Claim No. SCT 483/2019 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 AND REGISTRAR NASSIR AL NASSER BETWEEN LEZLY BANK (PJSC) Claimant and LAZARO Defendant Hearing : 1 July 2020 Judgment : 23 July

Claim No: SCT 166/2020

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS

BETWEEN

LENDRO

Claimant

and

MR. LUTIS

Defendant

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 10 May 2020

AND UPON the Defendant filing an Acknowledgment of Service intending to defend all of this Claim dated 11 May 2020

AND UPON a Consultation having been held before SCT Judge Delvin Sumo on 18 May 2020

AND UPON the parties failing to reach a settlement at the Consultation

AND UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 8 June 2020, with the Claimant's representative in attendance and the Defendant failing to attend although served notice of the Claim

AND UPON a Second Hearing having been held before SCT Judge Maha Al Mehairi on 16 June 2020, with the Claimant's representative and the Defendant in attendance

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 33,075.56 in relation to unpaid invoices.

2. The Defendant shall pay the Claimant the sum of AED 2,315.29 in relation to Late Payment Fees.

3. The Defendant shall pay the Claimant the Court Fees in the sum of AED 1,653.76.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of Issue: 23 July 2020
At: 3pm

SCHEDULE OF REASONS

1. The Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking an order for the payment of alleged unpaid invoices relating to an engagement agreement dated 9 February 2015 (the "Agreement") in the total amount of AED 33,075.56.

2. The Defendant paid the Claimant's invoices until August 2019, and thereafter from September 2019 until February 2020, and after this time, the Defendant stopped paying for the Claimant's services. Throughout this time, however, the Defendant led the Claimant to believe that the relationship continued as normal and that he would pay for their services.

3. On 10 May 2020, the Claimant filed a claim with the SCT claiming payment of the outstanding invoices in the amount of AED 33,075.56 (the "Invoices"), in addition to a late payment penalty fee on the outstanding Invoices, as per the terms of the Agreement, and the recovery of the Court fees associated with filing the Claim.

4. In response to the Claim, the Defendant submits that, on 1 September 2019, he sent an email to the Claimant requesting that they stop acting on his behalf until further notice. However, the Defendant continued to receive monthly invoices from the Claimant which he ignored.

5. The Defendant submits that upon requesting further details in relation to the pending invoices in February 2020, he discovered that the Claimant

was seeking payment for services that he did not request.

6. The Defendant admits that, even after 1 September 2020, he continued to communicate with the Claimant, however, he submits that such communication was merely to obtain an update in respect of services for which he had already made payment.

7. The Defendant refuses to pay the Invoices and claims that he sent an email to the Claimant which included a copy of the `cancellation of the Power of Attorney' as he did not want the Claimant to further represent him.

8. In reply, the Claimant relies upon correspondence between the Defendant and the Claimant shared via WhatsApp and telephone, wherein it is claimed that throughout the period of September 2019 to February 2020, the Defendant continued to request the Claimant to represent and assist him with various matters in the ordinary course of business.

9. The Claimant sent monthly invoices to the Defendant which were never contested by him, and in light of the five-year relationship between the parties, the Claimant provided some leeway to the Defendant in respect of imposing late payment penalties.

10. In the Defendant's email of 19 January 2020, he confirmed that he was aware of the Invoices and asserts that he was just waiting to receive his money from the Court in order to process payment.

11. The Claimant argues that they have represented the Defendant in several matters, and that the outstanding amount sum of AED 33,075.56 refers to the services performed during the period of September 2019 to February 2020.

12. The services that were provided during the 6 months were in response to the Defendant's requests, as evidenced by the Claimant's records. Furthermore, the Claimant provided email evidence to demonstrate that the Defendant had previously confirmed his obligation and commitment to pay for Claimant's services.

13. The Claimant argues that the Defendant's refusal to pay for the services constitutes a breach of contract.

Discussion

14. This dispute is governed by DIFC Contract Law and the relevant case law and principles concerning a breach of contract. Neither party has disputed the jurisdiction of the DIFC Courts and thus the Court assumes jurisdiction of this dispute.

15. Clause 14 of the Agreement stipulates that *"any dispute arising out of, or in connection, with the Engagement Agreement ("Engagement Dispute"), including any question regarding its existence, validity or Termination, shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre ("DIFC Courts"). This Engagement Agreement shall be governed by and construed in accordance with the Laws of the DIFC."*

16. This is a very straight forward matter, although the Defendant states that he sent an email to the Claimant to discontinue the Claimant's service, dated 1 September 2019, it is clear that following transmission of the email, the Defendant continued to avail the Claimant's services.

17. Moreover, the Defendant received monthly invoices from the Claimant which he chose to ignore and failed to investigate further to understand the basis of these invoices.

18. The Claimant provided a list of the matters for which they had provided legal advice to the Defendant and a breakdown of the underlying Invoices. Upon review of the list, I am of the view that, if the Defendant was merely `following up on previous services', as he states, such communication between the parties would unlikely continue for a period of 6 months, and I find that the additional work completed by the Claimant should be chargeable. I also note that the Defendant failed to cancel the Claimant's Power of Attorney.

19. I am not satisfied that the Defendant ended the Claimant's services on 1 September 2019, as he suggests, and I find that the Claimant continued to provide its services to the Defendant until February 2020. As such, the Defendant is liable to pay the Invoices in the amount of AED 33,075.56.

20. In the Claimant's reply to the defence, I note that they have sought to claim additional remedies, which I set out below:

(a) The outstanding amount of AED 33,075.56 for Subject Services;

(b) Interest on the outstanding amount;

(c) Finance fee of seven (7%) per annum as per the Engagement Agreement;

(d) Damages incurred, which, as of now, amount to about AED 20,000;

(e) All court and legal fees incurred by bringing this Claim; and

(f) Any other applicable relief that the Court might find appropriate.

21. Upon review of the case file, it is noted that the Claimant has failed to amend the Claim Form to include the additional remedies (b), (d) and (f), set out above. Therefore, the Court will not be addressing these points at hand.

22. In relation to remedy (c), the Court is satisfied that the Agreement contains a clause for imposing a `Late Payment Penalty', which I set out below:

"i. In the event that the Monthly Invoice is not settled within (14) days from issuance, the firm will impose a finance fee at the rate of seven percent (7%) per annum on all outstanding amounts ("Finance Fee")"

23. In light of my reasons above, the Court is satisfied that the Defendant is liable to pay the Claimant the sum of AED 33,075.56 together with a 7% late payment fee, which I have calculated as follows:

(AED 33,075.56 x 7% late payment fee = AED 2,315.29)

24. The Claimant also seeks to recover the fee that was paid to the Court for the filing of this Claim. I am of the view that, as the Claimant has been successful on their claims, they are entitled to recover the Court filing fee in the sum of 1,653.76.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of Issue: 23 July 2020
At: 3pm