



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: [2024] QIC (F) 53

**IN THE QATAR FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT
FIRST INSTANCE CIRCUIT**

Date: 20 November 2024

CASE NO: CTFIC0042/2024

THALES QFZ LLC

Claimant/Applicant

V

ALJABER ENGINEERING W.L.L.

Defendant/Respondent

AND

BNP PARIBAS QATAR

Notice Party

JUDGMENT

Before:

Justice Fritz Brand

1. These are the reasons for an interim injunction granted in favour of the Applicant against the Respondent as a matter of urgency and without notice on 7 November 2024. The applicant is Thales QFZ LLC a company incorporated and licenced to do business in the Qatar Free Zone. The Respondent, AlJaber Engineering W.L.L. is a corporate entity established in the State of Qatar.
2. This Court has jurisdiction in the matter by virtue of article 44 of the Qatar Law No. 34 of 2005 as amended by Law No. 15 of 2021, in that it is a civil and commercial dispute involving an entity established in the Qatar Free Zone. The dispute has its origin in a subcontract concluded between the parties on 29 January 2022 for the installation of security systems and equipment by the Applicant as subcontractor to the Respondent in the execution of its contract with the State of Qatar for the development of a project referred to as the New Hamad Port Project.
3. The subcontract provided for a contract price of QAR 13,250,000. In terms of clause 2.6.1, the Applicant was obliged to provide a Performance Guarantee equal to 10% of the contract price. On 30 January 2022, BNP Paribas issued a Performance Guarantee in compliance with this obligation at the behest of Applicant in favour of the Respondent for an amount of QAR 1,325,000.
4. Litigation between the parties commenced when the Applicant as the Claimant lodged its Claim Form in an action against the Respondent as the Defendant who thereupon filed its Defence and Counterclaim in the action on 3 November 2024. Since the present dispute does not directly flow from the pleadings in the main case, they need not be analysed in detail for present purposes. Suffice it to say that the Applicant's case, as formulated in its Claim Form, is that:
 - i. The Subcontract provided for the completion of the works undertaken by the Applicant on the basis of 9 milestones.

- ii. The Applicant completed the works in relation to milestones 1 to 3 and completed part of the works in relation to milestones 4, 6 and 7, but due to the Respondent's failure to comply with its obligations under the subcontract, the Applicant was prevented from completing the works.
 - iii. Despite the Applicant's compliance with the terms of the contract and its partial completion of the works, the Respondent had failed to make payment in accordance with the terms of the subcontract or at all. In consequence, the Applicant suspended works under the contract on 24 January 2023 and eventually terminated the contract on 20 February 2023 pursuant to article 183 of the Qatari Civil Code (Law No. 22 of 2004).
 - iv. The Applicant inter alia claimed: (i) an order declaring that the contract had been duly terminated by it; (ii) payment of the amounts allegedly owing to it upon termination of the contract; and (iii) an order compelling the Respondent to return the Performance Guarantee to the Applicant.
5. In its Defence and Counterclaim, the Respondent inter alia:
 - i. Disputed that the Applicant is entitled to the amounts claimed or to any payment at all.
 - ii. Disputed the Applicant's claim that the contract had been terminated.
 - iii. Sought an order that the Applicant be compelled to "*maintain the validity of the Performance Guarantee until the completion of the scope of the claimant's subcontract and the acceptance of the work by the Engineer.*"
6. On 29 October 2024, the Respondent sent a letter to BNP Paribas demanding payment of QAR 1,325,000 under the Performance Guarantee. According to the letter, the demand was made on the basis that, "*the Applicant is in breach of its obligations under the underlying relationship as it has failed to perform the works under the contract. As a result, the contract has been terminated*".

7. This led to the urgent application for an interim injunction under present consideration. The relief sought was in essence that the letter of demand be withdrawn pending the return day of the injunction; that BNP Paribas be notified that it was not required to make payment by virtue of the demand; and that, if payment had already been made to Respondent pursuant thereto, the Respondent be ordered to ringfence and retain the proceeds pending the return day.
8. Broadly, the requirements for the interim injunction sought are threefold. First, the Applicant must establish the claim relied upon for the ultimate relief on a prima facie basis, even if open to some doubt. Second, that if the relief is refused, the Applicant is likely to suffer irreparable harm. Third, that the balance of convenience favours the Applicant in that the unwarranted refusal of the injunction sought will cause the Applicant more harm than the Respondent will suffer if the application is wrongly granted.
9. As to the right relied upon, the Applicant accepted for purposes of this application, and I think rightly so, that the Performance Guarantee is a simple autonomous on demand bond. That is, a contract between the Respondent and the bank for the presentation under which the bank is obliged to pay without reference to the terms of the underlying contract and despite objection by the other party to the underlying contract. It is further accepted by the Applicant that the letter of demand is in accordance with the prescribed terms of the Performance Guarantee.
10. The contention relied upon by the Applicant is however that this general approach to demand guarantees is subject to the “*fraud exception*” acknowledged by this Court, as in other jurisdictions, in *Obayashi Qatar LLC v Qatar First Bank LLC* [2020] QIC (F) 5 at paragraph 90. In accordance with the fraud exception, the Court will intervene to restrain a demand under the guarantee if there is evidence that the demand was fraudulently made. The Applicant’s further contention was that in the present context, fraud had been established where it is shown that the demand was made with no honest belief in the truth of its contents or recklessly, in the sense of not caring whether the contents were true or false. I agree with this contention.

11. Applying these principles to the facts, I also find myself in agreement with the Applicant's further contention that on the papers, it had been established, at least prima facie, that the demand by Respondent which the Applicant sought to restrain, had been fraudulently made. I say that mainly because of the inherent conflict between the allegations relied upon by Respondent in the letter of demand on the one hand, and in the Defence and Counterclaim on the other. According to the Defence and Counterclaim, the subcontract is still in existence and on that basis it is claimed that the Applicant be compelled to maintain the Performance Guarantee until completion of the contract. By contrast, the whole basis relied upon in the letter of demand is that the contract had been terminated by reason of the Applicant's breach.

12. As I see it, a further reason to think that the allegation of termination, which is fundamental to the demand, was to the Respondent's knowledge unfounded, arises from the fact that the Applicant had suspended its work under the subcontract in January 2023 and purported to terminate the contract in February 2023. Yet, no attempt was made by the Respondent to call on the Performance Guarantee. It was only after the Claim Form was filed and shortly before the Defence was due that the demand was made. This, I believe, is another indication that the Respondent never thought that the subcontract had been terminated. It was only after litigation proved to be inevitable that it made the demand on the basis of allegations it knew to be unfounded so as to gain a tactical advantage in the course of the litigation.

13. It is undoubtedly possible that, on the return day, the Respondent may be able to establish the truth of the allegations on which the demand relies. But at this stage I find that the Applicant has made out a prima facie case, which is sufficient for present purposes.

14. As to the requirement of irreparable harm, Mr Graeme Perry, the Applicant's senior contracts manager, explained under oath (in an affidavit) why a claim for damages will not be an adequate remedy for the loss that the Applicant will suffer if the call on the Performance Guarantee should be allowed to proceed. Amongst other things, so he said, the Applicant will suffer serious reputational harm and will find it difficult, if not impossible, to persuade banks in Doha and even in the wider region to provide it with performance or advance payment guarantees, without which it will be impossible for

the Applicant to carry on with its business. That is apart from the unwarranted and unfair tactical advantage the Respondent will be allowed to gain in the main proceedings.

15. As to the balance of convenience, it is fairly clear to me that the potential harm that the Applicant may suffer if the injunction were to be wrongly refused will outweigh the harm that the Respondent will suffer if the injunction eventually proves to have been unwarranted. The harm that the Applicant may suffer has been explained under the rubric of irreparable harm. By contrast the only harm the Respondent may suffer, as I see it, is that it will have to wait a few days longer for payment of the guaranteed amount with the concomitant loss of interest for which the Applicant will be liable.

16. Finally, there is the consideration that the application was brought without notice to the Respondent. Understandably, this consideration gave me serious concern. Ultimately, I was persuaded, however, that since payment by the bank could happen any day; that on the Applicant's version, the Respondent has already shown a tendency not to play by the rules; and the overwhelming balance of convenience favours the Applicant, the absence of notice should be condoned.

17. For these reasons the interim injunction of 7 November 2024 was granted.

By the Court,



[signed]

Justice Fritz Brand

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

Representation

The Claimant/Applicant was represented by Mr James Bowling of Counsel (4 Pump Court, London, United Kingdom), instructed by Al-Tamimi and Company (Dubai, United Arab Emirates).