



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: [2022] QIC (F) 2

IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT

16 January 2022

Case No. CTFIC 0015/2021

BETWEEN:

BANK AUDI LLC

Applicant

v

AL FARDAN INVESTMENT COMPANY LLC

First Respondent

ALI HUSSAIN IBRAHIM HASSAN AL FARDAN

Second Respondent

FAHAD HUSSAIN IBRAHIM AL FARDAN

Third Respondent

OMER HUSSAIN IBRAHIM HASSAN AL FARDAN

Fourth Respondent

AL FARDAN GROUP LLC

Fifth Respondent

JUDGMENT

Before:

Justice Frances Kirkham
Justice Arthur Hamilton
Justice Fritz Brand

ORDER

1. Summary judgment is granted against the first, second, fourth and fifth respondents jointly and severally in the following amounts:
 - a) QAR12 million in terms of the First Loan.
 - b) QAR12 million in terms of the Second Loan.
 - c) Interest in terms of the First and Second Loans in an amount of QAR2, 320, 643.56.
 - d) Reasonable legal costs incurred by the applicant in this Court as fixed by the Registrar, if not agreed, excluding the costs contemplated in 2(b) below.

2.
 - a) The application for summary judgment against the third respondent is refused.
 - b) The costs pertaining to this part of the application are to stand over for later determination.

3.
 - a) The applicant is directed to file a further statement of claim pertaining to its case against the third respondent (if advised to do so) within 28 days from the date of this order.
 - b) The third respondent is directed to file a response to any further statement of claim filed under (a) (if advised to do so) within 28 days of the date of that filing.
 - c) Upon expiration of the periods in (a) or (b) this Court will give directions as to the further management of the case.

JUDGMENT

1. This is an application for summary judgment. The applicant is a bank registered in the Qatar Financial Centre (the QFC). Its claim against the first respondent, in an aggregate amount of QAR26, 320, 643.56, is for money lent and advanced under two loan agreements between the parties, together with interest accrued on these loans calculated in accordance with the terms of the two loan agreements. The applicant's claim for the same amount against the second, third and fourth respondents is based on personal guarantees and against the fifth respondent, a company, on a corporate guarantee. In terms of these guarantees, the respondents undertook liability, jointly and severally, for the due compliance by the first respondent of its obligations under the loan agreements of an amount up to QAR29, 970, 000.00. The respondents do not deny these loans. Their defence relies on set-off in that, so they say, the third respondent has an investment with the applicant in an amount of US\$20 million, which is now due and payable and which clearly exceeds the amount of its claim. That, in broad terms is what this case is all about.

2. The respondents concede that this Court has jurisdiction to entertain the dispute. We believe that this concession is rightly made. The applicant is a company incorporated in the QFC and the respondents are residents of the State of Qatar or entities established in the State of Qatar, albeit outside the QFC. Hence this Court has jurisdiction under article 8.3.c4 of the QFC Law No. 7 of 2005 (as amended) as well as article 9.1.4 of the Rules of this Court. In addition, both the loan agreements and the guarantees expressly provide that any dispute arising from these agreements must be brought before this Court and that these disputes will be determined in accordance with the Qatar Financial Centre Contract Regulations.

3. In compliance with the Rules of this Court, pleadings have been exchanged between the parties in the main action and in this application for summary judgment. From these papers it appears that the following facts are not in dispute in that they are either expressly admitted or at least alleged by the one party and not denied by the other.

(a) On 25 September 2019 the first respondent entered into a loan agreement (the First Loan) with the applicant for the sum of QAR12 million with a maturity date of 30 September 2020. In terms of this agreement, the first respondent undertook to repay the applicant the sum of the First Loan in one payment on the maturity date. The first respondent also undertook to pay interest on the First Loan at a rate of the Qatar Central Bank Rate (the QCB Rate) plus 0.5% (with a floor of 5.5%) and to pay default interest which were to accrue on all amounts overdue up to the date of payment.

(b) On 29 September 2019 the first respondent entered into a second loan agreement (the Second Loan) with the applicant for a further sum of QAR12 million. The terms of the two loan agreements are essentially the same, save that the interest rate provided for in the Second Loan was the QCB Rate plus 0.25% (with a floor of 5.25%).

(c) The First and Second Loans were secured by joint and several personal guarantees from the second, third and fourth respondents as well as a corporate guarantee by the fifth respondent in an amount of up to QAR29,7 million.

(d) The first respondent failed to make payment of any capital or interest owing under the First or the Second Loan on the maturity date or at all.

(e) As at the date of the summary judgment application, on 5 October 2021, interest and default interest calculated in accordance with the terms of the two loan

agreements added up to a combined total of QAR2, 320, 643.56 which, when added to the capital amount of QAR24 million represents the applicant's claim of QAR26, 320, 643.56.

4. The defence relied upon by the respondents is confined to a counterclaim for set-off pursuant to article 86 of the QFC Contract Regulations. The alleged debt on the part of the applicant which the respondents seek to set-off against its claim arises from an investment by third respondent. The respondents' case is that the investment was made with applicant in an amount of US\$20 million for a period of three years calculated from 12 December 2016. The applicant does not deny the investment. But it contends that it was made with another bank, Audi Private Bank (APB), registered and incorporated in Lebanon as an entity completely separate from the applicant. In support of this contention the applicant relies on documents which confirm, so it contends, that:

- (a) APB and the applicant are two separate and independent entities established in different jurisdictions under different regulatory authorities; and
- (b) that the third respondent's investment was made with APB and not with the applicant.

5. This Court's authority to grant summary judgment is derived from article 22.6 of its Rules. This rule was amplified by way of Practice Direction 2/2019 in the following way:

“Summary Judgment

...

2 In accordance with article 22.6 of the rules, the court may, if it considers that justice so requires, give summary judgment on a claim or defence or on any issue.

3 The court may give summary judgment against a defendant or a claimant on the whole or part of a claim or counterclaim or a particular issue if- (a) it considers that (i) the defendant to the claim or counterclaim has no prospect of successfully defending the claim or issue; or (ii) the claimant to the claim or counterclaim has no prospect of succeeding on the claim or issue; or (b) there is no other compelling reason why the case or issue should be disposed of at a trial”

6. In considering whether the applicant has succeeded in satisfying the requirements thus stated, a distinction should in our view be drawn between the different respondents *inter se*, because their positions are plainly not the same. In doing so we believe that the first respondent is contractually precluded from relying on set off by clause 7.1 of the General Terms and Conditions of the Conditions of the Account Opening Agreement, which was signed on its behalf on 26 September 2018. In relevant part this clause provides:

“The Customer waives the right to interpose any counter-claim or set -off of any nature or description in any litigation between the Bank and the Customer.”

7. So, with regard to the first respondent it can in our view be said that on this basis alone, it has no prospect of successfully defending the claim or succeeding in a counterclaim for set-off, which amounts to the same thing. There may be another basis for finding against the first respondent. We propose to deal with that basis in considering the position of the second, fourth and fifth respondents. But even at this stage it should be apparent that, in our view, the claim for summary judgment against the first respondent has been established.

8. The position of the third defendant on the other hand is quite different. The outcome of the dispute between him and the applicant will depend on the determination of a factual dispute. We do not find it appropriate to enter into the merits of that dispute at this juncture. Suffice it to say that it cannot be found at this stage that the third respondent has no prospect of that dispute being determined in his favour after a proper investigation of all the facts, most probably after the hearing of oral evidence at a trial. It follows that the claim for summary judgment against the third respondent is bound to fail.

9. The position of the second, fourth and fifth respondents must be considered on the supposition the third respondent will be successful in raising a claim for set-off against the applicant. It must also be borne in mind, however, that all the respondents have undertaken liability to the applicant jointly and severally, as opposed to jointly. This means that each respondent is a debtor in his or its own right. The fact that they are guarantors for the same debt of the first respondent is of no consequence. Their position would be no different if they were each sued for a different debt. The position of each of these respondents must therefore be considered with regard to the facts pertaining to him or it. One of them cannot rely on facts peculiar to the other.

10. The question arising is thus: can debtor A, generally speaking, raise set-off against creditor X on the basis of a debt owing by X to debtor B? In our view the answer must clearly be “no”. If any motivation is needed for this answer which appears to be self-evident, it can be found in the wording of article 86 of the QFC Contract Regulations which clearly confines set-off to a claim by debtor A against X being raised by way of set-off in answer to a claim by X against A. On this basis, which incidentally also pertains to the first respondent, the applicant has established that the second, fourth and fifth respondents have no prospect of success in defending the claims against them.

11. A further argument raised by the other four respondents, apart from the third, is that it would be inappropriate to give summary judgment against some of them if the application against one of them is bound to fail. We cannot see why this would be so. Practice Direction 2 of 2019 permits summary judgment to be granted in part. Because each of the respondents is a debtor in his or its own individual capacity, he or it will not be assisted by a defence validly raised by another respondent.

By the Court,

[signed]

Justice Fritz Brand



A signed copy of this judgment has been filed with the Registry

Representation:

The Applicant was represented by Eversheds Sutherland, QFC, Doha, Qatar.

The Respondents were represented by Clyde & Co, QFC, Doha, Qatar.