THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE SMALL CLAIMS TRIBUNAL

BETWEEN

MINDALI

Claimant

and

MEUN

Defendant

ORDER WITH REASONS OF SCT JUDGE DELVIN SUMO

UPON reviewing the Claim Form dated 12 November 2020 (the "Claim")

AND UPON this Claim having been called for a Consultation before SCT Judge Delvin Sumo on 12 January 2021

AND UPON the Claimant's representative attending the Consultation and the Defendant failing to appear although served notice of the claim

AND UPON reviewing the case file and submissions contained therein

IT IS HEREBY ORDERED THAT:

1. The Claim shall be dismissed.

2. The DIFC Courts do not have jurisdiction over this Claim.

3. Each party shall bear their own costs.

Issued by:
Delvin Sumo
SCT Judge
Date of Issue: 19 January 2021
At: 10am

SCHEDULE OF REASONS

Parties

1. The Claimant is Mindali a bank providing financial services to customers (the "Claimant").

2. The Defendant is Mr. Meun, an individual customer of the Claimant Bank (the "Defendant").

Discussion

3. On 12 November 2020, the Claimant filed a Claim with the DIFC Courts' Small Claims Tribunal (the "SCT") seeking recovery of sums allegedly owed to the Claimant by the Defendant in relation to an application form dated 26 March 2019 submitted by the Defendant to the Claimant seeking to avail of a `Mindi' Credit Card with a credit limit of AED 5,000 (the "Credit Card"). The Claimant alleges that the Defendant fell into arrears on 8 February 2020 and claims that the outstanding sum owed against the Credit Card amounts to AED 6,855.49.

4. In support of its claim, the Claimant relies on the aforementioned application form dated 26 March 2019 which was completed by the Defendant electronically (the "Application Form").

5. Upon reviewing the Application Form, it appears that it does not contain an express clause by virtue of which the DIFC Courts would be able to exercise jurisdiction over the Claim. In its submissions, the Claimant submits the following:

> "As agreed by the Defendant the MINDALI Credit Card holder agreement and the service and price guide were provided in any form including but not limited to in either printed or digital form along with credit card. As mentioned in the welcome kit, the detailed Terms and conditions is always available on MINDALI's official website - .. "Governing Law clause 16" that the DIFC Courts have jurisdiction over all matters arising under the agreement."

6. The Claimant further submits that this `contractual provision constitutes a submission to the DIFC Courts' jurisdiction by the parties'.

7. Rule 53.2 of the Rules of the DIFC Courts (the "RDC") requires that the SCT only hear cases that fall within the jurisdiction of the DIFC Courts.

8. The jurisdiction of the DIFC Courts is determined by Article 5(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended (the "JAL"), which provides a number of limited gateways through which the DIFC Courts may exercise jurisdiction over a claim, which are, as relevant:

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

ii. (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;

iii. (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; . . .

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

(2). 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."

9. Pursuant to Article 5(A)(2) of the JAL, the DIFC Courts can exercise its jurisdiction over a matter that is unrelated to the DIFC, where the parties have agreed in writing that any dispute arising between them would be referred to the DIFC Courts for adjudication. Such a provision would allow the parties to `opt-in' to the DIFC Courts' jurisdiction, provided that it clearly demonstrates the parties' intention to do so.

10. In light of the Claimant's submissions set out above, I am of the view that, a referral from a welcome kit to terms and conditions available on the Claimant's website cannot be construed to be a valid opt-in clause. In coming to my view, I have been persuaded by the findings of SCT Judge Ayesha Bin Kalban in [2019] SCT 538 Lucy v Levi, wherein it was held that ".referral to terms and conditions that are available in digital form do not constitute to be a written agreement, as it does not guarantee in any form that the Defendant may have seen them, or that the Defendant agrees to submit to the DIFC Courts' jurisdiction".

11. Therefore, I dismiss the Claimant's Claim for AED 6,855.49 on the grounds that the DIFC Courts lack jurisdiction over this Claim.

Conclusion

12. The Claimant's Claim is dismissed due to the Courts' lack of jurisdiction.

13. Each party shall bear their own costs.

Issued by:
Delvin Sumo
SCT Judge
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