



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: [2023] QIC (A) 11**

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

**[On appeal from [2023] QIC (F) 6]**

**Date: 4 October 2023**

**CASE NO: CTFIC0033/2022**

**DEVISERS ADVISORY SERVICES LLC**

**Claimant/Appellant**

**v**

**MUHAMMAD ZAHID**

**Defendant/Respondent**

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**JUDGMENT**

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**Before:**

**Lord Thomas of Cwmgiedd, President**

**Justice Her Honour Frances Kirkham CBE**

**Justice Helen Mountfield KC**

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**Order**

1. Permission to appeal is granted, but the appeal is dismissed.
2. The Appellant is to pay to the Respondent the Respondent's costs incurred on the appeal, to be assessed by the Registrar, if not agreed.

**Judgment**

**Background**

1. The Appellant ('**Devisers**') seeks permission by an application dated 18 March 2023 to appeal from the judgment of the First Instance Circuit (Justices Sir Bruce Robertson, George Arestis, and Dr Rashid Al-Anezi) given on 19 February 2023 in favour of the Respondent ('**Mr Zahid**') for QAR 40,750 together with interest. Having read the First Instance judgment and the application dated 18 March 2023, we decided to grant permission to appeal, and to hold an online oral hearing of the appeal, which we heard on 3 September 2023.
2. It is necessary, in the light of the course these proceedings took, to set out the factual background as appeared from the documents and other information placed before the First Instance Circuit and us.

**The contract between the parties**

3. On 3 February 2019, a written agreement was entered into between Devisers, a company which offers immigration consultancy services, and Mr Zahid and his wife, under which Devisers was to assist them in obtaining a Tier 1 Entrepreneur Visa for the United Kingdom. The agreed fee was QAR 56,500. There was an initial payment of QAR 28,250.00, and a subsequent payment of QAR 12,500.00. The balance was due when the visa was obtained. The agreement provided inter alia as follows:

*Clause 5:*

*If the client revokes this agreement or change his/ her mind or found to have a criminal record after signing this Agreement then DEVISERS shall nevertheless*

*be deemed to have performed its services satisfactorily and be entitled payment of the full fee.*

*Clause 8:*

*If the application is refused due to the error by the applicant like but not limited to any false/ incorrect information provided by applicant OR any fake document provided by applicant for the application purpose OR If the High Commission makes an enquiry to any authority about the applicant and the authority does not reply to satisfactory level OR if the applicant fails to give correct reply to the questions in the official interview related to the visa application. In all these related cases applicant will not be refunded any service charges paid to us.*

*Clause 9:*

*Devisers will represent the applicant until the successful result of the application. In case the application remains unsuccessful without falling under clause no. 8 (above mentioned clause) of this agreement, any deposit received will be refunded in 2 weeks.*

*Terms of Business*

*Clause 10:*

*The Client undertakes on instructing Devisers to apply for a Visa for him/ herself or thereafter promptly on receipt of any request from Devisers to provide accurate and detailed information and documentation regarding the Client like but not limited to the personal details, qualifications and work experience of the Client, and any other information or documentation that in its sole discretion Devisers may deem necessary in order to obtain a visa for a client.*

4. On 7 and 10 February 2019, Devisers sent to Mr Zahid a list of the documents that he had to supply so that Devisers could progress the application for the visa.
5. On 21 July 2019, the type of visa sought was changed to a UK Innovator Business Visa. It was agreed in writing that the amount paid for the original type of visa would be, “adjusted” for the new visa and not be refunded. No further sum was paid.

### **The events giving rise to the dispute**

6. On 28 July 2019, Devisers sent to Mr Zahid a document checklist for the documents that would be required which were to be submitted at the earliest possible time. The accompanying list set out the extensive documentation required for Mr Zahid and his wife.

7. On 31 July 2019, Mr Zahid sent a, “*We Transfer*” link to Devisers with five categories of document. There was some uncertainty initially as to whether this was dated earlier (because of the date given in the translation), but we are satisfied that it was sent on 31 July 2019.
8. The next document provided to the Court was an email dated 17 March 2020, which sent a draft business plan for Mr Zahid’s comments so that the application could be further progressed.
9. On 23 March 2020, Devisers sent an email to Mr Zahid requesting him to follow up on the action plan sent to him. The email stated that numerous attempts had been made to get in touch with him, but to no effect. Mr Zahid did not respond by email.
10. On 30 March 2020, Devisers sent Mr Zahid another email requesting a follow-up on the action plan and asking whether he had any enquiries or notes in order to hold a meeting with him. However, Mr Zahid did not respond by email.
11. On 5 January 2020, there was an email from Devisers to Mr Zahid confirming a discussion in which he had stated that he was no longer interested in the start-up/innovator category of visa.
12. On 20 August 2022, Mr Zahid sent an email to Devisers headed, “*My Refund Request*” in which he complained that despite submitting all the documents to Mr Nadeem Butt, he had got no updates, and said that Mr Butt had stopped responding to his phone calls. He said that he had then visited the office of Devisers and was surprised to learn of the non-availability of Mr Butt; and that he had spoken to a Mr Luqman and asked for a refund. He said that unless a refund was provided by 27 August 2022, he would go to the Consumer Court. It was common ground that Mr Butt had been employed by Devisers and that Mr Luqman was and remained in the employment of Devisers.

### **The proceedings brought by Devisers**

13. On 31 August 2022, Devisers issued a Claim Form where the remedy sought was to oblige Mr Zahid to provide all the required documents to Devisers and to oblige Mr

Zahid to follow the terms and conditions of the agreement. The Claim Form referred to the documents required as including:

- Police certificate of each country where 12 months were spent continuously.
- Immigration history for the last ten years.
- Proof that investment funds had been maintained for 90 days in a personal bank account, and a personal bank statement and a letter confirming the availability of at least £50,000 or equivalent available in a regulated bank account for 90 consecutive days.
- Proof of sources of investment funds.
- Maintenance Funds Personal Bank statements and a letter confirming availability of maintenance funds available in the bank account for 90 consecutive days, £945 for the main applicant, and £630 for each dependent.

14. Mr Zahid then counterclaimed for the return of the sums paid; he said in his counterclaim that he had been told by the Consumer Court that as Devisers was a Qatar Financial Centre company, he should begin proceedings before the First Instance Circuit. He claimed that all the documents requested were provided and put forward explanations as to why there had been delays.

15. The claim was assigned to the Small Claims Track.

16. On 8 January 2023, the Court ordered each of the parties to provide a submission. A directions hearing was ordered for 23 January 2023, and was held then. The First Instance Circuit observed in its judgment, “*the parties continued to talk past each other and there was no substantial agreement*”. There was no further oral hearing.

17. What then happened is set out in paragraphs 8-11 of the judgment:

*8. The Court subsequently required the parties to file and serve details of the documents which had been disclosed in the course of the proceedings.*

*9. The Claimant listed an extensive catalogue of required documents which had not been provided by the Defendant.*

*10. In response, the Defendant claimed that the bulk of the required documents had been provided. There also arose the question of the actions of a Mr Nadeem Butt. He was the representative of the Claimant when the first involvement between the parties occurred, and who had played a critical role between the parties; but apparently he is no longer employed by the Claimant and has provided no testimony.*

*11. Each time we heard from a party there was a request for further response material to be filed but we have taken the view that the matters in dispute were already clear and permitting endless dissection of the clear factual matters gains nothing.*

### **Application to the First Instance Circuit to admit evidence**

18. On 6 February 2023, Devisers sent a request to the First Instance Circuit requesting permission to provide a WhatsApp message from Mr Nadeem Butt, to prove that he did not receive any documents from Mr Zahid.

19. On 7 February 2023, Mr Zahid sent an email to the First Instance Circuit claiming he had discovered that Devisers was no longer registered with a UK government body, the Office of Immigration Services Commissioners. The First Instance Circuit asked Devisers to confirm this and provide any evidence.

20. On 8 February 2023, Devisers responded saying that it was registered at the QFC; the UK Office of Immigration Services Commissioners had not regulated advisers since August 2019, and Mr Zahid had been told this. Devisers objected to the way in which this point had been raised after the submissions had concluded.

21. On 8 February 2023, Devisers asked for an update on the request made on 6 February 2023 in respect of the WhatsApp message. The First Instance Circuit responded to say the matter was being considered and if anything, further was required, it would revert. It did not request anything further.

### **The judgment**

22. In its judgment given on 18 March 2023, the First Instance Circuit found that:

- i. Devisers could not succeed on its claim as 2½ years had elapsed.
- ii. Mr Zahid’s counterclaim was affected by the lack of action for 2 ½ years and the failure of Devisers to call Mr Nadeem Butt.
- iii. Both parties had failed to deal with their obligations under the agreement in a timely manner.
- iv. Devisers, *“failed in its obligation to obtain the implementation of the agreements which were entered into and in the strange circumstances which have been outlined before us is not entitled to retain the funds which were paid to achieve the desired outcome.”*
- v. Mr Zahid was entitled to the repayment of the sums for which he had not received any benefit.
- vi. The arrangements made in 2019 had never been consummated, and each should be restored to their original position.

23. The First Instance Circuit made no order as to costs.

### **The grounds of appeal**

24. Devisers sought permission to appeal on a number of grounds:

- i. The First Instance Circuit lacked impartiality and did not carry out its responsibilities as a Court.
- ii. The First Instance Circuit wrongly accepted Mr Zahid’s evidence and did not accept Devisers’ evidence which was fully documented.

- iii. The First Instance Circuit should have admitted the WhatsApp message from Mr Nadeem Butt denying he had received any documentation.
- iv. The Appellate Division should admit the WhatsApp message from Mr Butt and a statement from Mr Luqman made after the First Instance Circuit had delivered the judgment dated 20 March 2023 saying that he had the responsibility for receiving documents, Mr Nadeem Butt had no such responsibility, and Mr Zahid had not provided the required documents. The evidence had not been put before the First Instance Circuit as Mr Luqman had not then been prepared to give evidence.
- v. The First Instance Circuit had failed to give effect to what was agreed in 2019 in relation to the return of funds.

25. We decided that justice would be best served in the circumstances of this case by considering the application for permission and any argument on the appeal at a single hearing. We received short written submissions and held a short oral hearing.

**The issue in the proceedings – was Mr Zahid entitled to the return of the sum paid?**

26. In our judgment, the First Instance Circuit was clearly right in refusing to grant an order that Mr Zahid provide the documents or otherwise perform his obligations under the agreement. Given the lapse in time between the making of the revised agreement in July 2019, and the bringing of proceedings in August 2022, an order requiring Mr Zahid to perform the agreement was no longer appropriate. In any event, it is clear that the claim was brought by Devisers in an attempt to forestall a claim by Mr Zahid for the return of the sums he had paid.

27. That was in fact, the issue between the parties before the First Instance Circuit and before us. It was an issue to be decided on the evidence and on the terms of the agreement between the parties. In all the circumstances, we considered that we should grant permission to appeal on that issue and the related issues.

28. As the scope of the evidence is essential to the determination of the appeal, it is first necessary to consider whether the First Instance Circuit should have permitted Devisers



to adduce evidence in the form of the WhatsApp message from Mr Butt and whether we should admit the fresh evidence of Mr Luqman before this Court.

The WhatsApp message and Mr Luqman's statement

29. Devisers contends that there was unequal treatment of the two parties to the dispute by the First Instance Circuit on the basis that it granted Mr Zahid the right to put forward a late submission on 7 February 2023 in relation to the registration of Devisers while preventing Devisers from establishing its case by offering convincing proof.
30. Devisers relied on the refusal of the Court to admit the WhatsApp message and response it had asked the Court to consider on 6 February 2023. The message stated:
- i. *“Greetings Quick confirmation is required. Zahid Younus, Nadia Al-Zahed's husband, claims that he has furnished you with all the documentation pertaining to his case, and I am aware that you never receive documentation from customers; Luqman's only responsibility was to reconfirm if you received all documentation from Zahid Younus. Greetings, sir.*
  - ii. The response was, *“It wasn't my responsibility, so I have no idea.”*
31. In our view, the First Instance Circuit was again clearly correct in declining to consider the message. Mr Zahid's case had been from the outset of the dispute that he had supplied all the documents required either by the, *“We Transfer”* email on 31 July 2019 or by giving them to Mr Butt. However, no attempt was made by Devisers to adduce any evidence in relation to that issue until after the First Instance Circuit had concluded the receipt of submissions and evidence. There was more than sufficient opportunity to adduce this material during the proceedings, and no reason was given for the failure to do so. There is, therefore, no basis for suggesting that the First Instance Circuit erred or behaved with a lack of impartiality.
32. We decline to admit into evidence before this Court the statement of Mr Luqman. As this Court has said on many occasions, the occasion on which to adduce evidence is at the trial before the First Instance Court. There are rare or unusual circumstances in which this Court will admit evidence which was not before the First Instance Circuit but there must be strong reasons for doing so and a compelling explanation for the failure to adduce the evidence at trial. This is not such a case. As we have said, the question of whether Mr Zahid had provided the documents to Mr Butt was in issue from

the outset. Mt Luqman was an employee of Devisers. There is no reason why his statement could not have been put before the First Instance Circuit.

The evidence and the terms of the agreement

33. The evidence as to the performance by the parties of their obligations under the agreement which was adduced before the First Instance Circuit was, as appears from the record of that Court and its judgment, slender. It is clear, from the documentation which we have set out at length, that Mr Zahid did provide a substantial number of documents; his case was that he supplied further documents to Mr Butt.
34. Devisers' claim was brought on the basis that Mr Zahid had failed to supply the necessary documents. If there were documents which were required, then in our view under the terms of the agreement, it was for Devisers, as the party that had agreed to advise Mr Zahid, to identify them so that Mr Zahid could supply them. Such an obligation is implicit in the agreement and particularly at clause 10.
35. There was no email or written or electronic material that showed that Devisers had sought to identify the documents that were required, and no other evidence before the First Instance Circuit had identified what was required of Mr Zahid before the commencement of the proceedings in 2022. As we have set out, the Claim Form identified documents that it was said had not been supplied, but that was some three years after the agreement was made. If these were the documents that should have been supplied, then they should have been identified by Devisers in 2019 or 2020. No explanation was given for their failure to do so.
36. In our judgment and on the evidence before the First Instance Circuit, Devisers failed to perform its obligations under the agreement. It was not able to prove a failure on the part of Mr Zahid to perform his obligations. He was, therefore, on the terms of the agreement, entitled to a refund of the sums paid. The appeal accordingly fails and must be dismissed.

**By the Court,**



**[signed]**

**Lord Thomas of Cwmgiedd, President**

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

Representation:

The Appellant/Claimant was self-represented.

The Respondent/Defendant was self-represented.