



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) 6

IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT

Date: 12 May 2022

CASE No: CTFIC0026/2021

ADIL BASHIR AHMED

Claimant

v

360 NAUTICA LLC

Defendant

CASE No: CTFIC0001/2022

360 NAUTICA LLC

Claimant

v

ADIL BASHIR AHMED

Defendant

JUDGMENT

Before:

Justice Bruce Robertson
Justice Arthur Hamilton
Justice Helen Mountfield QC

ORDER

1. The Defendant's challenge in case CTFIC0026/2021 to the jurisdiction of the Court is rejected and that case shall proceed to trial.
2. By not later than **4pm on Thursday 26 May 2022** the parties to the foregoing case shall file and serve witness statements and any additional documents upon which they respectively seek to rely; the witness statements shall include such a statement from each of the claimant (Mr Ahmed) and Dr Singh of the defendant, these in each case to provide, among other matters relevant to the dispute about salary, a schedule identifying in chronological order the events relied on and references to the evidential material in support of the relative contentions.
3. By not later than **4pm on Thursday 9 June 2022** the parties to the foregoing case shall file and serve final written submissions, each not exceeding ten pages in length.
4. A hearing in the foregoing case will take place on **28 June 2022** at **10:00am** (Qatar time).
5. The claim and the counterclaim in case CTFIC0001/2022 are both struck out.

JUDGMENT

1. On 3 April 2022 the Court directed that these two cases be heard together and that the parties be heard virtually on 24 April on certain issues. They were so heard on that date.
2. The earlier of these cases was initiated by a claim form dated 17 November 2011. In it the claimant ("Mr Ahmed"), who was not legally represented, described the defendant as "Tejinder Singh Hardev Singh (360 Nautica)", though it was plain from the other terms of that form that the action was directed not against any individual but against 360 Nautica LLC, a corporate body established in the Qatar Financial Centre ("QFC"). When a defence was subsequently filed to that claim form, it was in the name of 360 Nautica LLC ("Nautica"). The later of these cases is a separate action instituted by a

claim form dated 28 December 2021 by Nautica against Mr Ahmed. To this claim form Mr Ahmed filed a defence and a counterclaim. Nautica filed a reply thereto.

3. These cases arise against the background of a business relationship between Mr Ahmed on the one hand and Nautica, its principal, Dr Singh, and another body, 360 Play, on the other. That relationship, which appears to have had some complexity, included a period when Mr Ahmed was employed in a senior capacity by Nautica. Mr Ahmed resigned as such employee in March 2021. In the first case Mr Ahmed seeks judgment for monies which he contends represent salary, due but unpaid, under that employment. Nautica in its written defence contests the jurisdiction of this Court to hear that claim; it also disputes the merits of the claim. In the second case Nautica seeks from Mr Ahmed damages/compensation for what it claims to be breaches by him of an Undertaking Letter granted by him. That claim is resisted by Mr Ahmed, who also counterclaims with respect to Nautica having, allegedly, unlawfully photographed Mr Ahmed's business premises.
4. The first issue for consideration is the contention that this Court has no jurisdiction to entertain Mr Ahmed's claim in the first case. As Nautica is an entity established in the QFC and as the dispute in question is a civil or commercial dispute between such an entity and an employee thereof, the dispute falls within Article 8.3.c/3 of the QFC Law (reflected in Article 9.1.3 of the Regulations and Procedural Rules of the Court). However, Nautica relied, in its written defence and in its reply to the Court's directions, on the decision of the Appellate Division of this Court in *Al Tamimi v Employment Standards Office* [2018] QIC (A) 3, where it was held that the appellant was not entitled to pursue before the Court a claim which, in the form of a complaint, he had earlier unsuccessfully pursued on the same basis before the Employment Standards Office ("ESO"). The ground of judgment was not that the Court had no jurisdiction to entertain the claim but that it was an abuse of process for the appellant to pursue it before the Court.
5. In *Al Tamimi* the employee had presented a complaint to the ESO on certain grounds against his former employer, who resisted it. The claim was then determined by the ESO, the employee's complaint being rejected by it. The employee did not pursue his right to appeal to the Regulatory Tribunal against that determination and that right in

due course lapsed. He then presented a claim on essentially identical grounds to the First Instance Circuit of the Court, which declined to entertain it on a principle (subsequently characterised by the Appellate Division as “abuse of process”) which that Division approved. That principle reflected the approach of the civil Courts in the Netherlands, where a two-stage test was applied (*Al Tamimi*, paras 67 and 69). These two stages were (1) that the administrative body (which had earlier dealt with the matter) had made a determination and (2) that the relevant litigant had had access to an appeal process against that determination. In *Al Tamimi* both tests had been satisfied.

6. In the present case Mr Ahmed presented a complaint against Nautica to the ESO. However, the ESO did not determine that complaint. Before it could do so, Mr Ahmed withdrew it. The order made by the ESO dismissing the complaint expressly records that that dismissal was following the complaint having been withdrawn. Accordingly, in that case there was no question of the ESO having determined the claim or of a right emerging (and not being pursued) to appeal to the Regulatory Tribunal against such determination. *Al Tamimi* is, accordingly, readily distinguishable from the present case.
7. At the hearing Mr Mahmoud, who appeared for Nautica, accepted that *Al Tamimi* was distinguishable and that Mr Ahmed was not, by reason of the proceedings before the ESO, precluded from pursuing his claim in this Court. However, he strongly disputed Mr Ahmed’s claim that he was due unpaid salary. That dispute clearly raises issues of contested fact, which require to be examined in due course at trial.
8. The next issue addressed at the hearing concerned the claim made by Nautica in the second case. That turns, primarily, on a document headed “UNDERTAKING LETTER” signed by Mr Ahmed. Its whole terms are as follows:

“I, [Mr Ahmed], Undersigned hereby declare and undertake as under:

1. Shall not solicit any existing or former client of 360 Nautica, its successor’s assigns, subsidiary and/or associate (360 Play, Lecoffieur/ karak Stop) for the benefit of a third party that is engaged in similar business to that of the Company.

2. Shall not solicit or entice, or attempt to solicit or entice, either directly or indirectly, any of the employees of 360 Nautica to enter into employment or service with any business which falls under 360 Nautica.

I further declare that I have not violated any conditions above and shall comply with them even after leaving the company. I confirm that I do not have any document or information related to the company's business, customer's etc.”

9. On its face this undertaking, in so far as relevant to conduct after the termination of employment, involves two obligations, namely, (1) not to solicit any existing or former client of Nautica [or associated bodies] for the benefit of a third party engaged in a similar business and (2) not to solicit or entice, or to attempt to do so, directly or indirectly, any of the employees of Nautica to enter employment or service with any business operating in the same field as Nautica. Neither of these obligations is limited in time. Accordingly, on its face, Mr Ahmed undertook not so to act at any time for the rest of his life.
10. Article 20 of the QFC Employment Regulations provides: “Any provision in an Employee’s employment contract that provides that the Employee may not work on any similar projects or for a company which is in competition with the Employer must be reasonable, must not constitute an unreasonable restraint on trade, and must be appropriate to the circumstances of the Employee’s employment with the Employer”. That Article has recently been considered and applied by the Court in *Samia Abdel Rahim Othman Shqair v Aegis Services* [2021] QIC (F) 13 and in *Syed Meesam Ali Mousvi v Aegis Services* [2021] QIC (F) 16. It is not directly applicable to the Undertaking Letter, since the latter is not an employment contract (though closely related to a former employment) and concerns the soliciting of others rather than restricting an individual’s own work activity. However, it is an illustration in this jurisdiction of the general principle that a purported obligation which constitutes an unreasonable restraint of trade will not be given legal effect.
11. This Court sees no reason why that general principle, which is internationally recognised, should not be recognised and applied in this jurisdiction in situations which

are not within Article 20 but are parallel to it. In particular, the Court sees no reason why it should not be applied to the Undertaking Letter.

12. A material consideration in deciding whether a provision in restraint of trade is reasonable is the duration of the restriction. In the Undertaking Letter neither of the restrictions is in any way limited in time. No grounds are, in the claim form or otherwise, advanced by Nautica which could render this life-long bar reasonable. Accordingly, it is for that reason unenforceable.

13. There is a further major difficulty which faces this claim. Even if the Undertaking Letter were enforceable, the claim form does not set out any circumstances which could reasonably constitute any breach of them. The conduct complained of constitutes Mr Ahmed setting up (1) “a mini golf division which directly competes with the mini golf demarcation the Claimant has in place at Doha City Centre” and (2) “a trampoline division at the International Food Festival which mirrors a trampoline line the Claimant operates in Dar Al Salam Mall”. It is not suggested that either of these cited activities included the soliciting of existing or former clients of Nautica or of its associates for the benefit of any third party or the soliciting or enticing or any attempt to solicit or entice any of its employees to enter into the employment or service of any rival business. The circumstance that certain known trading activities of Nautica were replicated by Mr Ahmed on his own account after he had left his employment with it does not of itself constitute a breach of the Undertaking Letter: nor does the circumstance that certain former employees of Nautica were present at Mr Ahmed’s stalls constitute a breach of it.

14. In its written reply to the Directions of 3 April, Nautica refers to a provision (clause 22) in the Offer Letter relative to which Mr Ahmed subsequently had employment with it. That clause provided for certain restrictions on competitive activities by the employee both during the employment and for a restricted period (two years) after its termination. It was suggested that the Undertaking Letter was “not a stand-alone document, but rather is a follow-on to obligations which [Mr Ahmed] was previously obliged to adhere to”. The Undertaking Letter, it was argued, should be read with clause 22.

15. The Court rejects that contention. Nautica’s pleaded claim in the second action is founded exclusively on the Undertaking Letter. There is no reference to clause 22 in its claim form or in its reply to the defence. There is no written link between the Undertaking Letter and the Offer Letter or any part of it. These documents must stand or fall on their own terms. The Undertaking Letter falls. It is unnecessary to express a view as to whether clause 22, if it were to be relevantly pleaded, would or would not be enforceable. We note, however, that under Qatari national law (as recently amended), while certain non-competition provision may be made contractually, no such provision is valid for more than one year.
16. There are passing suggestions of other allegedly illegitimate activity by Mr Ahmed (for example, “wilful copying of the Claimant’s intellectual property”); but, such suggestions are all in the context of alleged breaches of the Undertaking Letter, upon which the claim in the second case is exclusively based. They fall with it.
17. Mr Ahmed’s own pleadings in his counterclaim in the second case include similarly unspecific allegations (for example, of Nautica harassing Mr Ahmed and of “unlawfully photographing [his] business premises”). No relevant averments of civil wrong are made. Reference was made to a provision of Qatari criminal law in relation to photographing in a public place. Any such infringement is not within the jurisdiction of this Court.
18. There is a proper basis for enquiry in the first case but not in the second (either in its claim or in its counterclaim). Accordingly, that claim and counterclaim will be struck out. The first case will proceed to trial. Orders are made accordingly.

By the Court,

[signed]

Justice Arthur Hamilton

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



Representation:

Mr. Adil Bashir Ahmed represented himself.

360 Nautica LLC was represented by Mr. Abubakar Mahmoud, Sharq Law Firm, Doha, Qatar.