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: [2020] QIC (F) 17

IN THE CIVIL AND COMMERCIAL COURT

OF THE QATAR FINANCIAL CENTRE

FIRST INSTANCE CIRCUIT

29 November 2020

CASE No. 3 of 2020

BETWEEN:

NASCO QATAR LLC

Claimant

v

MISR INSURANCE (QATAR BRANCH)

Defendant

JUDGMENT

Before:

Justice Bruce Robertson

Justice Arthur Hamilton

Justice Rashid Al Anezi

ORDER

1. The Defendant shall pay to the Clamant the sum of QAR 644,216.68.

2. The Defendant shall pay to the Claimant QAR 51,537.00 in respect of pre-judgment interest.

3. The Claimant is entitled to interest from the Defendant on the sum of QAR 644,216.68 at the rate of 4% per annum from the date of judgment until payment.

4. The Claimant is awarded against the Defendant its reasonable costs in these proceedings, these costs if not agreed to be assessed by the Registrar.

JUDGMENT

Introduction

1. The Claimant is an insurance broker, licensed and regulated by the Qatar Financial Centre ('the QFC'). The Defendant is an insurance company operating in the State of Qatar, although outside the QFC.

2. The Claimant's case, in short, is that its core business concerns collecting 'insurance applications' from its clients, which it then refers to the Defendant or other insurers, who will issue insurance policies to the relevant clients against premiums. Out of such premiums, the Claimant is entitled to a brokerage commission which is payable by the relative insurer, or otherwise deducted directly by the Claimant from any such premiums it collects. The Claimant states that, despite repeated demands, the Defendant has failed to pay the balance of due commissions in the sum of QAR 644,216.68 with respect to insurance policies placed by it on behalf of Darwish Holdings, a substantial Qatari enterprise, with the Defendant.

3. In its Claim Form, the Claimant sought to recover that sum, plus interest at a rate of 4% from the date the relevant commissions were due, as well as consequential losses and

damages estimated to be in the sum of QAR 386,000.00. The Claimant also sought to recover the costs of these proceedings.

4. The Defendant's initial response to this claim was to seek to challenge the jurisdiction of the Court to determine the matter. That challenge was dismissed by virtue of a judgment of this Court, handed down on 10 May 2020, reported at [2020] QIC (F) 4. No more need be said about it here.

5. The jurisdictional challenge having failed, the Defendant filed a Defence which was effectively three-fold. First, the Defendant contended that the claim was time barred as the Claimant had failed to initiative proceedings within six years from the date the cause of action accrued as required by Article 108 of the QFC Contract Regulations. Secondly, the Defendant argued that there was a 'lack of evidence' in support of the claim. In particular, it alleged that the Claimant had failed to provide a proper explanation of the legal and factual basis of its claim and had not explained what consequential losses and/or damages had been suffered as a result of any alleged breach. Thirdly, the Defendant submitted that there existed 'lack of certainty' in that there was no binding contractual relationship between the parties. The Defendant's point in this regard was that the parties had not reached a concluded agreement insofar as their commercial relationship was concerned and so it was not possible to say, with any degree of certainty, what the material terms of the alleged contract might be.

6. In response to Directions issued by the Court, the parties filed further submissions on 5 August 2020. In relation to the matters raised by the Defendant in its Defence, the Claimant responded as follows: In respect of the limitation argument, the Claimant submitted that the arrangement between the parties was based on a 'continuing commercial relation[ship]' and that, as such, time did not start to run until 20 June 2016 which is the date of the last payment received by the Claimant from the Defendant. As to the 'lack of evidence', the Claimant submitted that the business relationship between the parties was clearly evidenced by the established course of dealings between them, including the fact that the Defendant had paid the Claimant commissions in the sum of QAR 593,884.00. As to 'lack of certainty', the Claimant relied on various email exchanges, as well as the course of dealings between the parties, to establish what was said to be a clear insurance brokerage agreement. The Claimant submitted that the case

was suitable for summary judgment. The Defendant reiterated the points it had made in its Defence and agreed that the case was suitable for summary judgment, albeit in its favour.

7. Having considered the various submissions filed and served to date, the Court considered that the matter was not suitable to be disposed of by way of summary judgment and ordered a trial. Directions were set down and the matter was listed for a 2-day remote hearing on 16 and 17 November 2020.

8. Among the directions issued by the Court in the course of the proceedings was a direction which required, among other things, that the Defendant disclose certain documents and file and serve a relative witness statement. The Claimant subsequently submitted that the Defendant had failed to comply with that direction and sought, among other remedies, that its defence be struck out under Rule 31.1. Due to the then imminence of the 2-day hearing the Court deferred consideration of that submission until that hearing.

The contractual claim

9. On 3 January 2010 Darwish Holdings ("Darwish"), a substantial Qatari enterprise with multiple insurable interests, appointed the Claimant as its sole insurance broker with regard to all its insurance requirements. Shortly thereafter, following a meeting between officials of the Claimant and of the Defendant, the Claimant sent to the Defendant a copy of that appointment letter and certain other material.

10. In March of that year in the course of email correspondence between the Claimant and the Defendant the former stated that its commission with respect to insurance policies placed by it with the latter as insurer would be 5% on motor policies and 17.5% on all other lines of business. The Defendant accepted those terms. These percentages were of the premiums, initial or renewed, on policies issued by the Defendant to cover risks which Darwish required for its various interests. There was in the correspondence clear and uncontradicted evidence, which we accept, of agreement on the rates. The official acting for the Claimant was its then general manager in Qatar. The official acting for the Defendant was Ahmed Talaat; there is neither evidence nor suggestion in argument

that he lacked the necessary authority to agree these rates, which were in the event subsequently applied by the parties for more than five years.

11. No formal written contract was executed by the Claimant and the Defendant with respect to this arrangement but over the period from 2010 to the end of 2015 the Defendant issued or renewed, through the Claimant, a very large number of policies with Darwish, either under its own name or under an associated name, as the insured. Inclusive of a sum of QAR 170,142.00 paid in June 2016, commission totalling QAR 593,884 was paid by the Defendant to the Claimant under this arrangement (between 2011 and 2016).

12. The arrangement made in March 2010 did not specify any exact time or times when the commission so earned by the Claimant would be paid by the Defendant. The individual transactions under this arrangement amounted to several hundred each year. A running account was maintained into which the commissions earned by the Claimant were entered, against which were set such sums as the Defendant paid from time to time.

13. At the end of 2015 there was a substantial balance in favour of the Claimant outstanding on this account, that balance being subsequently reduced to some extent by the payment in June 2016 referred to above. When that payment and a minor correction in favour of the Defendant are brought into account, the balance amounts to QAR 644,346.68, which is the sum sued for.

14. Notwithstanding the payments previously made by it, the Defendant, apparently under new management, has declined to pay that balance or any part of it. This is not because there is evidence that the account is inaccurate but because the Defendant maintains that no sums were ever contractually payable by it under the above arrangement. It further maintains that, in any event, the Claimant's claim is unenforceable in a court of law.

15. Parties are agreed that the QFC Contract Regulations are relevant to the issues before the Court. Under Article 8 a contract need not be made or evidenced in writing and may be proved by any means. Under Article 15 it may be concluded by conduct of the

parties that is sufficient to show agreement. Consideration is not required for it to be binding (Article 31(2)).

16. The Defendant contends that no contractually binding agreement was entered into between the parties. There was no contract in writing; there was insufficient evidence of agreement; the arrangements were vague and ambiguous. Reference was made to *British Steel Corp v Cleveland Bridge & Engineering Co Ltd* [1984] 1 All ER 504.

17. We reject that contention. It is plain that, against the background of the Claimant having been appointed by Darwish as its sole insurance broker, the parties discussed and came to an agreement on the rates of commission which would be payable by the Defendant to the Claimant by way of commission. The word "commission" was used by both parties in the relative correspondence. That clearly was the return which the parties agreed the Claimant would receive from the Defendant for placing with it insurance business relative to Darwish's business. No doubt many details which might have been included in a written contract (such as its time span and particular dates or events when the commissions earned would be payable) were not included here; but none of these was essential to the conclusion of a contract of this kind. *British Steel Corp v Cleveland Bridge & Engineering Co Ltd* was concerned with whether a contract had been concluded for the sale and supply of certain materials (where agreement on the price was an essential term). It does not assist here. Further, the parties in the present case not only reached agreement sufficient to constitute a contract but actually operated it over a number of years. The Defendant cannot subsequently be heard to say that there was no contract.

18. There was a suggestion by Mr Ibrahim for the Defendant that the payments actually made by it had been recorded as "costs" rather than commission. However, no documents were filed by the Defendant to support any tenable view that the payments, when they were made, were treated by it otherwise than in discharge of its liability to pay commission contractually payable. Various receipts issued by the Claimant for payments received from the Defendant described these payments as being of "commission"; no objection was at the time taken by the Defendant to that description.

19. There was also a suggestion, made belatedly in these proceedings, that, because the Claimant was not licensed as an insurance broker by the Qatar Central Bank, it lacked the capacity to act as such and that it would be unlawful for the Defendant to pay to it any sums claimed as brokerage commission. The only basis advanced for the contention that the Claimant required such a licence was the definition clause (Article 1) in Law No. 13 of 2012. Despite being pressed by the Court on the matter, Mr Ibrahim was unable to identify any substantive provision in that Law or otherwise which prohibited a company such as the Claimant from charging or receiving commission as an insurance broker (or a person so charged from paying such commission) unless the former was licensed under that Law. Mr Khouri for the Claimant referred in this connection to a Circular said to have been issued by the Central Bank in 2019. But this Circular was not put in evidence before the Court and it is impossible to assess its significance, if any, to this issue. The Defendant's suggestion of illegality is rejected.

20. The Court is conscious that the principle of *ordre public* (in the sense of the non-enforceability of private contracts which are contrary to the public interest) applies in Qatar and that this Court may have a responsibility to take notice of an infringement of that principle, even if the relevant materials are not placed, or are inadequately placed, before it by parties. But, it is not to be assumed that an illegality has occurred. The Court is unaware of any basis on which it would be acting contrary to that principle if it were to give judgment in this case for monies to which the Claimant is otherwise entitled.

Limitation

21. The Defendant maintains that, on the assumption that the sums claimed by the Claimant as commission were ever payable by it, payment is, by reason of the operation of Article 108 of the Contract Regulations, no longer enforceable. That Article provides:

> *"(1) An action for breach of any contract must be commenced within six years after the cause of action has accrued…*
> *(2) A cause of action occurs (sic) when the breach occurs..."*

22. This action was commenced on or about 10 February 2020. The Defendant in its pleadings maintains, in substance, that a cause of action, in respect of each of the individual commissions which constitute the total sum sued for, accrued prior to 10 February 2014. Given that some of the insurance policies with respect to which commission is claimed were generated in 2015, these are clearly not rendered unenforceable by limitation; the same would apply to policies generated in 2014 but after 10 February. This was conceded by Mr Ibrahim at the hearing. No restricted scope for the limitation claim was advanced. However, a substantial number of the policies with respect to which commission is claimed were generated prior to 10 February 2014. So, the issue of limitation may, at least in theory, remain live.

23. The claims made by the Claimant are formulated on the basis that it suffered certain losses (including the total amount of the unpaid commission balance) as a result of the Defendant's "unreasonable rejection to pay the Claimant the due and payable Commission Balance". Thus, the action is based on breach of contract. It might be that it could have been formulated simply as a claim for payment under the contract. Had that been the case, a question might have arisen as to whether the limitation provisions under Article 108 had any application. But, it was not so formulated and no argument was presented that that Article was fundamentally inapplicable. Accordingly, the critical question is whether in the circumstances of this case any relevant "breach of contract" occurred before 10 February 2014.

24. The relevant business relationship between the parties commenced in 2010 and continued until at least 31 December 2015. It involved a multiplicity of individual transactions in which insurance was placed by the Claimant with the Defendant for Darwish. Over that period there were many hundreds of individual transactions. The arrangement between the parties took the form of a single contract with a running account, reflecting commissions earned by the Claimant and payments made by the Defendant from time to time. That single account continued from year to year. So far as appears from the evidence, no invoices or other demands for payment were, while the account was maintained, ever rendered by the Claimant to the Defendant, whether periodically or otherwise. The Defendant took no objection to the Claimant attributing the payments made by the former to such of the commissions earned as the latter thought fit.

25. There were no further commissions earned after the end of 2015 but on 20 June 2016 the Defendant made to the Claimant a payment of QAR 170,142.00. The Defendant did not then state that that was a final payment. No further payments were in fact made, although the Claimant informally pressed for such. Eventually, on 10 November 2019 the Claimant made a formal demand on the Defendant for payment of the outstanding balance. The Defendant denied liability to pay. It has not at any stage sought repayment from the Claimant of sums which the latter had previously been paid under the account.

26. The onus of establishing that a sum otherwise due is no longer recoverable by action rests on the party seeking to rely on the limitation in question. The sole argument presented by the Defendant in that respect proceeds on the proposition that a cause of action in respect of any commission accrued immediately and automatically upon each and every such commission being earned and that, no payment then being made, a relative breach of contract immediately occurred. Thus, in this case it is contended that there were several hundred causes of action, all of which accrued prior to 10 February 2014, and an equivalent and corresponding number of breaches of contract. That contention fails to recognise and give effect to the nature of the arrangements between the parties in the years between 2010 and 2015.

27. The underlying objective of a limitation provision is to protect the creditor from being subjected to stale claims, the investigation of which, including the marshalling of rebutting evidence, may be prejudiced by the passage of time. Where parties are in a continuing business relationship and maintain a running account reflecting their mutual rights and obligations, the risk of such prejudice is much reduced.

28. The Contract Regulations do not expressly provide for running accounts in the context of limitation; nor do the (English) Limitation Acts. However, it has been recognised judicially in England that, where a customer has a current account with a bank, a cause of action does not accrue to the customer until a demand for payment is made on the bank (*Joachimson v Swiss Bank Corporation* [1921] 3 KB 110, cited with approval by Lord Reid in *Arab Bank Ltd v Barclays Bank* [1954] A.C. 495 at p. 531; *McGee: Limitation Periods* (8th ed.) at paras 10.014-5). It may, however, accrue earlier if in the meantime the business relationship comes to an end (*In re Russian and Commercial Bank* (1955) 1 Ch. 148, per Wynn-Parry, J at p. 157).

29. Although the nature of the relationship between a bank and its customer on a current account (namely, that of borrower and lender) is different from that in the present case, there is a parallel in that both operate on a running account with potentially multiple transactions over time. In a particular case the time when any limitation period commences will depend not only on the applicable legislative provisions but also on the terms, express and implied, of the particular contract.

30. For the purposes of Article 108 the relevant starting date for any limitation period is the date of the relative breach. Where a claim is made with respect to a sum said to be due under a contract, the date of the breach is not necessarily the date when the claimant became "entitled" to the sum in question but may be the (possibly later) date when the creditor failed or declined, expressly or implicitly, to make payment. Mr Ibrahim relied on evidence given by Mr Aaraj, the only witness in the case, to the effect that the Claimant became "entitled" to commission as soon as each individual transaction was completed and that such commission was then "due". But, while upon individual items of commission being earned the relative figures would properly be brought into the continuing account as a credit in the Claimant's favour, it does not follow that there immediately occurred a breach of contract by the Defendant, with the attendant commencement of a limitation period with respect to that item of commission.

31. The proper inference is that under this contract a breach of contract arose only when the Defendant declined to settle the outstanding balance on the single account. That event may have been when the Claimant first demanded payment and the demand was not met; it may, if a demand was first made only after the parties had ceased to do business, have been when they so ceased. On the evidence before the Court, no such event occurred before 10 February 2014. On this approach the earliest possible date for the commencement of the limitation period is 31 December 2015 (when the last entry was made on the running account); other possible dates are dates subsequent to 20 June 2016 when the Claimant was pressing for payment of the outstanding balance. The six-year limitation period had thus not expired when the present proceedings were commenced in February 2020. In these circumstances the Defendant has failed to prove that any of the commission sought to be recovered by this litigation is irrecoverable by reason of the operation of the limitation provisions in the Contract Regulations. This defence must accordingly be rejected.

32. Mr Ibrahim relied on three judgments of the national Qatari courts (Case Nos. 2052, 2053 and 1070 / 2015). However, all of these concerned prescription issues arising between an insured and an insurer in relation to claims for damage to property, the relative legal provisions being Articles in the Qatari Civil Code. None of these judgments is of assistance in resolving the issues in this case.

33. Further, the Claimant relies on the partial payment of QAR 170,142.00 made by the Defendant on 20 June 2016 and submits that any limitation period which had already started was effectively interrupted by that event, the limitation period thereafter starting afresh. The (English) Limitation Act 1980 by section 29(5) provides that, where a partial payment is made in respect of a right, the cause of action is treated as having accrued on and not before the date of such payment (such payment being, in effect, an acknowledgement of the right). There is no express provision to that effect in the QFC Contract Regulations. However, we note that, in the history of English law, the rule that the running of a limitation period is interrupted by acknowledgement and by part payment was initially introduced judicially as an equitable remedy before being incorporated into statute (*Surrendra Overseas Ltd v Government of Sri Lanka* [1977] 2 All ER 481, per Kerr J at p. 487, citing the speech of Lord Sumner in *Spencer v Hemmerde* [1922] 2 AC 507; *Cheshire, Fifoot and Furmston's Law of Contract* (17th ed.) at p. 809) . A rule to a similar effect forms part of Qatari national law (Civil Code, Article 414) and is replicated, in one form or another, in very many jurisdictions throughout the world. We see no reason why it should not be recognised judicially as implicit in the Contract Regulations.

34. The payment of QAR 170,142.00 made by the Defendant on 20 June 2016 was clearly a payment made in respect of commissions earned by the Claimant under the contract which we have held existed between the parties. It was not stated to be a payment in final settlement of all commissions earned under that contract. In these circumstances it is properly to be regarded as a part payment under that contract and to have the effect of interrupting any limitation period then running and of starting a fresh such period. On that additional ground we reject the Defendant's limitation contention.

Quantum of the Principal Sum

35. The sum sued for is made up of total commission (QAR 1,245,331.680, less payment received (QAR 593,984.00), with a further deduction of QAR 7,101.00 by way of correction for excess commission charged. There was no serious challenge, evidentially or in argument, to the Claimant's computation, which we accept.

Striking Out

36. As narrated above, the Claimant in advance of the hearing date submitted that the Court should strike out the defence. Given the imminence of that date, the Court ordered that that submission be considered at that hearing. In the event, the Court, having heard the case on its merits, has decided in favour of the Claimant. In these circumstances it is unnecessary to decide the issue of striking out and we say nothing further about it.

Interest and Damages

37. In addition to the commission balance the Claimant seeks interest on it at the rate of 4% "over a period from the date when the Commission Balance was due until the date of this Case" and thereafter until final settlement. The Court has power to make an order for the payment of interest (Rules, Article 10.4.9). The exercise of that power is one of discretion.

38. In *Dentons & Co (QFC Branch) v Bin Omran Trading & Contracting LLC* [2020] QIC (F) 15 this Court observed (para 13) that interest is generally awarded to compensate a party for being kept out of money rather than for other reasons. The Court noted that there had been significant delays between the debts becoming due and the commencement of proceedings (about three years). It restricted the period over which interest was to run to nine months. In the present case there was likewise significant delay, which was inadequately explained, between the last payment by the Defendant in June 2016 and the commencement of the proceedings in February 2020. While we were told that representations for payment had been made on several occasions in that period, the only formal step taken (and the only step vouched) was the service of a pre-litigation notice in November 2019. In the circumstances we consider that, in this case,

pre-judgment interest should be awarded over a total period of two years. The rate of interest claimed is at 4% per annum, which is reasonable. Such interest (capitalised) amounts to QAR 51,537.

39. Interest at the same rate will further run on the principal sum from the date of this judgment until payment.

40. A claim for damages in respect of consequential losses was made in the Claim Form but was not pursued at the hearing.

Costs

41. The Claimant having been substantially successful is entitled to its reasonable costs, these to be assessed by the Registrar if not agreed.

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. Mohammed Ibrahim (The Law Office of Riad Rouhani, Doha, Qatar).