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 NATASHA BAKIRCI

BETWEEN

IASSEN LLC

Claimant

and

THE IBERNIA RESTAURANT AND BAR LLC

Defendant

Hearing:**21 May 2018**

Judgment: **24 May 2018**

JUDGMENT OF SCT JUDGE NATASHA BAKIRCI

UPON the Claim Form being filed on 10 April 2018;

AND UPON the Amended Claim Form being filed on 5 May 2018;

AND UPON a Consultation having been held before SCT Judge Ayesha Bin Kalban on 25 April 2018, and the parties not reaching settlement;

AND UPON a Hearing being held before me, SCT Judge Natasha Bakirci on 21 May 2018, with the Claimant's and the Defendant's representatives attending;

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1.The Defendant shall pay the Claimant the sum of AED 45,000 in respect of 3 months of retainer fees, plus VAT amounting to the sum of **AED 47,250**.

2. The Defendant shall pay the Claimant two months' notice for termination of the contract, in the sum of AED 30,000, plus VAT amounting to **AED 31,500**.

3. The Defendant shall pay the Claimant the court fee in the sum of **AED 5,769.19**.

Issued by:

Natasha Bakirci

SCT Judge

Date of issue: 24 May 2018

At: 10am

THE REASONS

The Parties

1.The Claimant is a consulting company which was contracted to perform consultancy services for the Defendant in August 2017.

2. The Defendant is a restaurant located in the DIFC.

The Claim

3. The Claimant claimed that the Defendant had not paid it its monthly retainer fee which was AED 15,000 plus VAT for the months of January, February and March 2018.

4. The Claimant further claimed that the Defendant had terminated the consultancy contract between them on 26 March 2018, which meant that the Defendant owed them 2 months' notice under the contract pursuant to Clause 20.

5. The Claimant further claimed its court fee.

The Defence

6. The Defendant accepted that it owed 3 months' retainer fee in the sum of AED 45,000 plus VAT to the Claimant.

7. As regards the 2 months' notice provided by Clause 20 of the contract, the Defendant argued that it was the Claimant who had requested that the contract be terminated by virtue of an email dated 25 March 2018 where they had stated the following to the Defendant's representative: "In order to release Iassen from the existing contract, please send us an official letter stating that you wish to terminate the contract as per the terms and conditions." Moreover, the Defendant asserted that the Claimant had not performed all of its duties, such as attending all the required meetings during the last month of the retainer, March 2018 especially and that this should be taken into consideration when calculating the notice period.

The Hearing

8. At the Hearing, the Defendant accepted that it owed the Claimant AED 45,000 plus VAT in respect of 3 months' retainer fees. The Defendant lamented the difficult financial situation it had been facing and the lack of investment funds and explained that this was the reason behind the delay.

9. As regards the 2 months' notice, the Defendant maintained that the Claimant had indicated the following via email on 25 March 2018: "In order to release Iassen from the existing contract, please send us an official letter stating that you wish to terminate the contract as per the terms and conditions." It was therefore argued that it was the Claimant who had in essence requested the termination, and that therefore the Defendant should not be responsible to pay the 2 months' notice provided in Clause 20 of the contract.

10.Additionally, the Defendant asserted that the Claimant had not performed all of its contractual duties in the last couple of months of the contract, and in particular had not attended a number of required meetings and that this should be a relevant factor when determining its liability as regards termination under the contract.

11. The Claimant maintained that it was the Defendant who had requested termination due to its inability to pay given its difficult financial circumstances. Therefore, the Defendant should pay for the 60 days'/2 months' notice period provided for at Clause 20 of the contract.

Discussion

12. I note at the outset that the Defendant unequivocally accepted at the Hearing before me that it owed the Claimant the sum of AED 45,000 plus VAT in respect of the retainer fee for the months of January, February and March 2018.

13. It follows that all that remains for me to consider is whether the Claimant should be paid 2 months' notice period in accordance with Clause 20 of the consultancy agreement signed between both parties on 16 August 2017.

14. Clause 20 of the Consultancy Agreement states the following:

> "**Termination** 20) Each of us can terminate the Consultancy Agreement or suspend its operation by giving 60 days' prior notice in writing to the other at any time only after completion of phase 1 and 2. Termination or suspension under this clause shall be without prejudice to any rights that may have accrued for either of us before termination or suspension and all sums due to us shall become payable in full when termination or suspension takes effect. (For major neglect by the consultant the agreement can be terminated with immediate effect)."

15. At no point does the Defendant appear to have argued that the Claimant was terminated for "major neglect." To the contrary, it appears from the correspondence put before me that the Defendant was invited to terminate the contract by the Claimant in its email dated 25 March 2018, cited at paragraph 9 above, after the Defendant had emailed the Claimant on 22 March 2018 expressing the following:

> "I believe its (sic) unfair for both parties to keep the business collaboration specially that you can't deliver in the current circumstances as you mentioned and this has been reflected through the previous operational months. I am afraid keeping you on board will only incur more liabilities that I might not be able to fulfill. Kindly suggested (sic) what would be the best way moving forward as I don't want to keep you locked with a project which is not delivering."

16. From the papers and what was discussed at the Hearing, it appears that the consultancy relationship ground to a halt due to the Defendant's unfortunate financial circumstances, leaving the latter with no other option but to terminate the agreement by way of an email dated 26 March

2018.

17. In the light of the above, I find that the Defendant is also liable to pay the 60 days' notice provided by Clause 20 of the Agreement, in the sum of 30,000 AED plus VAT as claimed by the Claimant.

Conclusion

18. It follows that the Defendant should pay the Claimant: (i) AED 45,000 plus VAT in respect of their retainer fee for the months of January until March 2018; (ii) AED 30,000 plus VAT as 2 months' notice for termination pursuant to Clause 20 of the Agreement; and (iii) the Claimant's court fee.



Issued by:

Natasha Bakirci

SCT Judge

Date of Issue: 24 May 2018

At: 10am