



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: [2021] QIF (F) 22

IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT

12 August 2021

CASE No. CTFIC0006/2021

BETWEEN:

BUSINESS BOX CONSULTANCY LLC

Claimant

v

ABDULLA AL DARWISH FAKHRO

Defendant

JUDGMENT

Before:

**Justice Bruce Robertson
Justice Rashid Al Anezi
Justice Fritz Brand**

ORDER

- [1] The Defendant is ordered to pay to the Claimant:
- (a) the sum of QAR 20,000.00.
 - (b) compensation for late payment of this amount in the agreed sum of 20% of QAR 20,000.00, that is QAR 4,000.00.
 - (c) the reasonable legal costs incurred by the Claimant in this Court to be assessed by the Registrar if not agreed.
- [2] The Defendant's counterclaims are dismissed.

JUDGMENT

[1] The Claimant, Business Box Consultancy LLC, is a company established in the Qatar Financial Centre and licenced to provide professional services, including the preparation of feasibility studies. The Defendant, Mr Abdulla Al Darwish Jassim Fakhro, is a resident of the State of Qatar. The dispute between the parties arose from a contract which was entered into at the end of December 2019. This contract came into existence when the Defendant accepted a quotation, dated 30 December 2019, by the Claimant to prepare a feasibility study pertaining to a copper factory which the Defendant planned to establish in the State of Qatar. As noted in the quotation the main aim of the feasibility study was to secure loan finance for the project from the Qatar Development Bank (QDB).

[2] Under the heading “Fees breakdown” the quotation provided for a fee of QAR 70,000.00 to be paid as follows: a first payment of QAR 35,000.00 upon acceptance of the quotation; a second payment of QAR 15,000.00 upon submission by the Claimant of a draft feasibility report and a third payment of QAR 20,000.00 upon submission of the final report. The quotation also provided that in the event of late payment, there would be a penalty of 5% for each month of delay (at a maximum of 20% of the arrear amounts).

[3] The Claimant submitted its first draft of the feasibility study on 7 May 2020. Thereafter four further drafts were provided until the final feasibility study was submitted by the Claimant on 16 August 2020. The first draft concluded that: “Based on market analysis, technical assessments and the financial projections, the project is deemed to be financially feasible.” By contrast, the conclusion in the final report was that “Based on market analysis, technical assessment and the financial projections, the project is deemed not feasible due to the following reasons” which conclusion is then followed by several reasons. Rather unsurprisingly in the light of this bleak prediction on behalf of the prospective borrower, the QDB was not inclined to invest in this project which contemplated a total expenditure of QAR 315 million.

[4] The Defendant paid the first two instalments of the Claimant’s fee in an aggregate amount of QAR 50,000.00 and in accordance with the tenor of the agreement. But it refused to pay the final QAR 20,000.00 upon submission of the final study as stipulated in the agreement. On the contrary, it instituted an action in the national Civil Court of Qatar (the Civil Court) for the reimbursement of the QAR 50,000.00 previously paid. The Claimant thereupon instituted its own action in this Court for the payment of the balance of the contract

fee in the sum of QAR 20,000.00. In addition, it claimed: (a) reimbursement of the expenses incurred by it in this Court and in the Civil Court, in the total sum of QAR 6,475.00; (b) an amount of QAR 30,000.00 in compensation for the time spent by its managing partner, Mr Amin Chaar, in preparing for the case in this Court and in the Civil Court, calculated on the basis of 25 hours at the rate of QAR 1,200.00 per hour; (c) an order directing the Defendant not to harm the Claimant or any of its employees.

[5] In the Civil Court, the Claimant (as the Defendant) objected to the jurisdiction of that Court on the basis of a provision in the quotation (which was accepted by the Defendant) to the effect that any dispute arising from the agreement “shall be subject to the exclusive jurisdiction of the QFCA Courts to which both parties hereby submit for those purposes.” In upholding the Claimant’s objection, the Civil Court held that it had no jurisdiction to entertain the Defendant’s claim. The Defendant later objected to this Court’s jurisdiction to decide the claims brought by the Claimant. In a separate judgment by this Court, dated 9 May 2021, this objection was however dismissed and in consequence it was held that this Court has jurisdiction to entertain the Claimant’s claims.

[6] The Defendant thereupon pleaded to the merits of the Claimant’s claims and instituted a counterclaim for the payment of the QAR 50,000.00 as well as a claim in the sum of QAR 100,000.00 for damages allegedly resulting from the Claimant’s failure to prepare a feasibility report in accordance with the terms of their agreement. By the nature of things, the defence to the claim for QAR 20,000.00 and the counterclaims essentially rest on the same basis. Broadly stated it is that the feasibility study provided by the Claimant had been rejected by the QBD

for failing to meet its minimum standards and that in the result it was not fit for its agreed purpose. In support of this defence, the Defendant *inter alia* contended in its statement of defence dated 18 April 2021 that:

“Notably, the defendant reached out to international offices with extensive experience conducting feasibility studies to ask them to complete the study, who told him that the study does not even amount to a feasibility study, that its preparation is miserable, that it is not based on real numbers, and that it lacks sources and information from accurate sources. They also told him that fundamental and intrinsic data are unsound and therefore if the defendant wishes to work with these offices, they would begin a new feasibility study from scratch.”

[7] This gave rise to an additional claim by the Claimant which was formulated (in its further statement of claim, dated 19 April 2021) in the following way:

“With reference to the memo submitted by the defendant on April 18, 2021 the defendant has breached a non-disclosure clause stipulated in the issued feasibility report by the claimant company: ‘LIMITATIONS AND CAVEATS – page 83 para 3 [of the feasibility report]

This report was prepared solely for the purpose referred in above and should not be relied upon for any other purposes. It should not be quoted, referred to or shown to any other parties, unless so required by a court order or regulatory authority without our

prior consent in writing.’ The defendant clearly states in his memo submitted on April 18, 2021 that they have shared the feasibility report with two different competitive parties in a clear violation of the above clause. Based on this new evidence, our demands are updated to incorporate the compensation on damages the defendant caused by breaching this clause.”

[8] Based on this premise the Claimant made the following additional claims:

“Compensation on damages caused by sharing the Feasibility Report with competitive parties without our consent in writing or a court order prior to the date of sharing the report with other parties, which we estimate at QAR 560 000 shown in the table below.”

[9] In answer to this additional claim the Defendant pleaded (on 2 May 2021): (a) that the relationship between the parties is governed by the contract of December 2019; and (b) that the proclamation against disclosure relied upon by the Claimant is not contained in that contract. Conversely stated, that the Claimant could not unilaterally introduce a term into their contract which would be binding on the Defendant. If such term was presented when the contract was concluded, so the Defendant stated, he would not have agreed thereto because the whole purpose of the report was to have it shown to third parties in order to obtain finance for the project.

[10] In its submissions for the purposes of the hearing the Claimant introduced a further claim for the first time. The claim is in the sum of QAR 9,122.00. According to the Claimant it is the equivalent of US\$ 2,500.00 which is the amount of an advance payment made by the Claimant to an independent technical expert who was engaged to assist in the preparation of the feasibility study, but who had failed, so the Claimant alleged, to perform in accordance with the terms of that engagement. The reason as to why it is contended that the Defendant should be held liable for this amount, is not disclosed by the Claimant. Because this claim was introduced for the first time in the submissions for the hearing, the Defendant had no opportunity to respond to it on the pleadings and his answer to this claim was therefore not known.

[11] In the light of the dispute of facts on the pleadings, particularly with regard to the issue as to whether or not the feasibility study in its final form was fit for its intended purpose, we concluded that these disputes could not be decided on the papers and that in consequence the matter had to be referred to an oral hearing. On Sunday 25 July 2021 the hearing was conducted online due to the Covid-19 pandemic. At the hearing Mr Amin Chaar represented the Claimant while the Defendant appeared in person. Neither party was legally represented. Two witnesses gave evidence. They were again Mr Chaar on behalf of the Claimant and the Defendant who testified in support of his own case. Both witnesses confirmed their written statements, and each party was then allowed to cross-examine the other side. Thereafter they were invited to make their final submissions.

[12] What emerged from the written statements, the questioning and the final submissions, is that the parties essentially agreed at the outset that the feasibility study would comply with the offer made in the written quotation and that it would meet the requirements of the QDB. The diametrical difference between them is whether the final feasibility study met those requirements. Mr Chaar testified that it did. The Defendant's version on the other hand is that it did not. Mr Chaar's version was that the Claimant prepared a first draft feasibility study. In that study the provisional conclusion was that the project was feasible. The QDB then asked some very pertinent questions about the assumptions regarding the availability of raw material, the anticipated competitors in the local market and the potential for export of the copper products to be manufactured by the proposed factory which formed the basis of the provisional feasibility study. In responding to these pertinent questions by the bank, so Mr Chaar testified, the Claimant then did further research. In the result it established that there was an acute shortage of scrap copper which would be the main source of raw material for the project; that an entity contemplated as one of the customers of the proposed factory was in fact a major competitor for the scarce commodity of scrap copper; that this perceived customer, who now turned out to be a competitor, was financed by the QDB and was operating at half its capacity because of its inability to obtain the source material which was vital for the success of the Defendant's proposed project; that there was a ban on the export of copper products from the State of Qatar; and that the combination of these factors rendered the project not feasible.

[13] The Defendant's denial that the feasibility study was fit for its intended purpose seems to rest on various grounds. First, that it was rejected by the QDB for failing to meet the bank's requirements. Secondly, that the Claimant should have realised that the project was not feasible at a much earlier stage and that it should not even have proceeded to the final stage. Thirdly,

that the Claimant should have done more research to find out how the project could possibly be made feasible; and fourthly, that the report was found wanting by other experts in the field. Mr Chaar's undisputed evidence is that he has done a number of feasibility studies for the QDB; that there was nothing wrong with this study; that the bank did not reject it for failing with the Bank's requirements, but that it refused to entertain the project precisely because it was found to be non-feasible.

[14] In the end Mr Chaar's expert evidence essentially stands uncontradicted by any other expert. Moreover, it accords with the inherent probabilities. The QDB did not reject the preliminary study out of hand. It asked for further particulars. When the Claimant sought to provide these particulars, it found that the project was simply not feasible. The fact that the QDB then refused to grant the finance sought, does not in itself reflect on the quality of the study. It reflects on the quality of the proposed project for which the Claimant can obviously not be held responsible. The second and third answer relied upon by the Defendant appears to be inherently contradictory. According to the second, the Claimant should have realised at an earlier stage that the project was not feasible. This presumably means that the Claimant should have applied better skills and greater effort to determine the actual feasibility, in which event the exercise would have been terminated at a much earlier stage. The third answer, on the other hand, seems to suggest that the Claimant had not done enough; that it should have done more to establish alternative ways in which the project could be rendered viable. In considering these two conflicting answers, the inherent probabilities seem to support the proposition that the non-viability of the project should have been realised at an earlier stage. But this does not reflect on the quality of the final report. It therefore does not mean that the final feasibility study was not fit for purpose. Moreover, the fee claim rests on an agreed amount. It is not

based on time spent. The fact that the Claimant should not even have embarked upon the final report is therefore of no consequence.

[15] The allegation is made in the Defendant's papers that some independent experts had considered the feasibility study and that they found it wanting. No such expert evidence was however presented by the Defendant. The only expert in the field who testified was Mr Chaar. Although he is clearly not an objective expert, there is nothing to gainsay his testimony. On the contrary, it appears to be supported by the inherent probabilities. The result is that the claim for QAR 20,000.00 must succeed while the Defendant's counterclaims are bound to fail.

[16] As to the claim for QAR 560,000.00 based on the Defendant's disclosure of the study, we agree with the Defendant's answer which is essentially that there is nothing in the agreement between the parties, as embodied in the December 2019 quotation, which precludes such disclosure. The provision relied upon by the Claimant is not part of the quotation. It was unilaterally imposed by the Claimant for the first time in the viability study itself. That does not make it a term of the contract between the parties. On the contrary, the quotation pertinently provides that it constitutes the entire agreement between the parties.

[17] As to the claim for reimbursement of an advance payment made by the Claimant to a technical expert in the Dollar equivalent amount of QAR 9,112.00, we have a similar difficulty. Again, we do not find that this claim is supported by the terms of the agreement between the parties. The technical expert was appointed by the Claimant. Since the agreement makes no

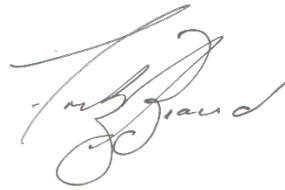
reference to his fees, the only inference is that it would be part of the Claimant's agreed compensation. The fact that the expert then proved to be incompetent and that he had to be replaced by another, as alleged by the Claimant, does not detract from this conclusion. In consequence we hold that this claim must also fail.

[18] As for the claims based on (a) Mr Chaar's time to prepare and (b) the legal expenses incurred by the Claimant both in this case and defending the claim against it in the Civil Court, the short answer to these claims is that the Claimant is entitled to the reasonable legal costs incurred by it in this Court but to nothing else. This means that the claim for Mr Chaar's charges and for legal expenses incurred in the Civil Court must fail.

[19] In its statement of claim dated 19 April 2021, the Claimant claimed, with reference to the arrear payment that it be awarded to it "with compensation for the whole period the money is withheld with the Defendant (due since 16 August 2020). In this regard, the agreement provides "Penalty 5% for each month of delay (Max 20%). In this light we hold that, in addition to the QAR 20 000.00, the Claimant is entitled to payment of an amount equal to 20% thereof, which is QAR 4,000.00.

[20] As to the Defendant's counterclaims for repayment of the QAR 50,000.00 paid under the agreement and for damages, the inevitable result of our finding that the final feasibility study was fit for purpose, is that these claims cannot be sustained.

By the Court,

A handwritten signature in black ink, appearing to read "Fritz Brand".

Justice Fritz Brand

Representation:

The Claimant was represented by its Managing Partner, Mr. Amin Char.

The Defendant represented himself.