



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] QIC (F) 17

**IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT**

29 July 2021

CASE No. 3 of 2020

NASCO QATAR LLC

Claimant

v

MISR INSURANCE (QATAR BRANCH)

Defendant

REVIEW OF REGISTRAR'S COSTS ASSESSMENT

Before:

Justice Bruce Robertson

Justice Arthur Hamilton

Justice Rashid Al Anezi

ORDER

1. The application by the Defendant in the action (the applicant in the present application) for review of the Registrar's Costs Assessment (dated 13 June 2021) is dismissed.
2. The Defendant (the present applicant) shall pay to the Claimant (the present respondent) the latter's reasonable costs in resisting this application, these costs if not agreed to be assessed by the Registrar.

JUDGMENT

1. On 29 November 2020 this Court gave judgment in favour of the Claimant in its claim against the Defendant for QAR 644,216.68, together with pre-judgment and post-judgment interest thereon. It awarded to the Claimant its reasonable costs "in these proceedings", to be assessed by the Registrar if not agreed. That judgment is reported at [2020] QIC (F) 17. The Defendant applied for permission to appeal against that judgment, but that application was, on 3 March 2021, refused by the Appellate Division of the Court, its judgment being reported at [2021] QIC (A) 4.
2. Each party filed written submissions, which were considered by the Registrar. There was no oral hearing, neither party having suggested that this was appropriate. The Claimant sought costs in the sum of QAR 397,600.00. In the event the Registrar awarded it QAR 239,000.00.
3. This Court's Procedural Rules provide by Article 33.5 that, if parties are unable to reach agreement as to the appropriate assessment of costs, the necessary assessment will be made by the Registrar, "subject to review if necessary by the judge". In this application the Defendant seeks such a review.
4. It is important to notice that an application of this kind is by way of "review". It is not an appeal. Accordingly, to succeed the applicant must demonstrate that the Registrar has, to the prejudice of the applicant, erred on some point of principle or

in some other fundamental respect (see *Shawabkeh v Daman Health Insurance (Qatar) LLC* [2017] QIC (F) 1, at paragraph 17).

5. Neither party has sought an oral hearing in this matter. Each has filed written submissions, which have been duly considered by the Court.
6. In the Conclusion to its written submission to this Court the Defendant requests the Court to review the costs assessed by the Registrar “as they are extra ordinarily large and not proportional to the actual work done....”. However, as noted above, the current process is not one of appeal. An alleged excess of amount is not, of itself, a basis for interfering with the Registrar’s assessment. Nor is it for this Court to re-examine any issue of fact about which a party may complain.
7. At paragraphs 2.1 to 2.3 the Defendant seeks to refute a contention apparently advanced by the Claimant before the Registrar that the Defendant had unduly complicated and lengthened the proceedings before the Court and thus caused unnecessary costs. However, the Registrar in his Judgment (at paragraph 6) addressed that contention, concluding that the Defendant’s conduct in defending itself “could not be characterised as unreasonable or in some way unusual”. However, he went on to hold (rightly) that its “various defences were ultimately rejected and so it must bear the reasonable costs that have been incurred as a result”. Thus, he did not assess costs on the basis that the defence had been improperly conducted. This complaint by the Defendant discloses no valid ground for review.
8. The Defendant further complains (paragraph 2.4) that the Registrar had erred in relation to whether the costs claimed by the Claimant had actually been incurred by it. This appears to amount to an assertion that the Claimant had sought dishonestly to recover costs which had never in fact been incurred by it. The only basis advanced in the application for this serious assertion is that the Claimant had, in its submission for costs, “included three different hourly rates”. This seems to be directed to paragraph 8 of the Registrar’s Assessment where he notes that the “Claimant’s lawyers applied a flat rate of QAR 1,800 per hour, irrespective of whether the work was undertaken by a Partner or a Senior Associate”. The Registrar goes on to say: “It is not at all clear why this was done although, overall, it appears to have resulted in a saving to the Claimant when one looks at the number of hours

each lawyer spent on the case. The defendant does not, in fact, take issue with this distinction but instead says that a better approach is to apply the Qatar Chamber of Commerce rate for arbitrator fees.” The “three different hourly rates” referred to by the Defendant appear, accordingly, to be (1) the rate for a Partner, (2) the rate for a Senior Assistant and (3) the “flat” rate actually applied in the Claimant’s claim for costs, this last rate being presumably somewhere between (1) and (2). No doubt there was an oddity in taking an intermediate (and in, a sense, a fictional) rate but the Registrar records that the Defendant did not before him take issue with this. There is nothing to suggest that the Defendant was in any way prejudiced by the application of the intermediate rate. There is no suggestion that work in question was not done. This complaint is without substance.

9. In paragraph 2.5 the Defendant complains that the Claimant “failed to disclose the engagement between it and its counsel”. There is nothing in the Registrar’s Assessment to indicate that the Defendant made any representation to him about the absence of the terms of that engagement. The Defendant cannot now belatedly complain about that. In any event, the charges which a party’s counsel proposed to make, or in fact made, for its services are not determinative of what are “reasonable” costs. There is no basis here for an assertion that the Claimant sought to recover from the Defendant costs which it had not in fact incurred.
10. In paragraph 2.6 the Defendant asserts that the “Claimant has developed the claimed amount in its submission to gain the maximum benefit and failed to prove that it was the actual costs incurred.” This appears to be merely a repetition of the Defendant’s earlier assertions, which have already been dealt with.
11. In paragraph 2.7 the Defendant complains that the Registrar erred in finding the Claimant entitled to recover any costs of preparing the assessment submission. This in principle is a legitimate issue for review; but the Court is not persuaded that the Registrar erred in allowing such recovery. This Court in its Order awarded to the Claimant against the Defendant its reasonable costs “in these proceedings”, to be assessed by the Registrar if not agreed. The Registrar was clearly correct in construing the quoted phrase as wide enough to encompass costs incurred by the Claimant in seeking an assessment of costs in circumstances where parties had

failed to agree on their amount. The fact that the parties could have agreed the costs (but did not do so) does not mean that it is not part of the proceedings. This complaint is without substance. The amount of the costs recoverable in preparing and pursuing before the Registrar an assessment of costs is, of course, subject to the same restriction of reasonableness as the amount of the costs of pursuing the Claim itself; but that is a separate matter.

12. In paragraph 2.8 the Defendant asserts that the Claimant “failed and refused to send any offer of settlement to discuss or negotiate its terms” (sic). The Order of the Court awarding costs clearly envisaged that parties should endeavour to agree costs and so avoid the need for, and expense of, a formal Assessment. Conduct by a party which results in unnecessary expense may be reflected in what award (if any) the Registrar makes as regards the costs of the Assessment. At paragraph 5 of his Costs Assessment the Register records the Defendant’s submission that the Claimant had chosen to apply for an assessment without having first made any attempt to settle the matter amicably. He subsequently reduced the costs claimed by the Claimant for work relating to costs submissions from QAR 9,540 to QAR 5,000 (part 11 of the appended table). Although in paragraph 10 of the Assessment he makes no specific reference to the Defendant’s submission referred to above, there is nothing before this Court to justify an inference that, in making his decision on assessing costs, he ignored that submission and any material provided to him in support of it. No such material is provided by the Defendant with this application. In these circumstances no error of principle prejudicial to the Defendant is demonstrated.

13. In paragraph 2.9 the Defendant asserts that the “amount ordered by the Registrar are not proportional to the awarded amount given the amounts, afforded to defend itself” (sic). In so far as that assertion is intelligible, it appears to be that the costs awarded were excessive in amount. That, without more, is not a proper subject for review.

14. On the whole matter this application is without merit and must be dismissed. The costs occasioned by it must be paid by the Defendant.

By the Court



Justice Arthur Hamilton



Representation

The Claimant was represented by Mr. Johnny Al Koury (John and Wiedeman LLC, Doha, Qatar).

The Defendant was represented by Mr. Reyad Rawhani and Mr. Mohammed Ibrahim (The Law Office of Riad Rouhani, Doha, Qatar).