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: [2021] QIC (F) 13

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

26 May 2021

CASE No. CTFIC0001/2021

BETWEEN:

SAMIA ABDEL RAHIM OTHMAN SHQAIR

Claimant

v

AEGIS SERVICES LLC

Defendant

JUDGMENT

Before:

Justice Frances Kirkham
Justice Fritz Brand
Justice Helen Mountfield QC

ORDER

1. It is declared that the restrictive covenant in paragraph 9.4 under clause 14 of the service contract between the parties contained in the Employment Offer Letter dated 4 September 2019 provided by the Defendant to the Claimant constitutes an unreasonable restraint on trade and is inappropriate in the circumstances of the Claimant's employment with the Defendant; that it therefore infringes Article 20 of the QFC Employment Regulations; and that in consequence it is void and legally unenforceable.

JUDGMENT

1. The Claimant (Ms Shqair) is a Brazilian national employed in the State of Qatar. The Defendant (Aegis) is a company established within the Qatar Financial Centre and registered as a consultant in the field of International Organization for Standardization (ISO) certification. Ms Shqair is a former employee of Aegis. She seeks an order, in broad terms, declaring a restraint clause in the service contract between them, invalid and unenforceable. The jurisdiction of this court to adjudicate the dispute between the parties is not contested. Nor is it in dispute that, in principle, this court is empowered by Article 10.4.5 of its Rules to grant the declaratory relief sought. The exact nature of the dispute and the issues arising therefrom will be better understood in the light of the background that follows.

2. The service contract between the parties was entered into on 4 September 2019. In terms of the contract Ms Shqair was appointed in the position of an ISO consultant for a period of three years. The parties are in agreement, however, that, contrary to the anticipated duration, the contract lasted for one year only, until September 2020. There appears to be some disagreement about the exact cause and the manner of the termination, but we

believe it can be accepted for present purposes that initially it was Ms Shqair who sought to resign; Aegis denied that she was entitled to do so; but eventually her resignation was accepted, and the contract thus terminated, perhaps a bit sooner than she anticipated.

3. Clause 14 of the service contract which stands central to the dispute was clearly transposed from another contract in which it was numbered 9. We say that because it still bears the scars of that numbering. In relevant part it reads as follows:

> "14 Non-Disclosure and Non-Compete agreement
>
> 9.1 The Employee shall not use or reveal to others any technical aspect or any information related to the Services or Employer's activities, except when it is necessary for rendering the Services, and with previous written authorisation from Employer. For the purpose of this article, the terms ' the confidential Information of the Company', both technical and related to other aspects of the Services and Employer 'activities' mean every piece of information used, learnt or to which the Employee had contributed during the period of this Contract, regardless if it is a written piece of information or presented under any other tangible format and that would not usually be at the disposition of the public or that would give a competitive advantage to whoever came in contact with such information. For the avoidance of doubt, Confidential Information under this Contract and Employment, includes without limitation, any and all information related to the Employer's operations, processes, plans, production information, know-how designs, trade secrets, software, market opportunities, clients, suppliers, and customers.

9.2 Nothing in this contract shall be construed to mean a transfer of ownership and/or license of Confidential Information from Employer to the Employee and/or any of its Representatives.

9.3 Upon Employer's request, the Employee shall return or destroy all Confidential Information provided by Employer to the Employee and/or any of its representatives during the term of this contract. The Employee shall furnish Employer with a Certificate of Return/Destruction of Confidential Information.

9.4 To protect the Employer's business and its clients' privacy of information, the Employee shall not: (a) enter into employment contract with the Employer's competitors (any ISO-related company within Qatar); (b) contact the Employer's clients for a period of five years after the termination of employment; and (c) leave any negative reviews about the company particularly but not limited to google reviews. Otherwise, a penalty for breach of contract amounting to 500 000 USD shall be charged by the employer against the employee.

9.5 The Employee acknowledges and agrees that all the pledges and obligations mentioned in this article shall outlive the termination of the present Contract."

4. Pursuant to the service contract Ms Shqair was employed by Aegis as an ISO consultant. After termination of the contract, she went to work for a new employer, an international firm of auditors. Unlike Aegis, her new employer is not currently involved in the field of ISO consultation and assistance with ISO certification. Yet, during the course of its business it may be required by clients in different fields of endeavour to assist them in acquiring ISO certification. Because Ms Shqair had previously practised as an ISO consultant, she is qualified to assist clients in this field. But she and her new

employer are uncertain whether she is precluded from advising in the ISO field by the provisions of clause 9.4 of the service contract. This, she says, may lead to her losing the job she is doing now, which is why she seeks a declaration from this court to establish the true position. The contention by Aegis is indeed that she is precluded from advising in the ISO field in any way. Rather than leaving it to Aegis to enforce the provisions of the clause, Ms Shqair took the precautionary measure of seeking a declaratory order from this court which would essentially allow her to advise clients, on behalf of her current employer, in the field of ISO albeit that this may render them a competitor of Aegis.

5. Throughout the proceedings neither party was legally represented. Ms Shqair acted in person while Aegis was represented by its managing director Mr Muhammad Hadeel Sheikh. Ms Shqair's case is set out in her statement of claim and her two witness statements of 29 March 2021 and 12 April 2021. Aegis's case, on the other hand, appears from its statement of defence and a witness statement by Mr Sheikh dated 11 April 2021. On 9 May 2021, the matter was heard online due to the Covid pandemic. At the hearing Ms Shqair again appeared in person while Aegis was represented by Mr Sheikh and by Ms Mary Lupo, described as being from Aegis' HR department.

6. As indicated by way of introduction, this court is in principle empowered by its Rules to grant a declaratory order. Nonetheless, courts are traditionally reluctant in the exercise of this kind of power to consider questions of an academic or hypothetical nature only. It appears however that the parties in this case have a real interest in the declaratory order sought and that the outcome will have a very practical impact on the

way they arrange their affairs. Hence, we decided to consider the declaratory relief sought.

7. Both parties referred to the pivotal provisions of the service contract as a non-disclosure agreement or an NDA. We find that reference confusing. As we see it, clause 14 contains both a non-disclosure agreement (in 9.1 – 9.3) and what is commonly known as a provision in restraint of trade (in 9.4). Ms Shqair conceded from the outset that she is bound by the non-disclosure provisions in that she is not allowed to use any confidential information of Aegis or of its clients despite the termination of the service contract. Hence, her challenge is not directed at the non-disclosure agreement in 9.1 – 9.3, by which, Ms Squair emphasised, she is happy to be bound. It is aimed solely at the restraint of trade in 9.4. Moreover, it appears that the confusion is not only one of nomenclature or classification. It effectively misdirected the approach by Aegis to the whole case.

8. Restraints of trade, like the one under consideration, are governed in this jurisdiction by Article 20 of the QFC Employment Regulations which provides:

> "*20. Restrictive covenants*
>
> *Any provision in an Employee's employment contract that provides that the Employee may not work on any similar projects or for a company which is in competition with the Employer must be reasonable, must not constitute an unreasonable restraint on trade and must be appropriate to the circumstances of the Employee's employment with the Employer."*

9. In interpreting this Article, we derived considerable assistance from the following passage in the judgment of the Appellate Division of this Court in *Chedid & Associates Qatar LLC v Said Bou Ayash* [2015] QIC (A) 2, in the course of considering the reasonableness of the restraint clause in that case:

> *"31. Next we consider Mr Kennel's submission [on behalf of the defendant / employee in that case] accepted by the Court below and repeated before us that there was no justification for Paragraph one of Section 5.2 which prohibited the Defendant from entering into a contract of employment with a competitor of the Claimant. Mr Kennel accepted that it was reasonable for the Claimant to impose a restraint on the Defendant soliciting business from clients of the Claimant which a restraint imposed by Section 5.2.7. He submitted, however, that the Claimant has no legitimate interest in prohibiting the Defendant from working for a competitor of the Claimant. So to do was an unreasonable restraint on trade.*
>
> *32. In our view, this issue lies at the heart of the dispute between the parties. In resolving it, it is necessary to weigh the interest of the general public and of the Defendant himself against the interest of the Claimant. Qatar is a small country, with almost all business activity concentrated in Doha. Qatar has always welcomed foreign nationals willing to provide services that might otherwise be unavailable or in short supply. It is in the public interest that a foreigner who has taken up employment with one employer, should be free to continue to provide his services by taking up employment with an alternative employer should his initial employment come to an end. It is of course even more in the interest of the employee himself that he should be free to do so."*

10. In their defence, Aegis relied on the following:

(a) Ms Shqair signed the service contract with full knowledge;

(b) The restriction is to prevent Ms Shqair working for ISO-related companies; she is not prevented from working provided her current employment does not require her to undertake ISO-related work;

(c) Ms Shqair chose to terminate her employment prematurely, leaving after only one year when she had accepted a role which would last for three years;

(d) Aegis had spent resources on Ms Shqair's training and had registered her as an auditor approved by Qatar Petroleum;

(e) Ms Shqair had access to sensitive information. The purpose of the non-disclosure agreement is to protect Aegis' confidential information and their clients' confidential information.

11. The starting point of the case advanced by Aegis is that Ms Shqair signed the service contract voluntarily "*and with full knowledge of the situation and everything*". Though this is not an irrelevant consideration in considering the validity of a contract in general, it is not in this case relevant to the question whether or not the agreement, though voluntarily entered into, offends the provisions of Article 20 of the QFC Employment Regulations. If it does, that part of the service contract is unlawful and thus unenforceable, despite the fact that the agreement itself was voluntarily entered into. A further argument relied upon by Aegis, which is equally inconsequent, is the one

formulated in paragraph 3(c) of the witness statement by Mr Sheikh. It reads as follows: "*she is the one who chose to end the contract prematurely. The contract she accepted was for three years however she has left the organisation just [after] one year. She is the one who choose (sic) to leave even though she was offered a very significant increment*". In our view Ms Shqair's decision to terminate the contract has no impact on the reasonableness or otherwise of the restraint provisions in 9.4. We say that because, even if her termination amounted to a breach of the service contract, it would not render legal and enforceable a restraint clause which is unlawful for constituting an unreasonable restraint of trade. The purported restraint is not a penalty for breach by the employee. It applies whenever the contract is terminated in whichever way. In any event, the service contract was terminable on notice and, although initially disputed, Aegis eventually accepted Ms Shqair's resignation; hence it must be accepted that she was not in breach.

12. The main ground relied upon by Aegis in support of 9.4 was that it was aimed at protecting the confidential information of Aegis and that of its clients and which had become known to Ms Shqair in the course of her employment with Aegis. In their oral presentation Mr Sheikh and Ms Lupo again underscored the importance of protecting the confidential information of their clients. In order to advise clients on ISO standards and to assist them in securing ISO certification, so they argued, Aegis and its employees necessarily have to be acquainted with information regarding the business affairs of the particular client. This information is confidential and if it were to be communicated to the client's competitors, it could be severely damaging to that client's business. That is why Aegis' clients insist on Aegis binding itself to them in terms of non-disclosure agreements. If clients were to apprehend that, despite these non-disclosure agreements,

their trade secrets would not be protected if the employees of Aegis were to leave its employment, it would be severely prejudicial to the business of the latter. That, so Mr Sheikh argued, is why Aegis must insist on Ms Shqair being bound by the non-disclosure agreement.

13. We do not underestimate the importance of this consideration. Yet we do not believe that the declaratory order sought by Ms Shqair would impact on the protection of the confidential information of Aegis' clients. This is protected by the non-disclosure agreement in clause 9.1 – 9.3. It is pertinently acknowledged by Ms Shqair that the undertakings embodied by these clauses remain binding on her despite the termination of the employment contract. The oblique suggestion by Mr Sheikh that Ms Shqair might fail to honour this admitted undertaking is completely unsubstantiated by any evidence. So, in considering the reasonableness of the restraint of trade provisions in 9.4 we do not have to concern ourselves with the protection of any confidential information belonging to Aegis' clients.

14. Another ground relied upon by Aegis as to why the restraint in 9.4 should be regarded as reasonable is formulated as follows in paragraph 3(d) of the witness statement by Mr Sheikh:

> "The organisation spent resources on her training and career development. We even registered her to be an auditor approved by Qatar Petroleum under our organisation considering that she accepted a three-year job offer with us. However, after receiving this approval and the relevant trainings, she decided

to leave the company which lead (sic) to significant restraints and loss to the company."

15. In their oral presentation before us, the representatives of Aegis elaborated on this theme by pointing out that over the years Aegis has developed certain techniques in doing assessments for ISO certification readiness and advising clients how to qualify for ISO certification and which had been communicated to Ms Shqair during her training as an employee of Aegis. In this light, they submitted, it was not unreasonable to preclude Ms Shqair from applying those techniques effectively in competition with Aegis. In considering this argument sight should, however, not be lost of the fact that before Ms Shqair joined Aegis she practised as an ISO consultant for one year in Jordan and then for another year in Qatar. We accept that she acquired skills and experience on the training and while working for Aegis in the ISO field. We also accept that if she is allowed to participate in the same field of endeavour by her new employer, the latter will benefit from these skills. In consequence we accept that the relief sought by Ms Shqair would, if granted, enable her new employer, by applying the skills she acquired from Aegis, to become a new competitor, or a stronger competitor, of Aegis in the ISO field.

16. However, accepting without deciding (a) that Aegis has developed unique methods and skills in conducting its business as an ISO consultant; and (b) that in conveying those methods and skills to Ms Shqair it acquired some interest worthy of protection, the question remains whether this interest outweighs the interests of others which are clearly deserving of protection. Included amongst these opposing interests are those of the general public. As pointed out by the Appellate Division of this court in the *Chedid*

*case (*para 32), the general public has an interest in scarce human recourses, consisting of skills acquired through education and training, not being rendered unproductive by isolating them. As also pointed out in that judgment, this public interest is particularly worthy of protection in a relatively small country such as Qatar where these skills might be unavailable or in short supply. Then there is the interest of Ms Shqair's new employer in being able to attain the full benefit of her services for which she is being remunerated.

17. Finally, there is the interest of Ms Shqair herself to be gainfully employed with an income commensurate with her qualifications, skills and training. In evaluating this interest sight should not in our view be lost of the fact that Ms Shqair was already a trained ISO consultant who had practised in the field for two years before she joined Aegis. Accepting that she enhanced those skills during the one year that she worked for Aegis, it is disproportionate to sequester her from the exercise of all her skills - including those she acquired before she joined Aegis - for five years. It is true that Ms Shqair's new employer will benefit from these skills and experience gained by Ms Shqair while employed by Aegis in competition with it. But so did Aegis when Ms Shqair joined its employment.

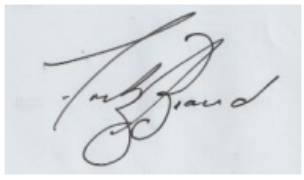
18. Paragraph 9.4 seeks to restrain Ms Shqair for a period of five years. Aegis' explanation was that this period reflected the period of three years during which Aegis had expected that Ms Shqair would be working for them plus an additional two years. That does not demonstrate how Aegis consider they need a period as long as five years to protect their business. A period of that length would be exceptional even for a very senior former employee. Even had we considered the rest of the restraint clause reasonable, we would

have regarded this as an inappropriately lengthy period of restraint in the circumstances of this case.

19. In weighing these competing interests we find the that the provisions of paragraph 9.4 under clause 14 of the service contract are unreasonable; that they constitute an unreasonable restraint on trade; and that they are not appropriate to the circumstances of Ms Shqair's employment with Aegis. Accordingly, we conclude that, in consequence, paragraph 9.4 contravenes the provisions of Article 20 of the QFC Employment Regulations and is therefore void and unenforceable. The practical consequence of the declaration to this effect that we now make is that Ms Shqair will be free to work without the fetter of the restraint sought to be imposed by paragraph 9.4 of the service contract, even if the consequence is that she or her current employer will be in competition with Aegis.

20. In the normal course of events Ms Shqair would be entitled to a costs order in her favour. But since she was not legally represented nor did she ask for an order to this effect, there will be no order as to costs.

By the Court,



Justice Fritz Brand