



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 (C) 4

IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE

13 June 2021

CASE No: 3 of 2020

NASCO QATAR LLC

Claimant

v

MISR INSURANCE (QATAR BRANCH)

Defendant

COSTS ASSESSMENT

Before:

Mr. Christopher Grout, Registrar

JUDGMENT

Introduction

1. This costs assessment arises as a result of the judgment of the First Instance Circuit of the Court (Justices Robertson, Hamilton, and Al Anezi), dated 29 November 2020 and reported at [2020] QIC (F) 17. The case concerned the non-payment of insurance related commissions by the Defendant to the Claimant. The matter was heard over a 2-day remote hearing on 16 and 17 November 2020. The Court gave judgment for the Claimant in the sum claimed, namely QAR 644,216.68. It awarded QAR 51,537.00 in respect of pre-judgment interest as well as post-judgment interest at a rate of 4%. In addition, the Claimant awarded the Defendant its reasonable costs “in these proceedings”, to be assessed by the Registrar if not agreed. On 3 March 2021, the Appellate Division of the Court (Lord Thomas, President, Justices Kirkham and Brand) refused the Defendant’s application seeking permission to appeal (the judgment is reported at [2021] QIC (A) 4). The Appellate Division’s judgment was silent on the issue of costs occasioned by the application seeking permission to appeal. The parties have been unable to reach agreement on the issue of costs and so the matter has been referred to me for assessment.
2. On 6 April 2021, the Claimant filed its submissions in support of the assessment; the Defendant, having been granted an extension of time in which to do so, filed submissions in response on 27 April 2021. As I am afforded a “wide discretion”¹ as to the procedure to be adopted when undertaking an assessment, on the basis of proportionality and expediency I considered the matter on the written submissions provided, i.e. without an oral hearing, neither party having suggested that an oral hearing was appropriate.

¹ *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (F) 1, at paragraph 21. That principle was not interfered with by the Appellate Division of the Court in the same case in its judgment dated 11 September 2017, reported at [2017] QIC (A) 2.

The Principles to be Applied

1. In *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (C) 1, I laid down the principles to be applied when assessing 'reasonable costs'. At paragraphs 10-12 of my Costs Assessment, dated 5 March 2017, I said:

How is the issue of reasonableness to be approached? In my judgment, in order to be recoverable costs must be both reasonably incurred and reasonable in amount. If they are not then they are unlikely to be recoverable.

I have identified the following (non-exhaustive) list of factors which will ordinarily fall to be considered when assessing whether or not costs have been reasonably incurred by a party and, if they have, whether they are also reasonable in amount:

- (a) Proportionality;*
- (b) The conduct of the parties (both before and during the proceedings);*
- (c) Efforts made to try and resolve the dispute without recourse to litigation (for example through Alternative Dispute Resolution);*
- (d) Whether any reasonable settlement offers were made and rejected; and*
- (e) The extent to which the party seeking to recover costs has been successful.*

When considering the proportionality factor, the following (again non-exhaustive) factors are likely to fall to be considered:

- (a) In monetary or property claims, the amount or value involved;*
- (b) The importance of the matter(s) raised to the parties;*
- (c) The complexity of the matter(s);*
- (d) The difficulty or novelty of any particular point(s) raised;*
- (e) The time spent on the case;*
- (f) The manner in which work on the case was undertaken; and*
- (g) The appropriate use of resources by the parties including, where appropriate, the use of available information and communications technology.*

2. Those principles were, upon review by the First Instance Circuit of the Court, approved.² In the present case, neither party sought to suggest in their written submissions that those principles should not be applied here.

The Parties' Submissions

3. The Claimant claims QAR 397,600.00 which relates to work undertaken before the First Instance Circuit, the Appellate Division, and the preparation of its costs submissions. It points out that it was “absolutely successful” in recovering the full amount claimed and that the Defendant’s actions “caused unnecessary costs and expenses to be incurred.” The Claimant states that, applying the principles in *Shawabkeh*, all of its costs have been reasonably incurred and are reasonable in amount. The Claimant acknowledges that “the value of the claim may not look proportionate with the value of the claimed costs”, but that the reason for this is because the Defendant exhausted all possible legal arguments and procedures which the Claimant then had to deal with.
4. Attached to the Claimant’s costs submissions is a schedule of the work undertaken. I will return to this below. It appears that both a Partner and a Senior Associate of the Claimant’s instructed law firm undertook work on the case. Although the hourly rates are set out as QAR 2,200 (for the Partner) and QAR 1,650 (for the Senior Associate), rather oddly it appears that a flat rate of QAR 1,800 per hour was agreed, regardless of whether the work was being undertaken by a Partner or a Senior Associate. The total number of hours spent is said to have been 220.8 which equates to QAR 397,440.00. There is then a claim for disbursements in the sum of QAR 3,650.00 which brings the total to QAR 401,090.00 which is in fact slightly more than is argued for by the Claimant in its submissions.

² *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (F) 1, at paragraph 20. The decision of the Court to approve those principles was not interfered with by the Appellate Division of the Court in the same case in its judgment dated 11 September 2017, reported at [2017] QIC (A) 2.

5. The Defendant submits that the Claimant has chosen to apply for an assessment without having first made any attempt to settle the matter amicably. It submits that the total amount claimed is “extraordinarily hefty” which I take to mean “unreasonable”. The Defendant denies that it has sought to complicate, or otherwise elongate, the case; it has simply defended itself as it is entitled to do. The Defendant also suggests that the costs claimed have not, in fact, been incurred and that the Claimant is seeking to benefit from this application rather than recover its actual losses. The Defendant states that the number of hours spent on the case, as well as the hourly rates charged, are unreasonable. It suggests that a sensible comparator is to look at the rates charged by arbitrators, applying Qatar Chamber of Commerce arbitrator fees. The Defendant also states that the Claimant is not entitled to recover its costs of preparing the costs application as, first, such costs do not relate to court proceedings, and, secondly, the court did not make an order for such costs to be paid.

Analysis

6. It is helpful to start by addressing some of the general observations made by the parties in their submissions. The Claimant is undoubtedly right that it has been wholly successful in its claim (and in successfully resisting an application seeking permission to appeal). Whilst the Defendant has been unsuccessful, I am, however, unable to agree that its conduct in defending itself can be characterised as unreasonable or in some way unusual. It is to be noted that, at paragraphs 6-7 of its judgment, the First Instance Circuit of the Court considered that the case could not be determined on a summary judgment application and necessitated, instead, a two-day hearing at trial. Be that as it may, the Defendant’s various defences were ultimately rejected and so it must bear the reasonable costs that have been incurred as a result.

Whether the Claimant’s costs have been ‘incurred’

7. As noted above, the Defendant suggests that the costs claimed have not actually been incurred. What it says is this:

“2.5 The Claimant is trying to write at length to lend credence to the claimed costs, but it did not pay heed to the real incurred costs.

2.6 The Claimant’s Counsel has set this application to benefit rather than recovering the actual incurred costs. This explains why the Claimant refused to send offer of settlement and refused to negotiate any terms of settlement.”

What the Defendant appears to be saying is that this is a dishonest claim in the sense that the Claimant is trying to benefit by recovering more than that which it has actually incurred. That is a serious accusation to make and not one that should be made lightly. Whilst it is perfectly permissible for a party to argue that another party’s costs are unreasonable, it would be an exceptional course to argue that the claim is, whether in whole or in part, a dishonest one. Where such an argument is, exceptionally, advanced, it must be substantiated by evidence and/or a reasoned explanation as to why it is said that the claim is a false one. In the present case, no such evidence or explanation has been provided. There is no basis, on the material before me, to conclude that the Claimant’s claim for costs has in any way been falsified. I reject the Defendant’s argument in this regard.

The Hourly Rate

8. The Claimant’s lawyers applied a flat rate of QAR 1,800 per hour, irrespective of whether the work was being undertaken by a Partner or a Senior Associate. 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. I do not accept that argument. First of all, the rates charged by lawyers involved in litigation before this Court are not comparable to those set by a particular arbitral institution in respect of its arbitrators (who are themselves performing a very different function).

Moreover, if one looks at the table of fees upon which the Defendant relies, it is apparent that the fees payable to arbitrators are fixed depending upon the value of the particular claim they are dealing with. That is very different from how lawyers usually charge which is, as in the present case, by reference to an hourly rate and the number of hours actually worked.

9. Turning to the hourly rate in the present case, this has been set at QAR 1,800. In the absence of a fixed costs regime or regulations which deal with recoverable legal fees following litigation before the Court, the best I can do is consider whether the hourly rate charged in the present case is broadly in line with other cases I have dealt with. It is broadly in line with other cases and I am satisfied that it is reasonable. As to the actual work undertaken, I deal with that below.

The Costs of the Costs Assessment and the Costs of the Permission to Appeal Application

10. The Defendant submits that the Claimant is not entitled, as a matter of principle, to its costs of the Costs Assessment because such costs do not relate to court proceedings and were not ordered by the Court. I reject that submission. The costs incurred as a result of preparing the costs submissions clearly do relate to court proceedings as matters relating to costs are an integral part of such proceedings. In addition, “in these proceedings”, which was the phrase used by the Court in its judgment of 29 November 2020, seems to me wide enough to encompass the work undertaken by the Claimant in preparing its costs submissions. Indeed, it would be odd if having been awarded its costs, it could not then recover for the time spent preparing its submissions in respect of them. Of course, the principles of reasonableness continue to apply. Moreover, it seems to me that two additional factors to consider will be (a) the amount, if any, by which the amount of costs claimed has been reduced on assessment, and (b) whether it was reasonable for a party to claim the costs of particular work or a particular item, or to dispute that work or item.
11. However, although not a point taken by the Defendant, it seems to me that different considerations apply in respect of work undertaken in response to the permission to appeal application. The First Instance Circuit of the Court would certainly not have

been contemplating appeal proceedings when it made its award of costs on 29 November. If the Claimant wished to recover its costs of opposing the Defendant’s application for permission to appeal, it should have pursued the matter with the Appellate Division of the Court. The Appellate Division’s judgment was silent on the issue of costs and, in those circumstances, it seems to me that I am unable to make any award in respect of them as part of this Costs Assessment.

The Costs Awarded

12. In relation to the costs claimed, I have set out in the table below details of what is claimed and what I have awarded:

Nature of Work	Total amount claimed	Total amount awarded	Observations
Part 1: 7 November 2019 until 17 February 2020- pre-commencement correspondence, preparing and filing the claim form.	QAR 109,260.00	QAR 63,000.00	The sum awarded reflects the reasonable work required in respect of pre-commencement correspondence and preparing and issuing the claim.
Part 2: 24 February 2020-11 May 2020- relating to jurisdiction challenge.	QAR 48,600.00	QAR 18,000.00	The number of hours spent in respect of the jurisdictional matter is unreasonable. The amount awarded reflects the reasonable work

			required to be undertaken.
Part 3: 31 May 2020 – 27 June 2020- Reviewing defence and drafting reply.	QAR 39,600.00	QAR 39,600.00	The time spent and amount claimed are reasonable.
Part 4: 28 June 2020- 24 August 2020- review of court directions, addressing procedural matters, dealing with application for strike-out, as well as matters relating to disclosure.	QAR 29,160.00	QAR 29,160.00	The time spent and amount claimed are reasonable.
Part 5: 27 August 2020- 13 September 2020- review of court directions and correspondence, preparing witness statements and disclosure.	QAR 47,160.00	QAR 27,000.00	The sum awarded reflects the reasonable work required in respect of reviewing court directions and correspondence, as well as preparing witness statements and disclosure.
Part 6: 14 September 2020- 20 September 2020- reviewing defendant's submission and drafting a reply.	QAR 9,900.00	QAR 6,300.00	The sum awarded reflects the reasonable work required.

Part 7: 25 September 2020-19 October 2020- matters relating to the preparation of the hearing bundle.	QAR 23,220.00	QAR 10,800.00	The amount awarded reflects a reasonable sum for dealing with matters relating to the preparation of the hearing bundle.
Part 8: 25 October 2020-2 November 2020- review of case and drafting of skeleton argument.	QAR 27,540.00	QAR 18,000.00	The amount awarded reflects a reasonable sum for dealing with matters relating to reviewing the case and drafting the skeleton argument.
Part 9: 11 November 2020- 17 November 2020- preparation for, and attendance at, the hearing.	QAR 22,140.00	QAR 22,140.00	The time spent and amount claimed are reasonable.
Part 10: 28 November 2020- 3 March 2021- reviewing and responding to the Defendant's application for permission to appeal.	QAR 31,320.00	QAR 0.00	The amount claimed under this Part is not recoverable as part of this costs assessment for the reasons explained in paragraph 11 above.
Part 11: work relating to costs submissions.	QAR 9,540.00	QAR 5,000.00	The amount awarded reflects a reasonable sum

			bearing in mind, in particular, the observations made in paragraph 10 above.
Part 12: Disbursements (printing, scanning, arrangements of case files)	QAR 3,650.00	QAR 0.00	These disbursements are not sufficiently particularised or evidenced.
TOTAL	QAR 401,090.00	QAR 239,000.00	

13. Accordingly, the amount awarded in respect of the Claimant's costs is **QAR 239,000.00**.

Conclusion

14. The outcome of the above exercise is that I have determined that QAR 239,000.00 of the costs claimed are reasonable. I have considered whether, standing back, that sum is a reasonable one in all the circumstances and have concluded that it is.

15. Accordingly, the Defendant shall pay to the Claimant the sum of QAR 239,000.00

By the Court,

Mr. Christopher Grout

Registrar



Representation:

For the Claimant: John & Wiedeman LLC, Qatar Financial Centre, Doha, Qatar.

For the Defendant: The Law Office of Riad Rouhani, Doha, Qatar.