



محكمة قطر الدولية
ومركز لتسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

Neutral Citation: [2019] QIC (A) 4

**In the name of His Highness Sheikh Tamim bin Hamad Al Thani,
Emir of the State of Qatar**

**IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE
APPELLATE DIVISION**

14 July 2019

Case No: 6 of 2019

BLOM BANK QATAR LLC

Respondent

v

**(1) QATAR ASPHALT COMPANY WLL
(2) EMIL MICHEL TURK**

Applicants

JUDGMENT

**Before:
Lord Thomas of Cwmgiedd, President
Justice Hassan Al Sayed
Justice Sir Bruce Robertson**

ORDER

1. The Application seeking Permission to Appeal is refused.
2. The Applicants are to pay the reasonable costs of the Respondent, such costs to be assessed by the Registrar if not agreed.

JUDGMENT

1. In a written application made on 2 May 2019 the Applicants seek permission to appeal from the judgment of the court of the First Instance Circuit (Justice Hamilton, Justice Blair, Justice Al Anezi) given on 10 April 2019. In that judgment the court gave judgment for the Respondent against the two Applicants jointly and severally for QAR 19,463,394.21 which was found to be due under a credit facilities agreement and guarantee made between the parties. It also awarded the Respondent its reasonable legal costs. The Respondent in its submission dated 18 June 2019 contends we should refuse permission.
2. The claim made in the proceedings brought by the Respondent (the Bank), a bank registered at the Qatar Financial Centre, was in respect of money said to be due by the First Applicant (the Borrower), a Qatari company, under a credit facility agreement entered into on 26 June 2012 in connection with the Borrower's contract with Ashghal, the public works authority. The Second Applicant (the Guarantor) was a party to the credit facilities agreement as the Guarantor of the obligations of the Borrower to the Bank under the credit facilities agreement. The agreement provided that it was governed by the laws of Qatar and that disputes were to be resolved at this court.

3. During the course of the agreement variations were made to the credit facilities agreement and significant sums were drawn down by the Borrower under the agreement. On 21 May 2018 the Bank gave notice to both the Borrower and the Guarantor of default and made a demand for payment. On 4 October 2018, the Bank commenced proceedings in this court for QAR 19,463,394.21 said to be the outstanding amount under the credit facilities agreement and the guarantee contained in the agreement.
4. The Bank made an application for summary judgment and in due course obtained orders for security by way of temporary distraint of debts owed by third parties to the Borrower. On 7 March 2019 the First Instance Circuit heard the application of the Bank at a hearing at which all the parties were represented. At that hearing the applicants submitted that:
 - a. The claim had not been properly served;
 - b. The court had no jurisdiction and should in any event, even if it had jurisdiction, have declined jurisdiction in favour of the other Qatari courts; and
 - c. The sums which the Bank claimed to be under the credit facilities agreement were entirely wrong and that the Bank was in breach of the terms of the credit facilities agreement.

The First Instance Circuit in the course of its judgment considered these contentions and dismissed all of them for the reasons carefully set out in the judgment.

5. In the application notice for permission to appeal, the Borrower and the Guarantor contend that
 - a. The First Instance Circuit was wrong in determining that it had jurisdiction; it should have referred the dispute to the other courts of Qatar; and
 - b. The judgment of the court was based on flawed reasoning. It had not considered the facts properly; it had wrongly refused a request to appoint an accounting expert; the amount determined to be due from the Borrower and the Guarantor was entirely wrong.

6. We can see no reasonable prospect of success in establishing any of these contentions. There are no other grounds for considering the judgment is erroneous or that it will result in serious injustice.

The jurisdiction of the court

7. The First Instance Circuit's judgment sets out in some detail the terms of the QFC law conferring jurisdiction on this court, the terms of the credit facilities agreement and the governing law and jurisdiction clauses set out in the agreement. We can see no basis for contending that the First Instance Circuit's interpretation of the QFC law or the terms of the agreement can in any way be faulted.
8. The Borrower and the Guarantor contend that as a result of a tripartite agreement made on 16 March 2014 between the Bank, the Borrower and the Doha Bank, the dispute between the Bank, the Borrower and the Guarantor should be subject to the jurisdiction clause in the tripartite agreement and in accordance with that clause should be heard by the courts of Qatar. The tripartite agreement was entered into to make provision as to how monies paid by Ashgal, (the public works authority with which the Borrower had the contract) should be distributed between the Bank and Doha Bank. Given that that was the purpose of the tripartite agreement, we see no basis for contending that the dispute between the Bank, the Borrower and the Guarantor was to be determined under the tripartite agreement, as such disputes fell within the jurisdiction clause of the credit facilities agreement.
9. In any event the Borrower had brought a claim against the Bank in the other Qatari courts which dismissed that claim on the 26 February 2019 on the ground of lack of jurisdiction.

The appointment of an expert and the determination of the sums due

10. The Borrower and the Guarantor contend that the First Instance Circuit should have referred the case to an expert or committee of experts to examine the documents submitted by the parties so that, after a careful and proper determination of the facts and technical issues by the experts, the First Instance Circuit could rule correctly on the law. It was contended that the First Instance Circuit should have followed, in accordance with decisions of the Egyptian courts, the practice that the facts and technical issues should have been so determined and then submitted to the First Instance Circuit for it to render a judgment.
11. We do not consider that point is in any way arguable. The practice and the procedure of this court provides for the court to determine factual issues, using expert evidence when appropriate or necessary. In this particular case it is not arguable that any such evidence was required as (1) the credit facilities agreement contained a conclusive evidence clause which provided that statements sent by the Bank to its customers would be conclusive evidence of the amounts due unless objection was made; and (2) there was ample evidence to support the Bank's contention that the sums it claimed were in fact due.
12. The First Instance Circuit considered the case law of other jurisdictions and the decision of the Qatari Court of Cassation as to conclusive evidence clauses and the circumstances in which they will be held valid. We cannot see any basis on which it could be argued that the clause in the credit facilities agreement was not a valid clause; nor can we see how it can be argued that the clause was inapplicable on the facts of this case as the Bank had regularly provided the Borrower with statements throughout the duration of the facility. In those circumstances we cannot see how it is arguable that it was necessary for the First Instance Circuit either to appoint an expert or itself to examine in any greater detail the state of the accounts and the amount said to be due.

13. In any event there was significant documentary evidence before the First Instance Circuit as to the amount due; the case of the Borrower and the Guarantor was that it was for the Bank to prove what was due and not for them to prove anything. We cannot see how such an argument has any merit either on the facts of this case or in law.
14. The application for permission to appeal is accordingly refused. The Applicants are to pay the reasonable costs of the Respondent, such costs to be assessed by the Registrar if not agreed.

By the Court,



Lord Thomas of Cwmgiedd
President of the Court



Representation:

The Application seeking Permission to Appeal was considered on the papers, all parties having filed written representations.