

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

16 November 2017

CASE NO: 01/2016

HAMMAD SHAWABKEH

Appellant

v

DAMAN HEALTH INSURANCE (QATAR) LLC

Respondent

JUDGMENT

Members of the Court:

**Lord Phillips of Worth Matravers, President
Justice Al Sayed
Justice Kirkham**

JUDGMENT

1. This is an appeal by the Appellant (formerly the Claimant) against part of the Order made by Justice Rashid Al Badr, Enforcement Judge, on 1 November 2017 in respect of the judgment debt of QAR 270,589.35 arising out of the costs order made against the Appellant in these proceedings.
2. At the beginning of the hearing the Court gave the Appellant permission to appeal. It did so because this is the first occasion on which an Enforcement Order made by the Court has been challenged and it raises an issue of principle as to the proper approach to the enforcement of an order for costs made against an unsuccessful party. The Enforcement Judge did not give reasons for his Order and the Court observes that, even when dealing solely with enforcement, it is appropriate to give short reasons for the Order made.
3. The Order was as follows:

- 1. The Claimant shall, by no later than 4pm on 8 November 2017, make a payment to the Defendant in the sum of QAR 10,000;*
- 2. The Claimant shall, commencing on 8 December 2017, make monthly payments to the Defendant in the sum of QAR 3,500 until the judgment debt of QAR 270,589.35 is paid off; and*
- 3. The Parties have liberty to apply to the Court at 6 month intervals if there has been a change in the financial circumstances of the Claimant which may impact upon (2) above.*

4. The Appellant's case is that the only realizable property that he owned within the jurisdiction was his car and that he disposed of this by a forced sale, at less than its market value, in order to comply with the Order to pay the Respondent QAR 10,000 by 8 November 2017.
5. The Appellant's appeal is against the Order that he make monthly payments to the Respondent in the sum of QAR 3,500. He submits that in making this order the Enforcement Judge ignored the evidence he had adduced of his income and his liabilities.
6. At the hearing before the Enforcement Judge the Respondent did not advance any evidence that contradicted the Appellant's case that the only realizable asset was his car. Thus the only issue was the amount of the monthly instalments that the Appellant should be ordered to pay towards discharging the judgment debt.
7. The principle to be applied in such a case is a simple one. The judgment debtor should be ordered to pay each month as much as is likely to be available having regard to his existing commitments and reasonable living expenditure.
8. It is the Appellant's case that the Order made by the Enforcement Judge violated that principle in that it was much more than he would be in a position to pay. He has submitted that the maximum monthly instalment that he will be able to pay is no more than QAR 500.
9. The Appellant, who appeared in person, put before the Court the following schedule:

Claimant Monthly Statement		
Description	Debit	Credit
(Claimant) Hammad Salary		17,600
Wife Salary		6,000
(Claimant) Qatar International Bank (QIIB) Loan Installment	10,557	
(Claimant Wife) Commercial Bank (CBQ) Loan Installment	8,000	
House Rental	12,500	
Claimant Kids' School Expenses	2,000	
Claimant House Expenses	4,000	
Claimant Wife Medical Bills	4,000	
Total	41,057	23,600
Debt	17,457	

10. This schedule purports to show outgoings that exceed income by QAR 17,457. It is based on evidence submitted by the Appellant to the Enforcement Judge. When asked by the Court to explain how he managed to survive in these circumstances the Appellant's answer was that he gave priority to those obligations that were most pressing.
11. Ms. O'Neil, who appeared for the Respondent and for whose clear and forceful submissions we are grateful, sought to challenge two items on this schedule. The first was the Appellant's salary. She placed before the Court the Appellant's contract of employment, which showed that, with allowances, he should be receiving a gross amount of QAR 23,000 a month. The Appellant's answer to this was that the allowances shown on the schedule were, in part, discretionary and that he had only received QAR 17,600 a month, as evidenced by a statement from his employers that had been placed before the Enforcement Judge. The second item challenged was the monthly rent, alleged by the Appellant to be QAR 12,500. Ms. O'Neil submitted that this figure was in doubt because of a discrepancy on the rental agreement.

12. The Court was not in a position to resolve these challenges, but the short answer to them is that they have been made too late. They should have been made before the Enforcement Judge. In any event they do not significantly affect the overall picture.
13. Ms. O'Neil drew attention to a loan agreement with a Deal Reference of PFNO130861312101, the last instalment of which, in the sum of approximately QAR 6,000, the Appellant is due to repay on 30 November 2017. She submitted that once this final instalment was paid the Appellant's disposable income would rise by about QAR 6,000 a month. From this he would be able to pay the monthly instalments of QAR 3,500 that the Enforcement Judge had ordered. On examination, however, this agreement appears to be a short term loan agreement, to be repaid by only two instalments. It appears to the Court to be in the nature of emergency borrowing. The Court cannot infer that the discharge of this debt is an indication that the Appellant's long term financial predicament will be any less acute.
14. The Court is persuaded that the Appellant has demonstrated that he is in a dire financial situation. Any payments that he makes in discharge of his judgment debt are likely to defer his discharge of other liabilities. In these circumstances the Court is persuaded that he is at present unable to pay to the Respondent more than the very modest sum of QAR 500 a month that he has put forward. Accordingly the Court varies the Order to the extent of reducing the monthly payment to be made by the Appellant to QAR 500.

By the Court,



Lord Phillips of Worth Matravers
President



Representation:

The Appellant appeared in person.

The Respondent was represented by Ms. Nadine O'Neil, Regulatory Compliance Manager of the Respondent.