



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 (A) 5

IN THE QATAR FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT
APPELLATE DIVISION

[On appeal from [2024] QIC (F) 1]

Date: 15 April 2024

CASE NO: CTFIC0019/2023

QATAR FINANCIAL CENTRE AUTHORITY

Respondent

V

HORIZON CRESCENT WEALTH LLC

Applicant

AND

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

First Interested Party

AND

MOHAMED ABDULAZIZ MOHAMED EL-EMADI

Second Interested Party

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Fritz Brand

Justice Yongjian Zhang

Order

1. Permission to appeal is refused.

Judgment

Introduction

1. The Applicant ('**HCW**') seeks permission by an application dated 7 March 2024 to appeal from an Order of the First Instance Circuit ([2024] QIC (F) 1; Justices Sir William Blair, Ali Malek KC and Dr Muna Al-Marzouqi) given on 8 January 2024 ordering that HCW be wound up and that the Joint Liquidators be the joint liquidators of HCW and other ancillary orders.

The factual background and earlier proceedings

2. HCW was incorporated in the Qatar Financial Centre ('**QFC**') on 4 February 2015 and was authorised to carry out the non-regulated business of Trust Administration, but not any regulated business including asset management.
3. In 2017, significant sums were paid into trust accounts in the name of HCW at the Qatar National Bank ('**QNB**'), but following an investigation by the QFC Regulatory Authority ('**QFCRA**'), all HCW's accounts at the QNB were frozen on suspicion of money laundering.

4. Arising out of these events there have been several claims seeking payment of money from HCW. A claim by the Second Interested Party, Mr El -Emadi, the former Deputy Chair of HCW for sums due under his employment contract resulted in a summary judgment; and the QFC Authority ('QFCA') obtained judgment for unpaid tax and other sums due. Both judgments are final and enforceable. Regulatory proceedings were also commenced against HCW. It was found to have committed serious misconduct which resulted in the imposition of substantial penalties. Its appeal to the QFC Regulatory Tribunal failed. Permission to appeal to this Court was refused – see *Horizon Crescent Wealth LLC v QFCRA and QFCA* [2020] QIC (A) 2. The penalties have been made enforceable as judgments.
5. The QFCA and QFCRA put before the First Instance Circuit evidence to prove that HCW had insufficient funds to meet the judgments and was insolvent, even assuming that the funds held by HCW were beneficially owned by it and not funds held by it in the only business it was allowed to conduct – Trust Administration.
6. On 31 July 2023, HCW was ordered by the First Instance Circuit to identify in an affidavit the ownership of the assets in HCW's accounts and to give worldwide disclosure of its assets. Some information was provided but this was insufficient, and no affidavit was provided.
7. On 29 August 2023, an application was made for a Winding Up Order. Various applications delayed progress in the proceedings. HCW was represented by Mr Sami Abu Shaikha (Advocates and Legal Consultants, Doha). A Case Management Conference was fixed in October 2023 for 12 December 2023.
8. On 11 December 2023, Orso Avocats, a Swiss firm of lawyers based in Geneva, notified the Court that it had been appointed in place of HCW's previous lawyers. Orso Avocats sought an adjournment to allow the production of audited financial statements from 2017; an apology was tendered, and it was said that this was the result of "*force majeure*". That application was renewed by Orso Avocats who appeared by video link at the hearing on 12 December 2023. It was refused. The hearing proceeded. The Court stated at the conclusion of the hearing that it would make a Winding Up Order for reasons to be given.

The judgment of the First Instance Circuit

9. In its judgment given on 8 January 2024, the First Instance Circuit gave its reasons:
 - i. For refusing the adjournment: it had been given no explanation of what was meant by “*force majeure*” or why the application had been made so late. Furthermore, the application for the provision of financial statements lacked credibility as HCW had failed to comply with the Order of 31 July 2023 to produce an affidavit setting out details of the interests in the funds and the whereabouts of its assets. The Court considered that any orderly resolution of the case would be prejudiced by a further adjournment.
 - ii. For the making of the Winding Up Order: it concluded that an overall settlement would have been a desirable way to resolve the matter, but at this stage it was not practicable. The sufficiency and ownership of the assets was not clear. The ascertainment of the position could not be left to HCW given its conduct. The QFCRA and QFCA would not in any event accept this way of proceeding. It was not appropriate to make any further payment to Mr Al-Emadi as the beneficial ownership of the sums held in HCW’s accounts had to be ascertained and priority as between creditors had to be determined. In all the circumstances the Court was satisfied that the making of a Winding Up Order was the correct course to take. It was clear on the evidence provided by the QFCA that the company was insolvent; there was no evidence to the contrary from HCW. It was not in the public interest that HCW should continue to operate as it was no longer trading. It, its shareholders and its officers had been held to have committed serious regulatory misconduct and could not be relied upon to act lawfully or properly.
10. The Court appointed Steven John Parker and Joanne Kim Rolls as Joint Liquidators.

The grounds of appeal

11. HCW sought permission to appeal on the grounds that:

- i. The decision of the QFCRA, the Regulatory Tribunal and this Court in relation to the regulatory proceedings were not based on evidence, the penalties were excessive, and no proper reasons were given for the decisions. Therefore, the penalties imposed were “*not legitimated*”.
- ii. There had been no proper validation of the proceedings brought against HCW by Mr Al- Emadi; his claim had been wrongly accepted by giving summary judgment.
- iii. No Winding Up Order should have been made. The making of the Order should have been deferred pending the making of audited financial statements of HCW which would be produced.
- iv. The Joint Liquidators had conflicts of interest and should not have been appointed. They should be replaced by independent liquidators.

Our decision

12. In our judgment there are no grounds, let alone substantial grounds, for considering that the decision of the First Instance Circuit was erroneous and would result in any way in substantial injustice, as set out in article 35(2) of the Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules and paragraph 27 of *Leonardo v Doha Bank Assurance Company* [2020] QIC (A) 1.
13. The decisions made in the regulatory proceedings were properly made and upheld by this Court; there is no basis whatsoever for challenging the decisions or the significant financial penalties due from HCW. The penalties have been made enforceable as debts against HCW.
14. The judgment in the proceedings brought by Mr El-Emadi and by the QFCA in respect of unpaid corporation tax were judgments of the First Instance Circuit. The time for appealing against those judgments has long expired. There is no basis for challenging the sums due under the judgments as debts of HCW.

15. The First Instance Circuit was plainly correct in its decision to make a Winding Up Order. On the evidence HCW was insolvent; the sums due in the proceedings to which we have referred far exceed the funds held by HCW in its bank accounts. In any event the First Instance Circuit was correct in holding that an inquiry was required into the beneficial ownership of the funds. The request to defer making the Order until HCW provided audited financial statements for the years beginning in 2017 was rightly rejected as there was no credible evidence to support it. There is nothing before this Court that remotely begins to suggest that the decision to make the Winding Up Order was wrong.
16. There was no evidence whatsoever to suggest that the persons appointed as Joint Liquidators had any or any material conflict of interest.
17. The application for permission is wholly without merit and is refused.

By the Court,



[signed]

Lord Thomas of Cwmgiedd, President

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

Representation

The Applicant was represented by Jean Orso, Avocat (Orso Avocats, Geneva, Switzerland).