THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

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

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS

BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

KASPER INTERIORS DECORATION LLC

Claimant

and

KAIYA

Defendant

Hearing : **23 September 2019**

Further Submissions : **13 November 2019**

Judgment : **26 November 2019**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 8 August 2019

AND UPON the Defendant acknowledging service of the claim on 21 August 2019

AND UPON the parties being called on 3 September 2019 for a Consultation before SCT Judge Delvin Sumo

AND UPON the parties failing to reach a settlement

AND UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 23 September 2019, with the Claimant's representative and the Defendant's representative attending

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

AND UPON reviewing the Expert Report filed on 13 November 2019

AND UPON reviewing all documents and evidence submitted on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant a total sum of **AED 164,280**.

2. The Defendant shall pay the DIFC Courts' filing fee in the amount of **AED 8,214**.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of issue: 26 November 2019

At: 9am

THE REASONS

Parties

1. The Claimant is Kasper Interiors Decoration LLC, (the "Claimant"), an architectural and interior design consultancy company located in Dubai.

2. The Defendant is a Kaiya (the "Defendant"), a new caf located in Dubai.

Preceding History

3. On 8 August 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking the sum of AED 343,716 allegedly owed to the Claimant by the Defendant.

4. The matter was listed for a Consultation before SCT Judge Delvin Sumo on 3 September 2019, however, the parties failed to reach a settlement.

5. The matter was called for a hearing before me on 23 September 2019, with representatives appearing on behalf of both parties.

6. The Claim was originally filed against Mr Krain, the owner of Kaiya (being the Defendant company), however, after reviewing the evidence and specifically the contract between the parties, it is shown that the relationship is between the Claimant and Kaiya. In light of this, the Court, of its own initiative, proceeded to amend the Defendant's name from being Mr Krainto Kaiya.

7. On 24 September 2019, I gave post-hearing directions, requesting that the parties provide an expert report in relation to specific points within the claims, being the ground floor, first floor and exterior works.

8. The parties submitted the joint expert report on 13 November 2019 (the "Expert Report").

9. Upon reviewing all of the documentation on the Court file to date, I hereby give my judgment.

The Claim

10. The Claimant and the Defendant entered into a contract for design development and construction of the Kaiya in Dubai in the value of AED 650,940 (the "Contract"). The scope of work agreed between the parties in the Contract was defined in the Bill of quantity (the "BOQ"), and set out the agreed finishes and the design, which was approved by the Landlord.

11. The unit's permit was amended to be commercial rather than residential, however, this did not include a permit for its use as a food and beverage outlet. Upon the Defendant's request, the Claimant instructed an engineering consultant to amend the building permit from `commercial' to `caf�'.

12. The parties are in dispute with respect to the responsibility of the professional fees related to the engineering consultant. The Claimant was required to produce "As-Built" drawings, as this is a pre-requisite for applying for the permits and notably the landlord did not have copies of the drawings.

13. Upon changing the property's permit, the Claimant applied for a decoration permit. Throughout this time, the Defendant helped to expedite the work in relevant departments. The Claimant mobilised to site and started the works on the project as of 13 November 2018.

14. The Claimant claimed that the work was completed by late January/early February 2019. However, the Defendant claimed that the work was not completed until late May 2019 except for some items, such as, and not limited to, the painting of the first floor.

15. The Claimant sent several emails requesting that the Defendant pay the balance of the Contract. The Claimant sent an email with a total contract amended value of AED 686,024 in addition to variations for AED 166,192 and thus is claiming a final Contract value of AED 852,216. The Defendant rejected the final amount as sent by the Claimant.

16. Therefore, on 8 August 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming the remainder of the agreed amount set out within the Contract in the value of AED 177,524 and the additional work in the amount of AED 166,192 that was performed for the Defendant, a total of AED 343,716.

17. The Defendant rejected the claims which were made by the Claimant for the value of the balance work and the additional works claimed. The Defendant claimed that the Claimant's scope of work was not completed, also, it was stated by the Defendant that they incurred further losses in deploying third parties to finish the work.

18. The Defendant argues that the list of items in the BOQ were performed to an unsatisfactory standard and were rejected by the Defendant in their entirety, and other work was defective and required a third party to fix it.

19. On the Claimant's account, they submit that they fulfilled their part of the Contract and certainly, enough to warrant payment for their services and the additional work that was done to the project. Such is evidenced by the work presented on file and to the Defendant.

20. In response, the Defendant stated that the additional work was not agreed and that the amounts paid to the Claimant in respect of the Contract greatly exceed the value and quality of the work delivered in the project. The Defendant pleaded that despite being entitled to damages, they have not claimed any amount against the Claimant for all the additional costs, expenses and losses incurred due to delays in the project and the need to rectify the defective work.

21. The Claimant's argument is simply that they have fulfilled their part of the Contract and therefore require payment for pre-agreed services.

22. The parties reiterated their arguments at the hearing listed before me on 23 September 2019, and I ordered that an Expert Report be provided to value the parties' work and assess the damages that were made to the project.

Discussion

23. The Contract in question is signed by both parties on 15 September 2018. Its terms are not disputed by the parties. The dispute is governed by the DIFC Law of Contract and the relevant case law and principles concerning a breach of contract. Neither party has disputed the jurisdiction

of the DIFC Courts, as stated in the Contract under Clause 9:

> "In addition, in case of any dispute that may rise, the matter will be brought to the DIFC Court Laws for Arbitration or legal proceedings."

24. The Expert Report was made in consideration of the signed contract, site visits, and documents provided by the parties. After reviewing the Contract, the Expert concluded that the Contract is primitive with unclear Terms and Conditions. With respect to the contractual scope of work, the Expert relied on the original BOQ and drawings.

25. The drawings were prepared by Claimant and approved by the Defendant. The BOQ was prepared by the Claimant and priced accordingly. Therefore, the drawings and BOQ are the Claimant's responsibility.

26. The remuneration set out in the Contract is for payment via a lump sum subject to variations. However, the terms of the Contract provide that the Defendant shall pay to the Claimant, the allocated cost of any item, in the situation that the Defendant may opt to cancel such item. The Contract provides that "Anything not covered in the above scope will not be considered part of the Contract and would be priced separately". Therefore, the parties are in agreement with respect to the entitlement of the Claimant to claim variations concerning any scope which is not covered in the BOQ.

27. The Expert's Report provided is based on the BOQ items and the parties' comments on the BOQ. The Expert carried out two site visits, reviewed the submitted documents by the Defendant, the Claimant's submission of the final BOQ and variation by email dated 30 July 2019, as well as the parties' submissions.

28. The Expert selected by the parties has reviewed the BOQ thoroughly and has reviewed the work that was completed by the Claimant as well as the work completed by the third party to rectify the Claimant's work.

29. The Expert Report included a list of items that were listed in the BOQ which were discussed in depth. The concerned Expert also factored in the monetary value of the work completed by the third party to either fix or finish the Claimant's work.

30. The table below includes the summarised values of the Original signed BOQ, the claimed revised BOQ by the Claimant, the Defendant's valuation based on the First Witness Statement, and the Expert evaluated values:

Description

Original BOQ (AED)

Claimed revised values by the Claimant (AED)

Evaluated values by the Expert (AED)

Ground Floor including preliminaries

395,125

392,237

343,335

First Floor

156,140

183,762

141,545

Exterior Works

99,675

105,475

102,325

Sub total

650,940

681,474

587,205

Variations

N/A

166,192

77,075

Total

650,940

847,666

664,280

31. The Court has thoroughly reviewed the parties' oral submissions presented at the hearing, read the evidence on the case file, and reviewed the Expert Report and is satisfied with the calculations that were provided within the Expert Report.

32. The parties agreed that the received amount on behalf of the works was AED 500,000, and the Defendant confirmed that the amount paid was AED 500,000, minus the amount revised by the Expert, which is AED 664,280, with the balance amount due to the Claimant factoring in the Expert evaluation is AED 164,280.

Conclusion

33. Accordingly, I find that the Defendant shall pay the Claimant a total sum of **AED 164,280**.

34. The Defendant shall pay the DIFC Courts' filing fee in the amount of **AED 8,214**.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of issue: 26 November 2019

At: 9am