



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

Neutral Citation: [2024] QIC (A) 11

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

[On appeal from [2024] QIC (A) 29]

Date: 16 October 2024

CASE NO: CTFIC0002/2024

BOOM GENERAL CONTRACTORS WLL

Claimant/Applicant

V

SHARQ INSURANCE LLC

Defendant/Respondent

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Dr Muna Al-Marzouqi



Justice Dr Georges Affaki

Order

1. Permission to appeal refused.

Judgment

1. The Applicant (**‘Boom’**) seeks permission to appeal from the judgment of the First Instance Circuit (Justices George Arestis, Fritz Brand and Dr Yongjian Zhang) – [2024] QIC (F) 29 – given on 22 July 2024 in which it dismissed the claim Boom had brought against the Respondent (**‘Sharq Insurance’**) for non-compliance with the procedural directions of the Court. It ordered that costs be paid on an indemnity basis because of Boom’s complete disregard of the directions of the Court.

Factual Background

2. Boom’s claim was made under a workman’s compensation policy issued by Sharq Insurance on 25 January 2016 for the 12-month period 1 January to 31 December 2016. Clause 1 of the policy extended the policy to “*cover employees being transported in proper passenger carrying vehicles between their residences and the work site.*” The extension provided:

However, this extension will not replace any mandatory insurance requirement by the Traffic Department and the amount recoverable hereunder in such instance will only be the excess beyond the amount recoverable under such mandatory policy.

3. The claim made by Boom as set out in its Statement of Claim dated 6 February 2024 was in respect of two fatal accidents to employees:
 - i. On 20 October 2016, Mr Najindra Mandal was killed as a result of negligent driving of a car owned by Boom whilst he was on his way to work. On 15 March 2021, the Qatari First Instance Court (Partial/Labour/Civil Circuit) held that Boom should pay QAR 200,000 to the heirs of Mr Mandal. The Statement of Claim summarised the judgment as being in respect of “*compensation for the death of their deceased relative during work*”.



- ii. On 24 November 2016, Mr Ghazi Miyah Moin Al-Din was killed in a motor accident when he was in a Boom vehicle on his way to work. The Execution Court of the Supreme Judicial Council had ordered payment of QAR 200,000 on 9 June 2022, following a judgment of the Qatari First Instance Court (Partial/Labour/Civil Circuit) on 28 January 2020 which was attached to the Statement of Claim. The Statement of Claim quoted the judgment as finding that “*his death occurred during and as a result of work*” .

4. The relief claimed against Sharq Insurance was:

Firstly: to oblige [Sharq Insurance] to pay an amount of QAR 400,000 (Four hundred thousand Qatari Riyals);

Secondly: to oblige the [Sharq Insurance] to pay to [Boom] physical and moral compensation to the amount of QAR 200,000 (Two hundred thousand Qatari Riyals Only) for the damages caused to it; and

Thirdly: to oblige [Sharq Insurance] to incur and pay fees and expenses.

5. Sharq Insurance advanced its defence to the claim on three grounds:

- i. The claim should have been submitted to arbitration under the arbitration clause in the policy.
- ii. The claims had lapsed under article 800 of the Qatari Civil Code as more than three years had elapsed since the dependents brought their claims.
- iii. The policy only paid the excess after the exhaustion of the mandatory motor insurance policy.

6. After Boom had served a Reply, the First Instance Circuit gave directions on 26 May 2024 for a trial on 23 June 2024, but the date was vacated.

7. On 12 June 2024, the First Instance Circuit gave new directions for a remote trial on 14 July 2024; the directions included a requirement that requests for disclosure were to be made by 13 June 2024, an e-Bundle be agreed and written submissions be served by 7 July 2024.



8. On 13 June 2024, Sharq Insurance made a request for disclosure which included the motor insurance policies relating to the vehicles in the fatal accidents and the correspondence between Boom and the motor insurers. No response was made by the lawyers and advocates for Boom, the Fahad Kaldari Law firm. At the request of Sharq Insurance, the Registrar requested a response from Boom's lawyers. None was received. The First Instance Circuit made an Order for disclosure on 1 July 2024. The lawyers for Boom did not comply with this Order; nor did they answer any correspondence from the Court. Nor did they participate in the preparation of the e-Bundle for trial.
9. In the light of the failure by Boom to comply with the Order, its failure to respond to any correspondence, and its failure to cooperate with Sharq Insurance in preparing the e-bundle for trial, an application was made by Sharq Insurance to strike out the claim under article 31.1.2 of the Court's Regulations and Procedural Rules (the '**Rules**') which provides:

Where a party has, without reasonable excuse, failed to comply with a direction or order of the Court , the Court may

- 1. make an order as to costs against that party in accordance with article 33 below*
- 2. where the party is the Claimant or the applicant dismiss the claim wholly or in part...*

10. The application was sent by Sharq Insurance and the Court to Boom on 4 July 2024 with a request for a response.
11. Boom did not respond in any way to the application. Sharq Insurance filed its written submissions on 7 July 2024 in accordance with the directions, but Boom did not provide any written submissions.

Hearing on 14 July 2024

12. At the on-line hearing on 14 July 2024, Mr Ahmed Nasar of the Fahad Kaldari Law Firm appeared for Boom. When asked for an explanation as to why there had been no response to the requests, he asked for an adjournment. The First Instance Circuit refused the request and made clear it would only hear the application made by Sharq Insurance strike out the claim. Mr Paul Fisher made submissions on behalf of Sharq



Insurance, stating that no material documents relating to the fatal accident to Mr Miyah had been provided and explaining why the request for disclosure of the motor insurance policies and the correspondence between Boom and the motor insurers was central to one of its defences.

13. When Mr Nasar replied, in brief submissions made in Arabic, he said that the claim was based on the policy issued by Sharq Insurance and the judgments of the Qatari Labour Courts determining that the two employees in the fatal accidents were on their way to work. He explained the failure to provide the documents, as translated into English, in these terms:

Regarding the correspondence the Court had previously sent to the law firm, I apologize for whatever outcome such behavior may have caused. I apologize for this, as it was due to miscommunication on our end and a lack of coordination between the person who was receiving the emails on our end and the law firm. So, I apologize for this part, and concerning the documents, we consider the documents submitted as the primary documents for the case, from our point of view, that is it your Honours, and we leave it to the esteemed Court to make the appropriate decision.

Judgment of the First Instance Circuit

14. In its written judgment the First Instance Circuit decided that the Court should exercise its discretion under article 31 of the Rules on the basis of the principles set out in *Mohamed Al-Emadi v Horizon Crescent Wealth LLC* [2021] QIC (F) 12 at paragraphs 7-12. In that decision the Court had held that, when considering an application for a strike out, the first question to be asked was whether it would be fair and just in the circumstances to strike out the defence. The First Instance Circuit held that the same principles also applied to an application to strike out a claim.
15. The First Instance Circuit considered that it should weigh up the reasons for non-compliance provided by Boom with the prejudice caused to Sharq Insurance. It observed at paragraph 13:

A proper explanation for the non-compliance will usually persuade the Court to confine itself to an adverse costs order rather than a striking out of the defence or claim unless the prejudice caused to the other side is virtually irreparable. Conversely, the absence of any explanation for the non-compliance may lead to a striking out as a token of the Court's disapproval, even when the prejudice caused to the other side is less severe.



16. The First Instance Circuit noted that despite requests made by the Court, the only excuse given was that Mr Nasar personally was unaware of the requests and directions. This was no explanation. Boom through its lawyers had acted in flagrant non-compliance for which there was no explanation. That could only be overlooked if there was no prejudice. The First Instance Circuit concluded that it would not be fair or just if Sharq Insurance was to be obliged to present its defence without sight of the motor policy or the correspondence with the motor insurers. It was clear that the policy issued by Sharq Insurance was a second level insurance and therefore the terms of the mandatory motor policies and the correspondence with the motor insurers were of vital importance to the defence (at paragraph 18):

Without this information there is a gaping hole in the Claimant's case which means that the Court can have no confidence that it is entitled to an indemnity from the Defendant under the policy. Hence, we find that it will not be fair and just if the Defendant were to present its defence without knowing the Claimant's potential answer (if any) to that defence.

The application for permission to appeal

17. On 17 August 2024, Boom made an application for permission to appeal supported by a lengthy memorandum setting out its grounds of appeal:

- i. The memorandum explained that Boom's claim was made under the Sharq Insurance policy seeking indemnification for the compensation paid to the dependants of the deceased and not for the amount due for the shedding of blood:
 - a. It claimed that Boom has been ordered by the Qatari First Instance Court (Partial/Labour/Civil Circuit) to pay compensation of QAR 200,000 to the dependents of each of the deceased employees in respect of each death. It had paid each dependent family compensation of QAR 200,000 awarded under judgments dated 15 March 2020 (Mr Mandal) and 28 January 2020 (Mr Miyha). Boom contended that the judgments conclusively determined that each fatal injury was a work injury under Law No. 14 of 2006.



- b. These judgments had awarded compensatory damages quite distinct from the amount for the shedding of blood due under Law No. 19 of 2008 in the amount also of QAR 200,000 in respect of each fatality. Boom said that the drivers of the cars and their insurers (Doha Takaful Company in respect of the death of Mr Mandal, and Daman Islamic Insurance Company in respect of the death of Mr Miyah) had been ordered by the criminal court to pay the amount due for the shedding of blood.
 - c. The First Instance Circuit had confused the claims for compensation and the amount due for the shedding of blood and not appreciated the nature of the claim made by Boom.
 - ii. The Order of the First Instance Circuit that Boom produce the motor policies was not a valid Order in respect of the 24 November 2016 accident as Boom was not a party to that policy. The motor insurance issued by Daman Islamic Insurance Company was issued to a car rental company and the amount due for the shedding of blood had been paid under that policy without any reference to Boom. In respect of the 20 October accident, the car had been owned by Boom; Boom had obtained the policy issued by Doha Takaful Insurance Company, though it was not relevant to the dispute.
 - iii. The communications from the Court had been in English and not in Arabic. This was contrary to the law.
- 18. As the memorandum did not appear to address the issue in the appeal as to why the decision given by the First Instance Circuit for striking out the claim was erroneous, the Registrar wrote by email on 1 September 2024 to Mr Mustafa of the Fahad Kaldari Law Firm (this was in both English and Arabic) pointing out that the memorandum was procedurally deficient as it did not address the actual decision of the First Instance Circuit and why it was contended that the decision to dismiss the case was erroneous. To assist Boom's lawyers, it enclosed a copy of the Court's Guide to Proceedings, the Maroon Book, which sets out guidance on the procedure of the Court, including the bringing an appeal.



19. In response to the Registrar's email, Boom submitted on 8 September 2024 a memorandum which was identical to that submitted on 17 August 2024 save that it produced for the first time some parts of the motor insurance policies relating to each accident and it asserted that its failure to comply with the request for disclosure and to respond to the requests was because the documentation was in English and not in Arabic.

Our conclusion

20. In our judgement permission must be refused as there are no substantial grounds for considering that the judgment of the First Instance Circuit was erroneous and no significant risk it would result in serious injustice, as set out in article 35(1) of the Rules and paragraph 27 of *Leonardo v Doha Bank Assurance Company* [2020] QIC (A) 1. We set out our reasons in respect of each of the three grounds.

Failure to set out submissions as to why the decision of the First Instance Circuit was erroneous

21. The memorandum submitted with the application for permission did not set out any submission as to why the decision of the First Instance Circuit to strike out the claim was erroneous. It did not address the issues raised in the decision which related to the application to strike out the claim. As this Court set out in *Zahir Makawy v Al Awael Captive Insurance Company* [2024] QIC (A) 9 at paragraph 4, the duty of the Applicant is to include in the application, "*a full statement of the basis on which it contends that the application should be granted.*" It should have set out its submissions as to why it contended the First Instance Circuit was erroneous in making the Order to strike out the claim.

22. Boom persisted in this failure, despite the Registrar writing to Boom's lawyers to point out this deficiency, following the observations made in *Zahir Makawy* at paragraphs 17-20. It failed to put forward any submissions in the second memorandum.

23. As to the assertion that the disclosure request was irrelevant on the basis that the claim was in respect of civil compensation and not for the amount due for the shedding of blood, that was no answer to the failure to comply with the Order or explain that failure to the First Instance Circuit. In any event, it was misconceived



because the terms of the motor insurance policies and the correspondence between Boom and the motor insurers were obviously relevant given the terms of the Sharq Insurance policy. Furthermore, submissions directed to the merits of the claim under the policy issued by Sharq Insurance were irrelevant as they ignored the fact that the First Instance Court had not made any decision on the merits of the claim, but had struck it out for the failure to make disclosure and to explain that failure.

24. In any event, it would appear that the First Instance Circuit properly exercised its discretion under article 31 of the Rules in accordance with the principles set out in *Mohamed Al-Emadi v Horizon Crescent Wealth* [2021] QIC (F) 12. It would not be appropriate for us to elaborate on this further or express a final view as no argument has been addressed to us on the principles set out in that decision.

Provision of the documents on appeal

25. It appears that most, if not all, of the documents which the First Instance Circuit ordered be disclosed were included with the memorandum seeking permission to appeal to this Court.
26. However, Boom did not comply with the Order of the First Instance Circuit in accordance with the Court's Regulations. The provisions relating to disclosure are summarised for the convenience of practitioners not familiar with the procedural law of the Court in the Court's procedural guide, the Maron Book, at Chapter 13. Boom simply ignored the Order and the subsequent Orders to make a written submission.
27. As this Court has made clear, parties must submit documents and evidence to the First Instance Circuit. When they fail to do so, it is generally not possible to provide the documents or evidence on the appeal: see for example *Klaas Bouwman v Kofler Group Middle East LLC* [2023] QIC (A) 1 at paragraphs 16 and 17. In this case, as no attempt was made to explain why the documents were not produced, we are not prepared to examine now whether Boom would have complied with the Order of the First Instance Circuit by producing to that Court what it has now produced to us.



Language

28. As regards the contention that the First Instance Circuit should have made the Order and addressed the correspondence in Arabic, there is again no basis for suggesting that the decision was erroneous or there was any significant risk of the decision resulting in serious injustice.
29. Under articles 8 and 9 of the QFC Law (Law No. 7 of 2005), Regulations made with the consent of the Council of Ministers govern the powers and functions of this Court. Under article 18, this Court is required to carry out its functions under the Regulations. As regards, the use of English and Arabic, the Court Rules provide:

Article (3)

Language

3.2 it is recognised that the Court is a court of Qatar. Accordingly, though proceedings before the Court will usually be conducted in English, the Court shall pay due respect to the fact that Arabic is the official language of the State. Parties before the Court shall be entitled to conduct proceedings in Arabic if they wish to do so.

Article (28)

Hearings, including trials

28.2 The Court may give directions as to:

28.2.2 the language or languages in which any hearing or any part thereof is to be conducted, (including as to the translation of documents into Arabic if appropriate), subject always to article 3.2 above;

30. As is clear from all the papers and correspondence in these proceedings, the Court operated in accordance with these provisions, as it does in every case. It is a bilingual Court and, although it usually works in the English language, it will always conduct correspondence, make Orders or conduct hearings in Arabic if so requested. No request was ever made for the Order to be made in Arabic. For example, in the hearing of the proceedings before the First Instance Circuit, the submissions made by Mr Nasr were made in Arabic and simultaneously translated. The Maroon Book is published in English and Arabic, but Boom's lawyers failed to have any regard to the way in which an appeal should be made in this Court. As we have pointed out, they ignored the procedure even when reminded by the Registrar.



31. In the submissions made by Mr Nasr to the First Instance Circuit it was never suggested that the failure to comply with the order of the Court had anything to do with the fact that the Order and subsequent correspondence had been made in English rather than Arabic. Mr Nasr did not do so as no request had been made for Orders and correspondence to be made in Arabic. It is also clear he understood the Order which had been made and the correspondence that followed. He sought to excuse the non-compliance on a completely different basis as we have set out in quotation of the submissions he made.

By the Court,



[signed]

Lord Thomas of Cwmagedd, President

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

Representation

The Claimant/Applicant was represented by the Fahad Kaldari Law Firm (Doha, Qatar).

