Claim No. SCT 262/2018

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 OF DIFC COURTS

BEFORE SCT JUDGE NASSIR AL NASSER

BETWEEN

JACKIE EQUIPMENT RENTAL LLC

Claimant/Counter-Defendant

and

JUHI BUILDING CONTRACTING LLC

Defendant/Counter-Claimant

Hearing:**16 January 2019**

Judgment: **21 January 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant's representative at the hearing;

AND UPON the Defendant failing to attend the hearing although served notice of the hearing date;

AND PURSUANT TO Rule 53.61 of the DIFC Courts, if a Defendant does not attend the hearing and the Claimant does attend the hearing, the SCT may decide the claim on the basis of the evidence of the Claimant alone;

AND UPON reading the submissions and evidence filed and recorded on the Court file;

IT IS HEREBY ORDERED THAT:1

1.The Defendant shall pay the Claimant the sum of AED 54,857.15 in relation to unpaid invoices.

2. The Defendant shall pay the Claimant the DIFC Courts fee in the sum of AED 3,110.34.

3. The Defendant's counterclaim shall be dismissed.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 21 January 2019

At: 10am

THE REASONS

The Parties

1.The Claimant is Jackie Equipment Rental LLC (hereafter "the Claimant"), a company registered in Dubai located at Al Quoz, Dubai, UAE.

2. The Defendant is Juhi Building Contracting LLC (hereafter "the Defendant"), a company registered in Ajman, located at Ajman, UAE.

Background and the Preceding History

3. The underlying dispute arises over the hiring of construction machinery by the Claimant to the Defendant pursuant to Hire Agreements (the "Agreements"), and the Defendant's failure to pay the Claimant sums due pursuant to the Agreements.

4. On 18 July 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of AED 54,857 due under five invoices.

5. On 23 September 2018, the Defendant was served with the Claim Form by Ajman Courts by way of Judicial Deputation.

6. The parties met for a Consultation with SCT Judge Ayesha Bin Kalban on both 11 October 2018 and 4 November 2018 but were unable to reach a settlement.

7. On 19 November 2018, a hearing was listed before me, at which both parties attended, and the Courts adjourned the hearing pursuant to the Defendant's request to file a counter claim.

8. On 16 January 2019, a second hearing was listed before me, at which only the Claimant's representative attended, and the Defendant was absent although served notice of the Hearing.

The Claim

9. The Claimant's case is that they entered into an agreement with the Defendant to supply construction machinery for a certain period as can be seen from the date of the invoices (which were acknowledged by the Defendant) in the sum of AED 67,285.72, and are set out as follows:

(a) INV No. 31380 dated 25 April 2017 for the period 7 April 2017 to 25 April 2017 in the sum of AED 13,714.29.

(b) INV No. 31381 dated 25 April 2017 for the period 11 April 2017 to 25 April 2017 in the sum of AED 11,142.86.

(c) INV No. 31382 dated 25 April 2017 for the period from 5 April 2017 to 25 April 2017 in the sum of AED 15,000.

(d) INV No. 31390 dated 26 April 2017 for the period from 11 April 2017 to 26 April 2017 in the sum of AED 11,785.71.

(e) INV No. 31391 dated 26 April 2017 for the period from 5 April 2017 to 26 April 2017 in the sum of AED 15,642.86.

10. The Claimant also confirms that on 5 April 2017 the Defendant made a payment of AED 6,000. In addition, the Claimant confirms that they issued credit notes against the above-mentioned invoices, details of which I set out below:

(a) Credit Memo 32717 dated 18 October 2017 was issued against INV# 31391 for 2.5 days breakdown in the sum of AED 1,607.14.

(b) Credit Memo 32718 dated 18 October 2017 was issued against INV# 31380 for 3.5 days breakdown in the sum of AED 2,250.

(c) Credit Memo 32719 dated 18 October 2017 was issued against INV# 31390 for 1.5 days breakdown in the sum of AED 964.29.

(d) Credit Memo 32720 dated 18 October 2017 was issued against INV# 31382 for 2.5 days breakdown in the sum of AED 1,607.14.

11. The Claimant also provided signed job reports for the breakdowns that occurred on site by the Defendant's representative.

12. In sum, the total amount claimed by the Claimant is AED 54,857.15 of unpaid invoices. The Claimant also claimed Court fees in the sum of AED 3,110.34.

The Defence1

13. On 5 December 2018, the Defendant filed a counterclaim, admitting that the Claimant provided a credit note for the days that the machine was not working, however, the Defendant disagreed with the number of days provided in the credit notes. The Defendant alleges that it provided evidence to prove that the damages and the total amount due after deducting the days that the machine was not working totalled AED 35,142.82. In addition, the sum of AED 6,000 was paid on 5 April 2017, and a further amount was paid by the Defendant to finish the scope of work in the sum of AED 14,998.99 as per Construction Law FIDIC, and, therefore, the Defendant concedes that the balance to be paid to the Claimant is AED 14,143.83.

14. The Defendant failed to attend the hearing although they were notified of the hearing date.

Discussion

15. The parties are both registered and located outside of the DIFC but have opted into the DIFC Courts Jurisdiction as can be seen in Clause 2, Annexure 1 of the Terms and Conditions which states the following: *"by entering into a Rental Agreement (Hire Agreement) with Jackie Equipment Rental LLC, hirer hereby consents that the jurisdiction for the Rental Agreement will be Dubai International Financial Centre (DIFC), and that any dispute arising out of this Agreement will be resolved thru DIFC Courts. Any dispute, difference, controversy or claim arising out or in connection with this contract, including (but not limited to) any question regarding its existence, validity, interpretation, performance, discharge and applicable remedies, shall be subject to exclusive jurisdiction of the Courts of the Dubai International Financial Centre ("the DIFC Courts")."*

16. Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, which are, as relevant:

"(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;

(b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract;

(c) Civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within DIFC and is related to DIFC activities; . . .

(e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations. . .

(2)[illegible] . . . civil or commercial claims or actions where the parties agree in writing to file such claim or action with [the DIFC Courts] whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

17. Therefore, pursuant to Article (5)(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended, the DIFC Courts have the authority to hear and determine this claim.

18. The Claimant filed a claim for outstanding invoices in the sum of AED 54,857.15 and the Court fee in the sum of AED 3,110.34.

19. The Defendant failed to attend the hearing, the Defendant also failed to provide evidence to prove its allegation of damages and the Defendant failed to provide evidence in regard to the "incident logsheet" provided.

20. Therefore, I find that the Defendant is liable to pay the Claimant the sum of AED 54,857.15 as per the Agreement and the invoices provided.

Conclusion

21. In light of the aforementioned, I find that the Defendant shall pay the Claimant the total sum of AED 54,857.15 being the payments for the above-mentioned invoices.

22. The Defendant shall pay the Claimant the court fee in the sum of AED 3,110.34.

23. The Defendant's counterclaim shall be dismissed.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 21 January 2018

At: 10am