

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

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

6 May 2018

CASE NO: 06/2017

AL QAMRA HOLDING GROUP

Applicant

v

PINSENT MASONS LLP (QFC BRANCH)

Respondent

JUDGMENT

Before:

Lord Phillips of Worth Matravers, President

Justice Arestis

Justice Blair

ORDER

1. The Application seeking Permission to Appeal is refused; and
2. The Court makes no order as to costs.

JUDGMENT

1. This Application states that it is an application for permission to appeal against a decision of 25 March 2018. The decision in this case that was delivered on 25 March 2018 was the Costs Assessment of the Registrar. The time allowed for an application to appeal against that Assessment had expired before the date of this Application. However, the Grounds for Seeking Permission to Appeal relate not to costs but to the substantive judgment of the First Instance Court. This Court will proceed on the basis that the Application relates to that Judgment. As such the Application is made in time.
2. Article 35(1) of the QFC Civil and Commercial Court Regulations and Procedural Rules provides that a first instance judgment of the Court will usually be final but that *“if there are substantial grounds for considering that a judgment... is erroneous and there is a significant risk that it will result in serious injustice”* a Court can give permission to Appeal. This filter on the right to appeal is in the interests of the due administration of justice and protects an unsuccessful party from the fruitless expenditure of, and potential liability for, further legal costs in cases where there is no reasonable prospect that an appeal will succeed.

3. In this case the Court has concluded that there is no need for, nor any benefit in, an oral hearing and that the Application should be dealt with on the papers.
4. The Applicant advances four grounds of appeal. The Court will consider each in turn.

Ground 1

“The Claimant should have proved and the court should have verified that the services for which the invoices were submitted have been completed as per the relevant article 4 of the letter of engagement and the assignment should have been done as adequate for the services of engagement.”

5. This appears to be an attack upon the findings of fact of the Court in paragraph 11 of the Judgment. The Court there held:

“On the evidence available we are satisfied that each of these transactions was covered by letters of engagement...there is no evidence of any complaint or dissatisfaction at the time from the Defendant. Unsubstantiated and vague claims that there were oral variations by Mr Phillips (who at the relevant times was a Legal Director of the Claimant and the relationship manager with the Defendant) have no evidential foundation. Similarly generalized complaints about exceeding estimates are contrary to the contemporary documents as is the suggestion that the relevant work was not completed.”

6. Any appeal in this case would be by review, not re-hearing. The Applicant has made a bare assertion that the findings set out above are not justified on the evidence. That assertion is contrary to the express findings of the Court. There is no prospect that such an assertion would succeed on appeal.

Ground 2

“The Claimant should prove that the services were performed in diligence and carried out by an experienced professional and should have been cost effective.”

7. Once again this is an attack on the Court’s findings in paragraph 11 of the Judgment. The comments that we have made in paragraph 6 above apply equally here.

Ground 3

“The Court should have appointed an expert to scrutinize the invoices against the services performed by the firm so that an independent view could be obtained.”

8. We do not understand that there was any application to the Court by the Applicant for the appointment of an expert. Nor was there any justification for such an appointment. Any issues of fact as to the adequacy of the services performed by the Respondent were well within the competence of the Court. In any event we do not understand that any evidence was adduced by the Applicant, so there was no scope for an expert’s opinion.

Ground 4

“The Court erred in stating that the defendant had cash flow issues that prevented payment. The Court must have examined the evidence submitted to it to arrive at its decision.”

9. As to the first sentence, this observation of the Court formed no part of the grounds for its decision and is of no relevance. As to the second sentence, the Applicant’s problem, both before the Court and on this application, is that, whereas the Respondent filed substantial evidence, the Applicant failed to file any evidence in support of its case. The Court observed at paragraph 6 of its judgment:

“...although there have been written allegations made by the Defendant, which included a number of factual assertions, complaints and criticisms, there was no evidential base for any of these”.

10. For all these reasons we are in no doubt that there is no prospect whatever that an appeal by the Applicant would succeed. The criteria for grant of permission to appeal are not satisfied.
11. The Respondent has filed a Response to this Application. A Respondent to such an application is entitled but not obliged to take this course. It is not normally the practice of the Court to grant a Respondent the costs of serving a Response to an Application for Permission to Appeal and the Court makes no order as to costs.

By the Court,



Lord Phillips of Worth Matravers

President of the Court



Representation:

The Application Seeking Permission to Appeal was considered on the papers, written representations having been filed by both Parties.