THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL

BEFORE SCT JUDGE NASSIR AL NASSER

BETWEEN

KARTIK COMMERCIAL BANK (PJSC)

Claimant

and

KURINA

Defendant

Hearing : **14November 2019**

Judgment : **12December 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant and the Defendant at the Hearing held on14November2019 before SCT Judge Nassir Al Nasser

AND UPON reviewing the documents and evidencesubmitted in the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 213,163.61 plus interest at the rate of 9% per annum.

2. The Claimant's claim in relation to the Car Loan Agreement shall be dismissed.

3. The Defendant shall pay the Claimant the Court fees in the sum of AED 10,658.18.

Issued by:

Ayesha Bin Kalban

SCTJudge and Deputy Registrar

Date of issue: 15December 2019

At: 10am

THE REASONS

Parties

1. The Claimant is Kartik Commercial Bank (PJSC),a bank providing financial services including credit cards and personal loans to customers (the "Claimant").

2. The Defendant is Mr. Kurina, an Egyptian national (the "Defendant").

Background

3. The parties entered into a written agreement on 31October2017, entitled `KartikSimply Life Personal Loan (the "Original Agreement"). Under the terms of the Original Agreement, the Claimant was to receive a loan of AED 250,000 with a repayment schedule of 48 instalments in the amount of AED 6,082.00.

4. The parties also entered into a written agreement on 21 February 2016, entitled `Kartik Car Loan' (the "Car Loan Agreement"). Under the terms of the Car Loan Agreement, the Claimant was to receive a car loan of AED 96,960 with a repayment schedule of 50 instalments in the amount of AED 1,879.

5. The Defendant made regular repayments of the Original Agreementand paid 17 installments.On 31 March 2019, the Defendantapproached the

Claimant seeking to restructure the loan (the "Restructure Agreement"). At the time, the amount to be repaid was AED 213,050.34, with a repayment schedule of 83 instalments in the amount of AED 3,407.

6. The Defendant fell into arrearson5August 2019 in relation to the Restructured Agreement. The Defendant has also been in arrears as of 22 August 2019 in relation to the Car Loan Agreement. According to the Claimant, the remaining amount currently outstandingunder the Restructured Agreement is AED 213,163.61 and the remaining outstanding sum under the Car Loan Agreement is AED 34,045.28.

7. Following the Defendant's failure to keep up with his repayments, the Claimant filed a claim with the DIFC Courts' Small Claims Tribunal (the "SCT")on 29August 2019seeking to recover the amounts allegedly owed to the Claimant(the "Claim").

8. The Defendant responded to the Claim on 5September2019indicating his intentionto defend all of the claim.

9. On 15September2019, the parties attendeda Consultation held before SCT Judge Maha Al Mehairibut were unable to reach a settlement.

10. A hearing was listed before me on 14 November 2019, at which the Claimant's and the Defendant's representatives attended. The parties were given 3 weeks to discuss and resolve the matter amicably, however, they failed to settle the claim, therefore, I set out my judgment below.

Discussion

11. This Claim must be assessed based on the documentary evidence provided to determine whether the Defendant is in arrears and, if so, how much remains owing to the Claimant.

12. The Claimant argues that the Restructured Agreement and the Car Loan Agreement remain valid between the parties.The Claimant contends that the Defendant signed the Restructure Agreement on 31 March 2019 andsigned the Car Loan Agreement on 21 February 2016 (, a copy of the Agreementscan be found attached to the case file. The outstanding amount of the Restructure Agreement is AED 213,163.61 and the outstanding amount of the Car Loan Agreementis AED 34,045.28.

13. The Claimant also argues that the Defendant only paid 2 installments in relation to the Restructure Agreement and has been in arrears since August 2019. In relation to the Car Loan Agreement, the Defendant has been in arrears since 22 August 2019. Therefore, the total outstanding sum in relation to the Restructure Agreement and the Car Loan Agreement is AED 247,208.89.

14. The Defendant filed adefence alleging that the DIFC Courts has no jurisdiction to hear and determine this claim, based on the following alleged facts:

a. The Agreement that has been signed between the parties for both the Auto Loan and the Personal Loan has not stated that in case of a dispute the Court of Jurisdiction shall be the DIFC.

b. In the absence of such agreement on the competent courts to determine this claim, the Defendant submits that both parties have not agreed nor defined the court of jurisdiction.

c. Due to the non-agreement on the court of jurisdiction, the Dubai Courts shall have jurisdiction to determine the dispute as per the applicable general rules of Law and based on the federal laws of the United Arab Emirates.

15. In response to the Defendant, the Claimant asserts that the agreement between the parties states that the DIFC Courts has the jurisdiction to hear and determine the claim as per clause 18, which states the following:

> "the civil courts of the individual Emirates, the Federal civil courts of the United Arab Emirates, and the Courts of the Dubai International Financial Centre (including without limitation the Small Claims Tribunal of the DIFC), shall have non-exclusive jurisdiction over all matters arising under the products terms and conditions save that the Bank shall have the right to file actions in any court with jurisdiction over you or your assets."

16. In relation to the Car Loan Agreement, the bank application provided along with the Terms and Conditions fail to include clause 18 as quoted above.

17. Therefore, I find that in relation to the Restructure Agreement, the DIFC Courts has the jurisdiction to hear and determine the claim, as per clause 18 of the Restructure Agreement. However, in relation to the Car Loan Agreement, I find that the DIFC Courts have no jurisdiction to hear and determine this issue as there is no covenant to provide an opt-in to the jurisdiction of the DIFC Courts in the Car Loan Agreement provided.

18. In relation to the Restructure Agreement, the Defendant alleges that the agreed amount as per the Agreement was AED 250,000, of which the Defendant has paid AED 105,400.

19. The Defendant also alleges that he lost his job in March 2018 due to financial difficulties that his sponsor company was facing. The Company has failed to pay the Defendant his labour rights and he continues to have outstanding entitlements pending as of today. In addition, the Defendant alleges that in order to maintain his relationship with the Bank, he restructured the loan and paid two installments amounting to AED 6,800.

20. The Defendant also alleges that the Restructure Agreement has added more than AED 90,000 as a new obligation upon the Defendant.

21. In response, the Claimant provided documentation to demonstrate that such an increase was due to the relevant bank charges and 7.99% interest pursuant to the Restructured Loan.

22. Therefore, as per the documentation of the Restructured Loan as provided by the Claimant, it is clear that the Defendant has entered into a Restructure Agreement and accepted the terms and conditions contained therein.

Finding

23. The Defendant shall pay the Claimant the Restructured Loan amount in the sum of AED 213,163.61 plus interest at the rate of 9% per annum pursuant to the DIFC Courts'Practice Direction No. 4 of 2017.

24. The Claimant's claim in relation to the Car Loan Agreement shall be dismissed for lack of jurisdiction.

25. The Defendant shall pay the Claimant the Court Fee in the sum of AED 10,658.18.

Issued by:

Ayesha Bin Kalban

SCTJudge and Deputy Registrar

Date of issue: 15December 2019

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