Claim No: XXXX

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE SMALL CLAIMS TRIBUNAL

BETWEEN

FLAVIAN

Claimant

And

(1)FLOELLA

(2)FLETA

Defendants

Hearing: 23 June 2015

Further Submissions:20 August 2015

Judgment: 21 October 2015

JUDGMENT OF H.E. JUSTICE OMAR AL MUHAIRI

BACKGROUND

1.The Claimant, Flavian, is the principal and Managing Director of Flavian, a professional consultancy firm that provides specialist services in connection with the resolution of construction disputes. The Claimant entered into an agreement (the "Service Agreement") with the Second Defendant, "Fleta" on 19 September 2014. The First Defendant, Floella is the general manager of Fleta, the Second Defendant in the case.

2.Under the terms of this Service Agreement the Claimant was to provide consultancy services in connection with a dispute with a construction contract with Messrs Associated Metal Works LLC ("AMC") for a pressed metal factory in Dubai where an associated Fleta, acting as a design and build contractor, ran into difficulties and a subsequent dispute.

3.The Service Agreement was signed between the Claimant and the First Defendant on 19 September 2014, and as per the agreement, the First Defendant tendered an advance payment of AED 25,000 before commencing work on the Service Agreement. It was agreed that invoices would be submitted on a bi-weekly basis, or after expenditure of the budgeted amount, whichever occurred earlier. Upon agreement of additional budget amounts, the Claimant would require further advance payments from the First Defendant.

4.The Claimant subsequently entered into a supplemental agreement (the "Supplemental Service Agreement") with the First Defendant on 9 October 2014 for additional general professional services in connection with other projects the Defendant was trying to develop. The Claimant worked on a project under the name of ("KIZAD") that the First Defendant was trying to develop. Under the terms of the Supplemental Service Agreement, the Claimant was to work at a reduced hourly rate for an unspecified number of hours and receive a bonus for projects that were awarded to the Second Defendant. The Supplemental Service Agreement was established in an exchange of emails between the Claimant and the First Defendant on 30 September 2014 and 9 October 2014, but there was no written contract other than the email exchange between the parties to finalize the agreement.

5.With regard to the services carried out in fulfilment of the Claimant's obligations under the Supplemental Service Agreement, the Claimant states that he met the first Defendant on a number of occasions between 24 September 2014 and 19 February 2015 to discuss the situation in relation to the KIZAD, visited the site on two occasions, accompanied the First Defendant to negotiation meetings on two occasions with the directors and senior personnel at KIZAD, subsequently reviewed the situation and drafted a number of letters to be submitted by the First Defendant to secure his position moving forward. Copies of the various letters and notes prepared by the Claimant for this purpose were entered into evidence in Claimant's Appendix 5a.

6.With the exception of the initial advance payment and the second and third payments, there is no indication that the First Defendant tendered payments upon receipt of the invoices submitted by the Claimant. By the end of February 2015, the outstanding amount owed to the Claimant by the Defendants was AED 38,862.00.

7.The Claimant sent regular reminders and statements of account disclosing the amount outstanding, the vast majority of which were not responded to by the Defendants. A meeting was held with the Claimant and the First Defendant on 28 April 2015 to reach a settlement, but no settlement was reached at the meeting.

8.On 19 May 2015 the Claimant filed a case with the DIFC Courts Small Claims Tribunal requesting that the First Defendant immediately pay the amount outstanding of AED 36,862 to the Claimant, plus the Court fees in the amount of AED 1,984.50 paid by the Claimant to the DIFC Courts. The Claimant also requested that the amounts due above shall carry interest from the date of judgment until the date paid at the rate of 8%

per annum simple interest.

9.	After acknowledgement of service, the First Defendant replied as follows:

> A.	The dispute is not for him to decide as a general manager of Fleta, but for the company to be officially served in Canada (The First Defendant submits that he is the General Manager of Fleta, a company incorporated under the laws of Quebec, Canada, despite his business card which lists him as the `President' of Fleta with an office address in XXXX, Dubai, UAE).
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> B.	The First Defendant refuses to pay any and all invoices for the Service Agreement above the agreed budget in the amount of AED 40,000.
>
> C.	The First Defendant refused the Supplemental Service Agreement in its entirety and states that the agreement is invalid and that the DIFC Courts have no jurisdiction to hear the claim and that it should instead be heard by the Dubai Courts.

10.	After the parties failed to reach an agreement in mediation under the SCT process the case was referred to me and a hearing was scheduled for 23 June 2015. The parties appeared before me and additional submissions were requested. After all additional submissions were presented; the parties agreed by email that a further hearing was unnecessary and for the matter to be dealt with on paper.

11.	Upon a review of the case and documents submitted, the issues before me are as follows:

A.	Service of Claim Form on Fleta

B.	Jurisdiction

C.	The legal position with regard to the First Defendant's personal liability for the debt

D.	The legal position with regard to the Second Defendant's liability for the debt

i.	Service Agreement

ii.	Supplemental Service Agreement

iii.	Court fees interest on the judgment.

A. Service of Claim Form on Defendant

12.	The first issue to be dealt with is the service method used in this case and whether it was an acceptable method according to the RDC of the DIFC Courts.

13.	The First Defendant was served with the Claim Form through the Court, and a question was introduced during the hearing of whether or not the First Defendant has the power to accept the Claim Form on behalf of the Second Defendant. Article 9.12 of the RDC provides as follows:

> "A document is served personally on a company or other corporation by leaving it with a person holding a senior position within the company or corporation. Each of the following persons is a person holding a senior position:

(1) in respect of a registered company or corporation, a director, the treasurer, secretary, chief executive, manager or other officer of the company or corporation, and

(2) in respect of a corporation which is not a registered company, in addition to those persons set out in sub-paragraph (1), the mayor, chairman, president, town clerk or similar officer of the corporation."

14.	As such, the court is satisfied that the service on Floella was successful, as the General Manager of Fleta.

B. Jurisdiction

15.	These proceedings arise out of a written agreement between the Claimant and the Second Defendant dated 17 September 2014, signed by the First Defendant on 19 September 2014 in his capacity as general manager of Fleta. The First Defendant accepted the agreement and assented to all the articles in that agreement when he signed the document. The Service Agreement states clearly in paragraph (e) on page three that any disputes will be resolved by the Small Claims Tribunal of the DIFC Courts and reads as follows:

> *"The agreement between us is subject to the laws of the Dubai International Financial Centre (DIFC) and it is hereby agreed that any dispute or difference arising out of or in connection with this agreement shall be submitted to the jurisdiction of the Small Claims Tribunal of the DIFC."*

16.	Article 5(2) of Law No. 16 of 2011 amending Law No. 12 of 2004 provides as follows:

> "The Court of First Instance may hear and determine any civil or commercial claims or actions where the parties agree in writing to file such claim or action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

17. With regards to the Small Claims Tribunal in particular, Rule 53.2 of the Rules of the DIFC Courts (RDC) provides:

"The SCT will hear and determine claims within the jurisdiction of the DIFC Courts:

(1)	where the amount of the claim or the value of the subject-matter of the claim does not exceed AED 100,000; or

(2)	where the claim relates to the employment or former employment of a party; and

(a) the amount of the claim or the value of the subject-matter of the claim does not exceed AED 200,000; or

(b) all parties elect in writing that it be heard by the SCT (there is no value limit for the SCT's elective jurisdiction in the context of employment claims);

(3) which do not fall within the provisions of sub-paragraphs (1) or

(2) above, but in respect of which:

(a) the amount of the claim or the value of the subject-matter of the claim does not exceed AED 500,000; and

(b) all parties to the claim elect in writing that it be heard by the SCT;

18.	It should also be noted that the Supplemental Service Agreement contains a provision that states, "All other terms and conditions would be as per our existing agreement," thereby binding the First Defendant to the terms of payment as well as the terms for the resolution of disputes.

19.	It is clear that the parties explicitly agreed in writing pursuant to specific, clear and express provisions in the Service Agreement that any disputes arising out of the Agreement would be submitted to the DIFC Courts and therefore satisfies Article 5(2) of Law No. 16 of 2011. Furthermore, Rule 53.2 of the RDC is also satisfied as the amount of the Claimant's claim does not exceed AED 200,000. Therefore I am satisfied that this Court possesses exclusive jurisdiction to hear and determine this claim.

**C.	The Legal Position with Regard to the First Defendant's Liability for the Debt**

20.	The Claimant states that at the first meeting with the First Defendant, the Claimant was presented with a business card indicating that he was the `President' of `Fleta' with an office address at, XXXX.' A photocopy of the business card was submitted into evidence in Claimant's Appendix 3. The Claimant accepted the business card at face value and understood it to indicate that Fleta was a legally constituted company in Dubai and therefore entitled to enter into contracts. Consequently, the name and address that was stated in the Service Agreement was duly stated to be the same as that on the First Defendant's business card.

21.	The Claimant submits that if it were decided that both the Service Agreement and the Supplementary Service Agreement had actually been made with Fleta Canada it still would not relieve the First Defendant from liability. The address stated on the Service Agreement for Fleta (whether Fleta Dubai or Fleta Canada) is clearly given as a Dubai address indicating that it is a Dubai company trading in Dubai. Article 26(1) of the Companies Law, DIFC Law No. 2 of 2009 states:

> *	"Where a contract purports to be entered into by a Company, or by a person as agent for a Company, at a time when the company has not been formed, then, subject to Paragraph (2) and unless otherwise agreed by the parties to the contract, the contract has effect as one entered into by the person purporting to act for the Company or as agent for it, and he is personally bound by the contract and entitled to its benefits."*

22.	The Claimant suggests that since neither Fleta nor Fleta have been formed and registered either in Dubai or in the DIFC, the First Defendant must accordingly be personally bound by the Service Agreement and Supplementary Service Agreement contracts and must therefore be responsible for discharging any debts incurred by the purported companies.

23.	Furthermore, the Claimant asserts that the First Defendant, Floella, has tacitly acknowledged by performance that he is personal liable for the debts incurred by his non-existent Dubai companies, due to the fact that he made payment for two outstanding amounts by way of personal cheques (representing 74% of the amount paid to the Claimant). According to the Claimant, it seems plain that he made payment in this way for no other reason than a bank account in the name of Fleta Dubai simply did not exist.

24.	In response to the Claimant's allegations, the Defendants assert that the First Defendant confirms that he introduced himself to the Claimant as President of Fleta Group having its office at the address written on the business card, but that the Claimant knew that the First Defendant was involved with a number of different companies including Fleta Group.

25.	The Defendants submit that the Claimant knew he was dealing with an overseas company as evidenced by the numerous documents drafted by the Claimant to be submitted to AMW which used the Canadian address of Fleta Group in addition to the Fleta Group letterhead which reflects the Canadian entity with a Canadian address.

26.	The First Defendant maintains that at all material times, he was acting on behalf of his capacity as the General Manager of Fleta Group and the Claimant was very aware of this fact.

27.	In light of the arguments presented by the parties, the Court is satisfied that the liability of any debt falls on the Second Defendant, and that the First Defendant acted on behalf of Fleta Group as the General Manager.

28.	Additionally and as will be elucidated in further detail below, Article 26(1) of the Companies Law as cited by the Claimant is irrelevant and does not apply in the instant case as the company DEF Group was indeed formed when the First Defendant entered into the Supplemental Agreement and as such the First Defendant is not personally bound by the contract.

29.	Accordingly, the First Defendant's name will be struck out from the parties in the case.

**D.	The Legal Position with Regard to the Second Defendant's Liability for the Debt**

30.	At this juncture it is important to clearly define the Second Defendant as it relates to liability. It has been established that the First Defendant is involved with a number of different companies beginning with the letters, "Fleta." According to the evidence submitted by both parties, Fleta Group of different companies as evidenced by the `Certificat de Constitution' or `Certificate of Incorporation' issued by the Government of Quebec, Canada, submitted into evidence in Defendants' Appendix 2.

31.	According to the `Certificate of Incorporation,' Fleta Group Inc. was incorporated on 6 October 2000. Additionally, the Defendants also submitted the Commercial License for Fleta, issued by the Government of Dubai in May 2008. No commercial or trade license for Fleta Group issued by the Dubai Government was submitted by either party.

32.	As such, it is imperative to conclude that Fleta Group (Canada) was represented by the First Defendant, Floella, as the General Manager to deal with the dispute with AMW. Subsequently, on behalf of Fleta Group (Canada), the First Defendant contracted with and appointed the Claimant to deal with the dispute.

33.	This conclusion is supported by documents submitted by the Claimant as evidence in Claimant's Appendix 5 drafted by the Claimant on behalf of the Defendants marked with a Canadian Fleta Group address. Additionally, the subsequent DIAC case correspondence, which was prepared by the Claimant, was printed on Fleta Group (Canada) letterhead with the Canadian address prominently displayed at the bottom of the page in addition to the official Fleta stamp that included the Canadian address.

34.	Accordingly, the Claimant knows or should have known that it is the Fleta Group (Canada) not Fleta Dubai that must bear liability for any outstanding payment owed on the Service Agreement and Supplemental Service Agreement.

The Service Agreement

35.	The Service Agreement clearly lays out the `Budget fees' as a proposed budget of USD 10,000 for the services rendered as an initial budget and in the event expenditure of the budget is reached, the Claimant would apply for an additional budget. An advance payment of AED 25,000 was required before commencing any work and invoices were to be submitted on a bi-weekly basis, or after expenditure of the budgeted amount, whichever occurred earlier. Additionally, upon agreement of additional budget amounts, further advanced payments would be required. The relevant portions of the Service Agreement are as follows:

> *"**Budget fees**:*
>
> *In view of this, we will accept the budget of US$ 10,000 (say AED 40,000) as an initial budget only, and point out that this will cover a period of about 36 hours of my time. We will keep you regularly informed on the expenditure of the hours spent and will apply for an additional budget when about 80% of the allowance has been used up.We shall require an advance payment of AED 25,000 before commencing work on this assignment and invoices will be submitted on a two-weekly basis, or after expenditure of the budgeted amount, whichever is earlier. Upon agreement of additional budget amounts, we shall require further advance payments."*

36.	The Service Agreement also contained a provision at paragraph (d) on the second page that states:

> *"All fees will become due and payable immediately upon presentation of the invoice at the end of each period, as well as at the conclusion of the assignment."*

37.	On 2 October 2014, the Defendants paid the Claimant the amount of AED 25,000, nearly two weeks after the Service Agreement was signed by the First Defendant. Thereafter, the First Defendant paid the Claimant twice more; AED 35,000 on 10 December 2014 and another AED 35,000 on 18 December 2014 for a grand total of AED 95,000 or roughly USD 25,000; generously exceeding the original initial budget of USD 10,000.

38.	As for the Service Agreement, the proposed budget of USD 10,000 was paid in full with the first payment made in October and the second payment of AED 35,000 in December which exceeded the initial budget of USD 10,000 or AED 40,000. As such, the Defendants are not liable for any debt under the Service Agreement.

Supplemental Service Agreement

39.	On 9 October 2014, the Claimant allegedly entered into a separate further agreement under the Supplemental Service Agreement with the Defendants on similar terms but at a reduced hourly rate for additional professional services of a general nature in connection with speculative projects which the Defendants were trying to develop and generate with various clients.

40.	The Supplemental Service Agreement is an e-mail exchange between the Claimant and the First Defendant (see Claimant's Appendix 2) and the relevant portions state as follows:

> *"(1) I will continue working on the FLETA v AMW claim on the basis already established*
>
> *(2) With regard to B.D. Work, I will undertake to devote 25% of my time (say 50 hours per month) to B.D./commercial issues in connection with other projects for Fleta on the following basis:*

- *50% of my normal minimum charge rate, I.e. 50% of AED 1,100 per hour = AED 550 per hour, computing to a lump-sum retainer of AED 27,500 per month*
- *In addition to the above payment there will be a bonus payment payable by Fleta upon the project being `secured' allowing the project to proceed. The bonus payment will be calculated to be 5 (five) times the amount actually earned up to the time the project is secured."*

In response to this e-mail the Claimant considers an offer, the First Defendant replied,

"Dear Peter,

- *AMW is already agreed on an hourly basis and I have to complete my research to get all documents required.*
- *Business development*

I suggest to keep it at an hourly rate of 550AED since at the moment I do not need 50 hours per month. Bonus will be around 3 times the money earned.

Peter, as you know, you are not really aware of our business details and your input that I appreciate very much is to gain importance on future files.

Let us discuss it"

41.I divide the Supplemental Service Agreement into two different issues. First, further work for the AMW case, in effect, an extension of the original Service Agreement; and second, new work for business development in relation to a different project completely separate from AMW.

42.I am duly convinced that the Supplemental Service Agreement operated as a written extension of the original Service Agreement, and the approval required for an additional budget envisaged by the original Service Agreement was agreed upon by the Supplemental Service Agreement. Indeed, in response to the Claimant asserting that he will continue working on the FLETA v AMW claim on the basis already established, the First Defendant replies, "AMW is already agreed on an hourly basis." and concedes that he needs to provide the Claimant with documents required to continue work on the claim.

43.In effect, beyond the original agreed upon budget of USD 10,000, the Supplemental Service Agreement operated to approve additional work on an hourly basis of AED 1,100 as evidenced not only by the invoices submitted in Claimant's Appendix 6 but also by the additional payments submitted by the Defendants in the amount of AED 35,000 on 10 December 2014 and another AED 35,000 on 18 December 2014. It is also important to note that at no time did the Defendants object to the work completed by the Claimant, nor did the Defendants ask the Claimant to terminate work on the AMW case.

44.Isolating the invoices for the work completed by the Claimant for the AMW case, the Claimant invoiced the Defendants a total of AED 117,425 between the dates of 30 September 2014 and 28 February 2015. Of this, the Defendants paid a total of AED 95,000 in three separate payments, leaving a remaining balance of AED 22,425 due to the Claimant in unpaid invoices for the AMW case.

45.As for the second issue regarding the business development work, I am also satisfied that the Supplemental Service Agreement constituted an offer and acceptance and therefore a valid contract by the Claimant and the Defendants. This is evidenced not only by the First Defendant's outright acceptance in the e-mail of 9 October 2014 and counteroffer of bonuses to be three times the amount earned instead of five, but also by the conduct of the parties subsequent to the Supplemental Service Agreement.

46.According to the Claimant's submissions, the Claimant met with the First Defendant on a number of occasions to discuss the business development work, visited the site of the KIZAD XXXX on two occasions and accompanied the First Defendant to negotiation meetings with the directors and senior personnel at KIZAD. The Claimant also drafted letters to be submitted by the First Defendant; copies of which were submitted into evidence at Claimant's Appendix 5a.

47.It is important to note once more that at no time did the Defendants object to the work carried out by the Claimant in connection with the Supplemental Service Agreement and further evidence of a desire to continue the work with the Claimant is evidenced by the two additional checks paid to the Claimant in December, as referenced above.

48.As such, the two invoices for business development work submitted by the Claimant in the amount of AED 11,550 and AED 2,887 on 31 October 2014 and 31 December 2014 respectively are to be paid by the Defendants to the Claimant.

49.Therefore, it is hereby ordered that the Claimant's claim is granted and that the Second Defendant, Fleta Group, pay the Claimant the full amount of AED 36,862.

Interest and Court Fees

50.The Second Defendant shall pay the Claimant interest at the rate of 1% plus EIBOR ("the three months' Emirates Interbank Offer Rate"), to run from the date of the amount is due to full payment.

51.Each party pay his own costs pursuant to the Article 53.70 of the DIFC Courts Rules.

52.For the reasons set out above, it is hereby ordered that:

53.The Claimant's Claim against the first Defendant is Dismiss.

54.The Second Defendant shall pay to the Claimant the amount of AED 36,862.

55.The Second Defendant shall pay the Claimant interest at the rate of 1% plus EIBOR ("the three months' Emirates Interbank Offer Rate"), to run from the date of the amount is due to full payment.

56.Each party pay his own costs.

Issued by:

Maha AlMehairi

Judicial Officer

Date of Issue: 21 October 2015

At: 11am