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

11 September 2017

CASE NO: 05/2017

HAMMAD SHAWABKEH

Applicant (Claimant)

v

DAMAN HEALTH INSURANCE (QATAR) LLC

Respondent (Defendant)

JUDGMENT ON APPLCATION FOR PERMISSION TO APPEAL ON COSTS

Members of the Court:

Lord Phillips, President
Justice Rajah
Justice Kirkham

ORDER

Having accepted jurisdiction in this matter, the Court determines:

1. **The application for permission to appeal is dismissed.**

JUDGMENT

INTRODUCTION

1. This is an application for permission to appeal against the judgment on costs delivered on 7 June 2017 by Justices Robertson, Hamilton and Arestis. The Applicant is not legally represented. He has sought an oral hearing on this ground, contending that he has difficulty in making a written submission and requires an oral hearing to explain his case. We have concluded that an oral hearing is not justified. The grounds set out in his Notice of Appeal are clear.

2. The Respondent was given the opportunity to respond to the Notice of Appeal if it wished to do so and submitted a written response dated 20 August 2017.

3. The original Costs Order against the Applicant was made by the Registrar under a written assessment 20 pages in length. The Applicant challenged this assessment and it was reviewed by the Court that had conducted the substantive hearing. At the Applicant's request the review was conducted at an oral hearing at which the Applicant appeared in person and the

Respondent chose not to appear. The Registrar had discounted some of the fees claimed by the Respondent to reflect issues on which the Applicant had succeeded at the trial. In its judgment dated 7 June 2017 the Court increased that discount by QAR 40,000. The Court did not otherwise alter the Order made by the Registrar.

4. In his Notice of Appeal the Applicant rightly recognises that, by reason of Article 35(1) of the Court's Rules and Regulations, the burden is on him to persuade this Court that there are substantial grounds for considering that the judgment of the Court below is erroneous and that there is a significant risk that this will result in serious injustice. The Applicant submits that he is able to discharge that burden. In seeking to do so he does not allege that the Court below made any error of principle. Rather he attacks a number of individual aspects of the Court's judgment. We propose to consider these one by one.

THE GROUNDS OF APPEAL

Grounds 1 and 3

5. The Respondent engaged the services of Pinsent Masons LLP and sought to recover the fees charged by and paid to that firm. The Registrar significantly reduced these fees on the ground that the number of hours charged for were excessive. He implicitly accepted, however, as reasonable the hourly rates charged by Pinsent Masons.

6. On review, in paragraph 26 of its judgment, the Court was concerned with whether the Registrar had been right to proceed on the basis that the rates charged by Pinsent Masons were fair and reasonable. The Court said this:

> *"As to the matter of hourly rates there could, in the judgment of the Court, have been a difficulty in the Registrar taking as his starting point the rates used by the particular firm of lawyers engaged by the party claiming recovery of costs from its opponent. These may be extravagant or markedly out of line with those which would have been charged by other firms providing equivalent services. But, in this case, that difficulty is avoided by regard being had to rates actually charged by another firm of lawyers who had a role, albeit a limited role, in this case. The Claimant himself at one stage engaged the services of Jumah Nasser Al-Kaabi Law Firm, based in Doha. In the event, that firm only provided limited services – a total of 15 hours provided by various members of staff, with a total charged of QAR 24,500. The Claimant did not engage that firm to act further for him. He told us that that was, for among other reasons, because he could not afford their services for the later stages in the case, But what is significant is that the hourly rate charged by that firm for the services of a "Sr. Legal Consultant" was QAR 2,000 [**a comparable rate to that charged by Pinsent Mason**]. The Claimant told us that the documentation showing the rates charged by Jumah Nasser Al-Kaabi Law Firm*

was before the Registrar. In these circumstances it cannot be said that the hourly rates used by the Registrar were plainly wrong."

7. The Applicant complains in ground 1 of his Notice of Appeal that the Court failed to mention or take into account evidence, that had been referred to by the Registrar, that Jumar Nasser Al-Kaabi Law Firm had reduced their bill to the Applicant to QAR 10,000. The Applicant contends that the Court should have concluded from this that the fair market rate in Doha was that actually charged to him by his lawyers, being less than 50% of their published charges.

8. Paragraph 28 of the judgment below records that the Applicant had stated to the Court that the market cost for litigation services in Qatar was a maximum of 5% (and ordinarily between 1% and 2%) of the value of the claim in issue. The court commented that

"there was no material before the Registrar nor is there before the Court which would allow any such "market" cost to be taken into account".

In ground 3 of his Notice of Appeal the Applicant criticizes this finding on the ground that the QAR 10,000 actually charged to him by his lawyers was 2% of the amount at stake and that this supported his case on market rate.

9. We consider that the Court was entitled to treat Jumah Nasser Al-Kaabi Law Firm's published rates as evidence of the going rate for litigation services in Doha. The fact that, for whatever reason, that firm chose to halve the Applicant's bill does not invalidate the Court's reasoning. Nor does the fact that that firm charged QAR 10,000 for the limited services rendered to the Applicant demonstrate that this was the market value for the litigation services in this case.

Ground 2

10. The Registrar found at paragraph 40 of his Assessment that the Applicant's reliance on what he was charged by his lawyers was unhelpful

> *"because, so far as I can ascertain, his legal team incurred little or no meaningful work on the case. They certainly did not represent him at the hearing and but for perhaps two or three emails with the Registry, all other correspondence came from the Claimant himself"*

In paragraph 27 of its judgment the Court referred to the Applicant's lawyers being "only marginally engaged in work on this case". The Applicant challenges this conclusion as being based on "no solid grounds". In our judgment this conclusion was soundly based on the Registrar's own finding.

Ground 4

11. At paragraph 30 of its judgment the Court rejected a contention made by the Applicant that the Respondent had not paid Pinsent Mason's charges and could not, in consequence, make any recovery from the Applicant in respect of these. The Court held that this suggestion came close to alleging dishonesty and should have had evidentiary support. Furthermore if the Respondent was legally liable to pay Pinsent Mason's fees that liability was a sufficient basis for their claim against the Applicant. In ground 4 the Applicant challenges these conclusions as being unexplained by the Court.

12. In our judgment the Court's conclusions require no explanation and are correct. The basis for a claim by the successful party to make a recovery in respect of its legal costs is founded on its own legal liability to pay those costs, whether or not it has in fact done so.

Ground 5

13. At paragraph 31 of its judgment the Court below rejected the Applicant's assertion that the Respondent could have employed its own in house lawyers rather than engaging Pinsent Masons. The Applicant now complains that "the Court failed to confirm that the Defendant's local law firm would have sufficed to conduct the Court hearings". The Registrar considered at length whether it had been reasonable of the Respondent to instruct counsel to appear at the hearing. He concluded that it had been,

but drastically cut down the sums paid to counsel when considering the Applicant's liability in respect of these. The Court below saw no reason to interfere with the Registrar's conclusions in respect of the use of outside lawyers and we endorse the Court's view. There is no merit in this ground of appeal.

Ground 6

14. Paragraph 32 of the judgment below recites the fact that the Applicant had told the Court that he had approached the Court on the basis that it was "free". The Court dealt with this simply by observing that Article 32.2 of the Court's Rules, which are readily available, makes it plain that the general rule is that the unsuccessful party pays the costs of the successful party. The Applicant complains that the Court did not accept his statement that he was unaware of his potential liability to the Respondent. Whether or not the Applicant was aware of his potential liability to pay the Respondent's cost when he commenced litigation in this Court has no impact on that liability. The Applicant cannot take advantage of failure to read the Court Rules.

Ground 7

15. The Respondent called in person a medical expert witness named Professor Waxman. The Registrar allowed only the costs in respect of this witness that would have been incurred had he given his evidence by video

link. The Court at paragraph 33 of its judgment found no reason to interfere with the Registrar's decision. The Applicant contends that Professor Waxman's fees should have been disallowed in their totality on the ground that "he was not needed in the first place". We see no justification for that assertion. Professor Waxman's evidence was referred to and relied upon by the Court – see for instance paragraph 47 of its judgment. The Court plainly did not consider that his evidence should not have been adduced at all. Furthermore, as the Respondent points out in its written submissions to the Court, the Applicant himself sought to rely on the evidence of three medical experts.

Ground 8

16. We have referred at paragraph 3 above to the additional reduction in the Applicant's liability made by the Court to reflect the issues on which he succeeded at the trial. The Applicant contends, without reasoning, that the Court should have absolved him of all liability to costs. We can see no justification for this contention.

Ground 9

17. The Applicant referred in argument to a figure that had formed part of unsuccessful settlement negotiations in relation to costs. In paragraph 36 of its judgment the Court held that this should not have been disclosed to the Court, we presume because it formed part of negotiations that were

'without prejudice'. The Applicant challenges the Court's refusal to have regard to this figure, but it seems to us that the Court was correct in principle.

18. The Applicant has submitted in emotive terms that his liability to pay the Respondent's reasonable costs is a serious injustice. We can understand the Applicant's dismay that, having lost his case, he has in addition had imposed this substantial liability in costs, but this is a risk involved in litigation. The principle that the loser usually pays the winner's reasonable costs is not contrary to justice.

19. In this judgment we have dealt with each of the Applicant's grounds in some detail in order to reassure him that they have been properly considered. We have concluded that each of them is without merit and that the Applicant has certainly not discharged the burden of demonstrating a serious risk of injustice.

20. For all these reasons the application for permission to appeal is refused.

By the Court,

Lord Phillips of Worth Matravers
President of the Court