



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: [2023] QIC (F) (4)

**IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT**

Date: 25 January 2023

CASE NO: CTFIC0019/2021

FADI SABSABI

Claimant/Respondent

v

DEVISERS ADVISORY SERVICES LLC

Defendant/Applicant

JUDGMENT

Before:

Justice Her Honour Frances Kirkham

Justice Fritz Brand

Justice George Arestis

Order

1. The Registrar's assessment of costs dated 27 October 2022 is hereby set aside.
2. The Claimant is not entitled to be paid any costs he claims in respect of the litigation between him and the Defendant.
3. The Claimant shall pay the Defendant forthwith the sum of QAR 10,000.00 in respect of the costs of Devisers Advisory Services LLC's application.

Judgment

1. This is an application by Devisers Advisory Services LLC ("**Devisers**") in respect of a costs assessment made on 27 October 2022. Devisers challenges the assessment and seeks an order that the assessment be dismissed, and that Devisers not be liable to pay any costs. The Claimant in the original action, Mr Fadi Sabsabi, opposes the application.
2. In the underlying proceedings, the First Instance Circuit dealt with Mr Fadi Sabsabi's claim against the Defendant, Devisers, and Devisers' counterclaim. The parties completed various procedural steps, and the claim and counterclaim were heard by the Court at a remote hearing on 28 February 2022.
3. The judgment of the first instance Court was issued on 12 April 2022. It ordered as follows:

The defendant is directed to pay to the claimant:

(a) The sum of QAR 65,000.00, and

*(b) Reimbursement of expenses incurred for
Visa application fees in the sum of US\$3,177.00, and
Immigration health surcharge fees in the sum of US\$6,372.00*

(c) The reasonable costs of these proceedings to be assessed by the Registrar if not agreed.

4. The judgment includes the following:

6. *From the outset neither party has had legal representation. The pleadings, witness statements and other documents filed on both sides bear the hallmark of lack of legal training and experience.*

7. *The Court conducted a remote hearing (due to practical difficulties created by the Covid-19 pandemic) on 28 February 2022. At the hearing the claimant represented himself, while the defendant was represented by Mr Zohaib Ahsan and Mr Rivan Mouhamad. [Mr Fadi Sabsabi] gave evidence on his own behalf and also called Mr Kamal Fadlelmola to give evidence. The only witness called on behalf of the defendant was Mr Muhammed Irfan Shahid who practices as an accountant in London.*

5. In its judgment issued on 22 June 2022, the Appellate Division refused Devisers' application for permission to appeal against the judgment of the First Instance Circuit.
6. Mr Fadi Sabsabi then applied to the Court for his costs to be assessed. The Registrar undertook an assessment. By his assessment dated 27 October 2022, he awarded Mr Fadi Sabsabi "*his reasonable costs in the sum of QAR 70,000*", and ordered Devisers to pay that sum forthwith.
7. On 21 November 2022, Eversheds Sutherland (Doha) on behalf of Devisers issued an application seeking a review of the Registrar's costs assessment. Rashed Raja Al-Marri Law Office, on behalf of Mr Fadi Sabsabi, provided a reply dated 19 December 2022. Eversheds Sutherland responded on 16 January 2023.
8. In summary, Devisers seeks an order that the costs awarded are disproportionate and that no costs at all should have been awarded to Devisers. Mr Fadi Sabsabi seeks orders that:
 - i. The Registrar's cost assessment be upheld.
 - ii. Devisers be ordered to pay Mr Fadi Sabsabi QAR 70,000.00 as determined by the Registrar.
 - iii. Devisers pay him QAR 45,200.00 in respect of the costs he has incurred in responding to Devisers' application.

Jurisdiction

9. There is no definition of “costs” in the Court’s Regulations and Procedural Rules (the “**Rules**”).
10. Article 33 of the Rules contains provisions concerning the costs of proceedings:

Costs

33.1. The Court shall make such order as it thinks fit in relation to the parties' costs of the proceedings.

33.2. The general rule shall be that the unsuccessful party pays the costs of the successful party. However, the Court can make a different order if it considers that the circumstances are appropriate.

33.3. In particular, in making any order as to costs the Court may take account of any reasonable settlement offers made by either party.

33.4. Where the Court has incurred the costs of an expert or assessor, or other costs in relation to the proceedings, it may make such order in relation to the payment of those costs as it thinks fit.

33.5. In the event that the Court makes an order for the payment by one party to another of costs to be assessed if not agreed, and the parties are unable to reach agreement as to the appropriate assessment, the necessary assessment will be made by the Registrar, subject to review if necessary by the Judge.

11. Thus, by article 33.1, the Court has a wide discretion as to the costs which may be awarded. By article 33.5, a review of the Registrar’s assessment may be made by “*the Judge*” i.e. by the Justices of the First Instance Circuit. That review must be made in accordance with the provisions of article 33.

The Registrar’s approach

12. At a costs assessment hearing conducted by the Registrar, Mr Fadi Sabsabi represented himself. Devisers was represented by Mr Alexander Whyatt of Eversheds Sutherland.
13. The Registrar’s judgment records in some detail the submissions made by both sides (e.g. the nature of the fee agreement said to have been reached between Mr Fadi Sabsabi and the Sharq Law Firm, whether that firm’s fees had actually been paid and so on). It sets out at paragraph 4 the information which Mr Fadi Sabsabi provided:

.... [Mr Fadi Sabsabi] filed two invoices with the Registry, both from Sharq Law Firm (“the Firm”). The first was dated 15 May 2022 in the sum of QAR 110,000 for “professional fees” for the period 27 September 2021 to 15 May 2022. It was accompanied by a brief narrative that identified the services as having been provided by Rashid Al-Saad, the Managing Partner of the Firm. It identified that Mr. Al-Saad had undertaken a “case assessment” (QAR 30,000), “review of submissions and advising client” (QAR 40,000), “review of response submissions” (QAR 30,000), and “meeting with the client and witness(es)” (QAR 10,000). The second invoice was dated 16 May 2022 in the sum of QAR 10,000 and pertained to a “review of permission to appeal submission”, with Mr. Al-Saad being identified as the provider of the services.

These were the fees said to have been incurred by Mr Fadi Sabsabi in connection with the Devisers litigation.

14. As the Registrar said, at paragraphs 3 and 4 of his judgment:

3 Although the First Instance Circuit of the Court had awarded [Mr Fadi Sabsabi] his reasonable costs of the proceedings, neither party had in fact been legally represented throughout the proceedings, including at the trial. Indeed, at paragraph 6 of its judgment, the Court observed that:

“From the outset neither party has had legal representation. The pleadings, witness statements and other documents filed on both sides bear the hallmark of lack of legal training and experience.”

4. It therefore came as something of a surprise when [Mr Fadi Sabsabi] filed two invoices with the Registry, both from Sharq Law Firm...

15. At paragraph 10 of his judgment, the Registrar records the first of Devisers’ written submissions:

10 (a) The understanding of the parties at trial was that each was representing itself and that no legal fees had been incurred; this also appeared to be the understanding of the Court given its observations at paragraph 6 of its judgment. As [Devisers] was unaware that [Mr Fadi Sabsabi] was in fact obtaining professional legal advice, it was unable to appropriately assess its cost risks of the litigation.

16. The Registrar considered this submission. He said, at paragraph 21 of his judgment, as follows:

21. I add a word of warning, however, as follows. It seems to me that where, as here, a party has incurred, or is incurring, legal costs in relation to a piece of

litigation before the Court that neither the opposing party, nor the Court, is aware of, this may be a factor to be borne in mind when assessing the extent to which costs ought to be recovered as against the losing party. A party to legal proceedings ought to have some idea as to the scope of its costs liability if it unsuccessfully brings or defends a claim. In the present case, [Devisers] had no idea that it was going to be faced with a bill of costs in the form of the two invoices because [Mr Fadi Sabsabi] at no stage revealed that he had been paying for legal assistance in respect of his case. At all times, [Devisers], and the Court, proceeded on the basis that [Mr Fadi Sabsabi] was a litigant in person. In future cases, it seems to me that parties to litigation need to be open about the extent to which they have engaged lawyers so that opposing parties can bear this in mind when assessing the cost risks of litigation. A failure to be transparent about this in future cases may mean that a successful party fails to recover its costs to the extent it otherwise might have.

17. We respectfully agree with the warnings given by the Registrar in that paragraph. However, although he had identified the need for parties to be open about the extent to which they had engaged lawyers and that failure to do so might result in a party not recovering its costs, the Registrar did not explain how, if at all, he had taken that into account when considering the circumstances of this case. He failed to apply the reservations he had himself raised. It is not clear why he did not do so.
18. We consider that in this case a proper approach to the exercise of the discretion whether to award costs, and if so how much, would have taken into account the following factors:
 - i. At no stage until the application for costs was to be assessed, did Mr Fadi Sabsabi disclose to Devisers that he had engaged lawyers whose costs he might seek to recover.
 - ii. Devisers was entitled to assume that Mr Fadi Sabsabi was an unrepresented party.
 - iii. As submitted on its behalf, Devisers was unable appropriately to assess its cost risks of the litigation.
19. We consider that a party in the position of Devisers in this case (i.e. one assuming it was dealing with an unrepresented party) would be entitled to assume that its exposure to the other party's costs would be small. It might be at risk of paying e.g. the opposing

party's out-of-pocket expenses consequent upon the litigation. If, however, a party in the position of Devisers in this case knew that it might face not only a judgment in respect of the sums claimed, but also a costs claim, it might well proceed differently. In those circumstances it might, for example, engage lawyers itself or take into account any potential costs exposure when considering settlement.

Conclusion

20. The costs which the Registrar ordered Devisers to pay were in respect of the Sharq Law Firm's legal fees, and not in respect of any other expenses or costs incurred by Mr Fadi Sabsabi in the litigation.
21. We conclude that the Registrar erred in his application of the wide discretion he had to determine costs. He failed to take into account the factors we have identified as significant in this case. The only conclusion the Registrar could have come to, had he approached correctly the exercise of his discretion as to the costs sought by Mr Fadi Sabsabi, was that Devisers should not be ordered to pay any costs to Mr Fadi Sabsabi.
22. It is therefore unnecessary to consider Devisers' submission that the costs it was ordered to pay were disproportionate or otherwise consider the quantum of the costs ordered.
23. We also conclude that it would generally be contrary to the overriding objective of this Court (namely to deal with cases justly, as set out in article 4 of the Rules) to require a party in Devisers' position to pay the legal costs incurred by the opposing party when that opposing party had given the impression that it was not legally represented.
24. We therefore conclude that the Registrar's order of 27 October 2022 should be set aside and replaced by an order that Mr Fadi Sabsabi be entitled to no payment in respect of his costs.
25. Devisers seeks an order that Mr Fadi Sabsabi pay QAR 45,000.00 in respect of the costs of this application. Devisers was represented by Eversheds Sutherland. No detail of the sum claimed has been provided. However, Eversheds Sutherland have filed two detailed submissions on behalf of Devisers. We conclude that Devisers is entitled to a

contribution towards the costs it has incurred in respect of this application to set aside the assessment. We consider that a contribution by Mr Fadi Sabsabi of QAR 10,000.00 would be fair and so award that sum to Devisers.

By the Court,



[signed]

Justice Her Honour Frances Kirkham

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

Representation

The Claimant was represented by Rashid Raja Al-Marri Law Office (Doha).

The Defendant was represented by Eversheds Sutherland (Doha).