and buildings only).

19. The preamble to the First Contract set out its subject as follows:

> *Whereas, the First Party owns [land] with a total area of 1,457 sq.m., and desires to carry out the following works:*
>
> 1) *Architectural and geometrical design of a residential villa, including perspective and detailed engineering drawings, with a total villa area not exceeding 1,300 sq m, and to submit all required drawings and specifications to the competent municipal authorities for obtaining the necessary building permits.*
>
> 2) *Interior design and decoration of the villa, including perspective and engineering drawings, provided that the total area of the villa does not exceed 1,300 sq m.*
>
> 3) *Construction and erection of the aforementioned villa – concrete works and buildings only – comprising (ground floor, mezzanine,*

*first floor, penthouse floor, external utilities, and surrounding walls), all in accordance with the architectural design set out and referred to above.*

20. Clauses I and II pertained to the architectural design and interior design of the villa, respectively.

21. Part III of Clause II concerned the construction and erection of the villa. Part III itself contains three parts: Part I identified in general terms the construction work covered by the agreement: (i) the ground floor, mezzanine, first floor and penthouse; (ii) external utilities; and (iii) external fences. Part II contained over half a page of general provisions for construction. Part III contained some more detailed provisions, but only over one page.

22. Clause III provided for termination.

23. Clause IV provided for fees and deductions: for (i) architectural design, QAR 100,000 reduced to 60,000 for a 40% contractual discount offered by the First Defendant; (ii) decoration design QAR 105,000; and (iii) construction (concrete and block work only) QAR 2,080,000.

24. Clause V provided for a deduction to the above of QAR 100,000 if the agreement for the interior finishing works was awarded to the First Defendant.

25. Clause VI provided for delay penalties of QAR 300 per day.

26. Clause VII concerned correspondence and notices.

27. A (second) Clause VII (sic) (Clause VIII) concerned additional works at the design and construction stages.

28. Clause IX made clear that interior finishing would be dealt with in a later contract.

29. Clause X provided for supervision of the execution of the work, including a fee of QAR 5,000 per month for engineering supervision by the appointed consultant as required by the municipality.

30. Clause XI sets out in three tables the handover and payment dates for the work.

31. Clause XII provided for Qatari law to be the governing law.

32. There was no dispute resolution clause and no arbitration clause in the First Contract.

33. Attached to the First Contract was a description of the project and the scope of works.

The contract of 20 January 2020 (Second Contract)

34. On 20 January 2020, a contract styled "*construction supervision contract*" and "*construction and building agreement*" was made between the Claimant and the First Defendant, through the Second Defendant (now described as Managing Director and Head of the Qatar Branch). The subject of the contract and its scope was supervision and management of the building and construction works.

35. The contract briefly described the work to be done (Clause 1.B), the supervision included (Clause 1.C), and the supervision excluded, which exclusion covered all electromechanical work and plumbing: Clause 1D. Clauses 1.C and 1.D were in the following terms:

> *C. Contract Supervision inclusion works:*
>
> 1. *Site facilitation (temporary fence, site office, water & power).*
> 2. *Excavation works.*
> 3. *Concrete works.*
> 4. *Water proofing or underground works.*
> 5. *Block works.*
> 6. *Primary electrical works/pipes, boxes (walls and slabs) & primary masonry works.*
>
> *D. Contract supervision exclusion works:*
>
> 1. *All internal & external finishing works.*
> 2. *All waterproofing works at any stage except for the concrete and block works.*
> 3. *All electromechanical works.*
> 4. *Internal and surface insulation works.*
> 5. *All swimming pool works (concrete and finish).*
> 6. *All types of work that are not mentioned above in (Contract inclusion works).*

36. Clause 2.B provided for the First Defendant to conclude contracting and subcontracting arrangements to implement the works.

37. Clause 3 provided for a fee for supervision of QAR 888,000, based on an estimate of the cost of construction of QAR 2,140,000.

38. Clauses 4 to 7 provided for general notices and terms, project consultancy, the agreement and contract implementation.

39. There was no dispute resolution or arbitration clause in the Second Contract.

The contract dated 24 November 2020 (Third Contract)

40. On 24 November 2020, the Claimant and the First Defendant executed a "*Contract Agreement*" for MEP works specified as the full supply and installation of the following internal items: electrical and plumbing installations, insulation works, the main lift, the air-conditioning system, the central water-heating system, water pumps, the ventilation system (exhaust fans), smart home systems, and the CCTV system for the villa comprising a (ground floor, basement floor, first floor, penthouse floor and external utilities).

41. Clause II (I, II and III) provided for the technical obligations of the First Defendant, the work included and contract conditions.

42. Clause III provided for a contract term of 12 months.

43. Clause IV provided for a lump sum payment of QAR 1,732,000.

44. Clause V concerned cancellation and amendment.

45. Clause VI provided for delay penalties.

46. Clause VII provided for correspondence and notifications.

47. Clause VIII provided for additional works.

48. Clause IX defined the contract documents.

49. Clause X provided for delivery dates and payments.

50. Clause XI also (like Clause IX) defined the contract documents.

51. Clause XIII (there is no Clause XII) permitted the First Defendant to employ subcontractors.

52. Clause XIV contained a detailed, eight-paragraph dispute resolution clause and proper law clause, the terms of which are set out in Annex A to this judgment.

The contract dated 14 October 2021 (Fourth Contract)

53. On 14 October 2021, the Claimant and the First Defendant, again the latter through the Second Defendant, executed the Fourth Contract, this time "*for execution of external finishing works*".

54. The preamble to the Fourth Contract described the position in general terms:

> *…the First Party owns an unfinished residential villa… and desires to supply, install and implement the external finishing works of the villa and its external yards, the finishing work of the boundary walls, the aluminium and glazing works for doors and windows, the swimming pool modification works, the external door works for the walls and the villa, the landscaping and external planting works together with their irrigation network, the car-shade works, the finishing works of the utility internally and externally and the balustrade works for the external staircases of the said villa, all in accordance with the engineering design and drawings submitted and annexed to the agreement…*

55. Clauses I, II and III described the work included in the Fourth Contract and the general contract conditions.

56. A (second) Clause III provided for a contract term of 11 months.

57. Clause IV provided for fees of QAR 4,798,000.

58. Clause V provided for cancellation and amendment of the contract.

59. Clause VI provided for consequences of delay.

60. Clause VII provided for correspondence and notification.

61. Clause VIII provided for additional works.

62. Clauses IX and X defined the contract documents.

63. Clause XI permitted the retaining of subcontractors.

64. Clause XII contained a seven-paragraph dispute resolution and applicable law clause in terms of Annex B hereto.

65. Whilst these provisions are similar to paragraphs 2 to 8 of Clause XIV of the 24 November 2020 MEP contract (the Third Contract) there is no equivalent to paragraph 1 of that Clause, being a paragraph expressly agreeing to submit the dispute to arbitration.

The contract dated 14 September 2022 (Fifth Contract)

66. On 14 September 2022, the parties executed the final contract concerning the villa, being for the "*interior design – architecture*". The preamble of the Fifth Contract stated:

> *The first party owns an unfinished residential villa… and desires to manage and supervise the supply, installation and execution of the internal finishing works of the villa, including floors, ceilings, walls, lighting, accessories, bathroom fixtures, all wooden cabinets, wooden cladding works, marble wall cladding, carpets, marble works, gypsum works, internal doors and other related works, all in accordance with the engineering and technical design and the drawings submitted and annexed to the agreement…*

67. Clauses I and II set out the work and general conditions.

68. Clause III provided for a contract term of nine months.

69. Clause IV provided for a lump sum of QAR 4,606,000.

70. Clause V provided for cancellation or amendment.

71. Clause VI provided for the consequences of delay.

72. Clause VII provided for correspondence and notification.

73. Clause VIII provided for additional work.

74. Clauses IX and X define the contract documents.

75. Clause XI permitted the appointment of subcontractors.

76. Clause XII provided for dispute resolution in a seven-paragraph clause substantially identical to that in the Fourth Contract found in Annex B hereto.

**Considerations arising from the five contracts**

77. The willingness of the parties to enter into contracts for and concerning the construction of the villa extended from January 2019 to September 2022.

78. The contracts did not expressly refer to each other, though they are each directed broadly to the same subject matter: the construction of the villa.

79. Though separate, the contracts have a broad similarity in structure and content, with clauses on the same subject matter repeated (at least in similar terms) in each contract, but importantly, there was an inconsistency concerning dispute resolution clauses. The First and Second Contracts had no dispute resolution or arbitration clauses, and the Third to Fifth Contracts have forms of such clauses.

80. The first arbitration clause is to be found in the Third Contract of 20 November 2020 for MEP work. Paragraph 1 of Clause XIV of that contract (see Annex A) provides, relevantly, for disputes regarding the interpretation or application of the provisions of the contract to be referred to arbitration. On its face, and even read liberally as it should be, this clause would not appear to cover disputes regarding the First and Second Contracts, unless such disputes also arose out of this Third Contract.

81. As for the last two contracts, the Fourth Contract of 14 October 2021 dealing with external finishing, and the Fifth Contract of 14 September 2022 dealing with internal finishing, each have a dispute resolution clause in substantially the same terms. Neither, however, has a clause providing for, or articulating, the submission to arbitration, as can be found in paragraph 1 of Clause XIV of the Third Contract. It is, however, clear from the text of the seven paragraphs that the parties contractually intended for there to be a submission to arbitration.

82. This lack of an express submission clause raises the question as to whether one can be implied into, or found within and from, the text in those last two contracts. In the context of the Third Contract of November 2020 and the complete arbitration agreement

therein, as well as the context of the one developing project, there should be implied or read into both the Fourth and Fifth Contracts a submission to arbitration in terms of paragraph 1 of Clause XIV of the Third Contract of November 2020. The express clauses in the Fourth and Fifth Contracts make no contractual sense without this implication or reading in. This being the case, the arbitration implied in or read into in the Fourth and Fifth Contracts would be supervised by the Qatar Chamber of Commerce and Industry, as would the arbitration in the Third Contract.

83. Thus (unless one construes the whole series of contracts as one overall contractual arrangement, with the Third Contract now providing for arbitration of disputes arising from the First and Second Contracts now enveloped by the Third Contract), there are two bodies of contracts related to the one project or development: the First and Second Contracts (28 January 2019 and 20 January 2020) dealing with the construction of the villa which have no dispute resolution clauses, and the Third, Fourth and Fifth Contracts (24 November 2020, 14 October 2021 and 14 September 2022) dealing with MEP work, external finishing and internal finishing which each have an arbitration clause, which are in similar terms.

84. I will proceed for now on the assumption that the contracts are separate for the present purpose of dealing with the effect of the arbitration clauses in the Third to Fifth Contracts.

85. A consequence of this dichotomy may be, depending upon the proper characterisation of the Claimant's case, that some disputes are covered by an arbitration clause and others are not. Whether or not this will be so will depend upon a detailed understanding of the elements of the controversy and whether some of the Claimant's complaints are referrable *only* to one or both of the First and Second Contracts.

86. Such parts of the controversy as fall to be resolved under the arbitration agreements within the Third, Fourth and Fifth Contracts or any of them (even if they also are referable to breaches of the First or Second Contracts) will fall to be adjudicated in the context of their having been agreed to be submitted to arbitration.

87. The pleadings only take one so far in unravelling which claims are referable to which contract or contracts, and any breach thereof. The Claimant pleads all five contracts.

The Claimant also pleads the arbitration clause of the Third Contract (24 November 2020) immediately prior to pleading the hearing that the parties apparently agreed to before an expert. It is not clear whether in the Claimant's Particulars the expert is being treated as an arbitrator or as an expert. I will assume the latter (as an expert) and not the former (as an arbitrator). The possibility that the expert was appointed as an arbitrator is contradicted by the balance of the claims brought by the Claimant.

88. The claims for relief are five:

    i. to rule for the termination of four contracts (28 January 2019, 24 November 2020, 14 October 2021 and 14 September 2022, treating the 20 January 2020 contract as an annex to the 28 January 2019 contract) for breach;

    ii. payment of QAR 6,520,177 based on the findings of the expert;

    iii. payment of liquidated damages of QAR 558,900 from 20 January 2020 (one year from the First Contract);

    iv. payment of QAR 10,000,000 in moral damages; and

    v. costs.

89. The claims and what precedes them treat the arrangement as one contract for the purposes of breach. There is no attempt to differentiate between the consequence of breach of one or more different contracts.

90. It is not clear what status the expert is said by the Claimant to have: as an arbitrator whose award is sought to be enforced, or as an expert whose views are to be enforced if there was an agreement for a final expert determination, or regarded as evidence.

91. In any event, in the Reply, the Claimant seeks recission of "*the Contract*" (I take this as all contracts, in particular the Third Contract on the grounds of fraud and deceit). It is not clear, but it appears to be asserted, that this is an answer to the plea of the arbitration agreement.

**The report of the expert**

92. The expert's report is short. It is Annex C. This translation was made by the Court at my request. There are comments at the end of the second page. There is a reference to QAR 7,079,077, which the Claimant appears to claim in the body of the claim documentation (notwithstanding the sum referred to at paragraph 88(ii)). I will assume, as the note on page 2 of Annex C suggests, that the reference to the name of the First Defendant should be to the name of the Claimant.

93. The report does not assist with any differentiation of the claimed breaches from different contracts and what damage is said to flow from each, or which contracts are unfinished and in what respects.

**The questions of separability and competence: articles 8 and 16 of the Arbitration Law**

94. On the assumption that part, or perhaps all, of the controversy based on the Claimant's claims is covered by the arbitration clauses in the Third to Fifth Contracts, the terms of article 8(1) of the Arbitration Law are engaged, unless the arbitration clauses are null and void, inoperative or incapable of being performed.

95. The only possible basis for the proviso to article 8(1) being established from the pleadings is that the contracts in which the clauses appear have been rescinded or are liable to recission on the grounds of the pleaded fraudulent misrepresentation and deceit.

96. This question engages the doctrines of separability and competence. The *separateness* or *separability* or *independence* of the arbitration agreement from the contract in which the arbitration agreement is found in article 16(1) of the Arbitration Law, which is built on, and is to be understood against, article 16 of the Model Law and a long history of the doctrine in both the civil and common law traditions. The *competence* of the tribunal to hear jurisdictional matters is found in article 16(1) and (3) of the Arbitration Law. These doctrines within the Arbitration Law are important in two respects. First, the fact that the main contract is liable to rescission for any reason including fraud, does not of itself affect the validity of the arbitration agreement. In this case, the tribunal has authority to hear and determine the whole case. Second, if it is asserted that vitiating factors affect the arbitration agreement itself, and not only the main agreement, such a

question can be heard and decided upon by the Court or by the arbitral tribunal. The latter is competent to decide the question whether the arbitration agreement is valid and effective ("*null and void*" in article 8(1) of the Arbitration Law or "*the non-existence … validity, nullity, expiry or … inapplicability to the subject matter of the dispute*" in article 16(1) of the Arbitration Law). If the tribunal decides the question, a party may appeal to and seek review by the Court (article 16(3)).

97. The importance of the first of these doctrines (separability) is that the arbitrator can be seen to have a clear basis of jurisdiction to decide whether the substantive contract is void or voidable or should be rescinded without destroying his or her own authority or jurisdiction to arbitrate. The invalidity of the substantive contract does not necessarily invalidate the arbitration clause (see generally *Premium Nafta Products Ltd v Fili Shipping Company* [2007] UKHL 40 at paragraphs 13, 16-19 and 32-35, reported as *Fiona Trust & Holding Corporation v Privalov* [2007] 4 All E R 951).

98. Whilst it may be that some circumstances will affect the validity or existence of both of the main contract and the arbitration agreement (such as a lack of any act forming the contract, for example through forgery or impersonation or perhaps mental incapacity), circumstances such as bribery, misrepresentation (even fraudulent) unless directed specifically to the arbitration agreement are matters which (subject to the terms of the arbitration clause) do not impugn the arbitration clause, even if made out. The clearest expression of the matter for present purposes comes from the speech of Lord Hope of Craighead in *Premium Nafta (Fiona Trust),* where his Lordship said at paragraphs 32-35, speaking of the provision of the English legislation relevantly indistinguishable from article 16:

> *32 … Section 7 of the Arbitration Act 1996 reproduces in English law the principle that was laid down by section 4 of the United States Arbitration Act 1925. That section provides that, on being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration. Section 7 uses slightly different language, but it is to the same effect.* ***The validity, existence or effectiveness of the arbitration agreement is not dependent upon the effectiveness, existence or validity of the underlying substantive contract unless the parties have agreed to this.*** *The purpose of these provisions, as the United States Supreme Court observed in Prima Paint Corpn v Flood & Conklin Mfg Co, 388 US 395 (1967), 404, is that the arbitration procedure, when selected by the parties to a contract, should be speedy and not subject to delay and obstruction in the courts.* ***The statutory language, it said, did not permit***

> ***the court to consider claims of fraud in the inducement of the contract generally. It could consider only issues relating to the making and performance of the agreement to arbitrate****. Dicey, Morris and Collins, The Conflict of Laws, 14th ed (2006), vol 1, para 12-099, acknowledge that there are excellent reasons of policy to support this approach.*
> *33. The appellants' case is that, as there was no real consent to the charterparties because they were induced by bribery, there was no real consent to the arbitration clauses. They submit that a line does not have to be drawn between matters which might impeach the arbitration clause and those which affect the main contract. What is needed is an analysis of whether the matters that affect the main contract are also matters which affect the validity of the arbitration clause. ...*
>
> *34. But, as Longmore LJ said in para 21 of the Court of Appeal's judgment, this case is different from a dispute as to whether there was ever a contract at all. As everyone knows, an arbitral award possesses no binding force except that which is derived from the joint mandate of the contracting parties. Everything depends on their contract, and if there was no contract to go to arbitration at all an arbitrator's award can have no validity. So, where the arbitration agreement is set out in the same document as the main contract,* ***the issue whether there was an agreement at all may indeed affect all parts of it.*** *Issues as to whether the entire agreement was procured by impersonation or by forgery, for example, are unlikely to be severable from the arbitration clause.*
>
> *35. That is not this case, however****. The appellants' argument was not that there was no contract at all, but that they were entitled to rescind the contract including the arbitration agreement because the contract was induced by bribery. Allegations of that kind, if sound, may affect the validity of the main agreement. But they do not undermine the validity of the arbitration agreement as a distinct agreement. The doctrine of separability requires direct impeachment of the arbitration agreement before it can be set aside. This is an exacting test. The argument must be based on facts which are specific to the arbitration agreement.*** *Allegations that are parasitical to a challenge to the validity to the main agreement will not do. That being the situation in this case, the agreement to go to arbitration must be given effect.* (**emphasis added**)

99. Parts of the speech of Lord Hoffman, in particular at paragraphs 17 and 18 also illuminate this distinction between matters going to the validity of the main agreement and matters necessarily going to the validity of the arbitration agreement:

> *17. The principle of separability enacted in section 7 means that the invalidity or rescission of the main contract does not necessarily entail the invalidity or rescission of the arbitration agreement. The arbitration agreement must be treated as a "distinct agreement" and can be void or voidable only on grounds which relate directly to the arbitration agreement. Of course, there may be cases in which the ground upon which the main agreement is invalid is identical with the ground upon which the arbitration agreement is invalid.* ***For example, if the main agreement and the arbitration agreement are contained in the same document and one of the parties claims that he never agreed to anything***

***in the document and that his signature was forged, that will be an attack on the validity of the arbitration agreement. But the ground of attack is not that the main agreement was invalid. It is that the signature to the arbitration agreement, as a "distinct agreement", was forged. Similarly, if a party alleges that someone who purported to sign as agent on his behalf had no authority whatever to conclude any agreement on his behalf, that is an attack on both the main agreement and the arbitration agreement.***

*18.* ***On the other hand, if (as in this case) the allegation is that the agent exceeded his authority by entering into a main agreement in terms which were not authorized or for improper reasons, that is not necessarily an attack on the arbitration agreement. It would have to be shown that whatever the terms of the main agreement or the reasons for which the agent concluded it, he would have had no authority to enter into an arbitration agreement. Even if the allegation is that there was no concluded agreement (for example, that terms of the main agreement remained to be agreed) that is not necessarily an attack on the arbitration agreement. If the arbitration clause has been agreed, the parties will be presumed to have intended the question of whether there was a concluded main agreement to be decided by arbitration.*** (**emphasis added**)

100. See also *Comandate Marine Corp v Pan Australia Shipping Pty Ltd* [2006] FCAFC 192 at paragraphs 218 to 230 and *Hancock Prospecting Pty Ltd v Rinehart* [2017] FCAFC 170 at paragraphs 341-384.

101. The importance of the second of these doctrines (competence) is that both the Court and the tribunal have authority to decide the question of the status and validity of the arbitration agreement. Importantly, however, the validity or invalidity of the arbitration agreement must be found conformably with the principle of separability. To the extent that the Claimant may have a claim in fraud and deceit in relation to the breaches of the Third, Fourth and Fifth Contracts, such claims have not been directed to the arbitration clauses within those contracts, but to the contracts as a whole. There is no suggestion of forgery or impersonation of the Claimant. There is nothing in the pleading which could impugn the arbitration agreements.

102. Thus, articles 8 and 16 of the Arbitration Law provide for the competence of the tribunal to decide upon its own jurisdiction, the separability of the arbitration agreement and main agreement and the duty (not discretion) of the Court to refer the dispute covered by the arbitration agreements of those three contracts to arbitration, unless the Court decides that the arbitration agreement is null and void, inoperative or incapable of being performed. The jurisdiction of the Court to decide such matters is not exclusive of the

arbitral tribunal. The Court's authority to decide the proviso is clear from the terms of article 8(1) of the Arbitration Law. It is also clear from article 16(1) and (3) of the Arbitration Law that the arbitral tribunal has the same authority. The jurisdiction of the arbitral tribunal extends to deciding upon the claims covered by the arbitration agreements, including any claim as to whether one or more of the contracts in which the arbitration agreements are found (the Third, Fourth and Fifth Contracts) is or are to be rescinded by reason of alleged fraud or deceit of the Defendants. It also extends to the tribunal deciding whether it, that is the tribunal, has jurisdiction: see the words "*including pleas based on the non-existence of an Arbitration Agreement*" in article 16(1) of the Arbitration Law and the words "*The Arbitral Tribunal may determine any of the pleas mentioned in this Article…*" in article 16(3) of the same.

103. Thus whilst article 8(1) of the Arbitration Law provides for a mandatory referral to arbitration, the question of whether the proviso to that obligation is engaged: that is whether the arbitration agreement is "*null and void, inoperative or incapable of being performed*" may be decided by the Court before referral, see article 8(1), or the Court may refer the matter to arbitration allowing the tribunal to decide upon its own jurisdiction by allowing it (the tribunal) to decide whether the arbitration agreement is "*null and void…*", either as a preliminary matter or within the substantive award, subject to an appeal to the Court if the tribunal dismisses the plea of a lack of jurisdiction: see article 16(3) of the Arbitration Law.

**The procedural approach to be taken**

104. That latter question of the proviso in article 8(1) of the Arbitration Law (whether any arbitration agreement is "*null and void…*") needs to be decided. My present view, though subject to hearing the Claimant, is that the Court should decide the question whether the arbitration agreements are "*null and void …*" within the meaning of article 8(1). The Claimant may be seen to have indicated in his Reply all the reasons why the arbitration agreements are not effective in that respect. I am concerned, however, that the Claimant be given an opportunity to consider these reasons before I decide this question.

105. There are other difficulties.

106. It is not clear from the pleadings and the agreements whether, and to what extent, the dispute or overall controversy between the parties will be wholly resolved by a determination of matters arising out of only the Third, Fourth and Fifth Contracts. That is, whether for the resolution of the whole controversy, there will need to be a resolution of claims referable only to the First and Second Contracts (which do not have an arbitration clause).

107. If the contracts are to be viewed as separate, there is no basis to refer the alleged breaches of the First and Second Contracts to arbitration. The Parties have not agreed to that. Arbitration is a consensual contractual matter. The Court has no authority to order people to arbitration unless they have agreed or agree to do so. However, the Court is obliged to refer the dispute or controversy covered by the arbitration agreements to arbitration because of the contents of article 8 of the Arbitration Law, if the arbitration agreements are not "*null and void ...*" for the purposes of the proviso in article 8(1).

108. It is obviously of concern that there may be two venues: arbitral and curial, necessary to resolve the whole controversy between the parties.

109. One possibility is that the parties now agree to send any disputes arising out of the First and Second Contracts to the same arbitral tribunal that deals with disputes arising out of the Third, Fourth and Fifth Contracts.

110. If that agreement is not forthcoming, the proper approach would appear to be to stay the whole proceedings in this Court, and refer the parties to arbitration under the Third, Fourth and Fifth Contracts and await the arbitral award. Once the award is available, any balance of the proceedings other than that determined by the award can be dealt with by the Court affected (such as by issue estoppels) by any relevant findings of the tribunal.

111. Another possibility is that the apparently separate (though obviously related) contracts can be viewed as one whole contract that developed over time. The face of the agreements does not say as much, but the context of the parties' relationship may, perhaps, lead to such a conclusion. It would accord with aspects of the pleading of the matter by both sides. I would make no such finding without hearing from the parties. It

is a conclusion which may save both parties from the consequences (especially time and expense) of unnecessary complexity. Such a conclusion would mean that the whole of the controversy could be heard by the arbitral tribunal in one place at one time, as long as the arbitration agreements were not null and void for the purposes of article 8(1) of the Arbitration Law.

112. Given the complexity of these matters, it is appropriate not to make orders, but to provide these reasons to the parties to permit them to consider them and to provide the parties an opportunity to put submissions before the Court before the making of any orders.

**Conclusion**

113. For, and in the light of, the above reasons, the orders of the Court are that within 28 days:

i. The Claimant fully articulate in submissions and by reference to evidence the basis for the arbitration agreements found in any relevant contract being null and void, inoperative or incapable of being performed for the purpose of article 8(1) of the Arbitration Law.

ii. The Claimant articulate in submissions such damage as is claimed to have been suffered by reference to the relevant breaches of which contract or contracts it is alleged that damage arose or was caused.

iii. The parties file and serve submissions as to any matter raised in these reasons, including, but not limited to: the proper contractual framework of the agreements entered into, the scope and effectiveness of the arbitration clauses in the Third, Fourth and Fifth Contracts, whether any parts of the controversy (and if so, which) do not fall under the arbitration clauses in the Third, Fourth and Fifth Contracts, the status of the expert report, and the proper form of orders that should be made.

iv. The matter is stood over to a date to be fixed by the Registrar for any further argument upon the procedural conduct of the matter, including the validity of the arbitration agreements (for the purposes of article 8(1)

of the Arbitration Law) relied upon by the Defendants, and whether some or all of the controversy should be referred to arbitration.

**By the Court,**


**[signed]**

**Justice James Allsop AC**

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

Representation

The Claimant was represented by the Bin Hindi Law Firm, Lawyers & Legal Consulting (Doha, Qatar).

The Defendants were represented by the Law Firm of Mohammed Saud Al-Khater, Lawyer & Legal Consultant (Doha, Qatar).