Claim No. SCT 388/2018

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

BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

JASMINE

Claimant

and

JABEZ

Defendant

Hearing: **7 January 2019**

Judgment: **27 January 2019**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 16 December 2018;

UPON the Defendant filing an application to contest jurisdiction;

UPON a hearing having been held before SCT Judge Maha Al Mehairi on 17 January 2019, with the Claimant and Defendant in attendance;

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

IT IS HEREBY ORDERED THAT:

1. The Defendant's Application to contest jurisdiction is granted.

2. The DIFC Courts do not have jurisdiction to hear this dispute. The case is therefore dismissed.

3. Each party shall bear their own costs as to the Application.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 27 January 2019

At: 10am

THE REASONS

Parties

1. The Claimant is Jasmine (hereafter the "Claimant").

2. The Defendant is Jabez, (hereafter the "Defendant").

Background

3. On 25 February 2015, the Claimant, the Defendant, and four other parties entered into an arrangement to set up a limited liability company, with each partner of the company receiving their shares respectively. Shortly thereafter, the company faced financial problems that threatened its existence and the Defendant entered into an agreement with the partners of the company to buy out their shares and to continue running the company.

4. The Defendant sought to buy the Claimant's shares by way of post-dated cheques and cash. The Claimant received three cheques from the Defendant, two of which have been cashed and one is still pending in the amount of AED 8,750.

5. The Claimant has been chasing the Defendant for the payment of the outstanding cheque but to no avail. On 16 December 2018, the Claimant filed a claim in the DIFC Courts Small Claims Tribunal (the "SCT") for payment of the outstanding cheque in the amount of AED 8,750, interest on the delayed payment of the cheques due to insufficient funds in the Defendant's bank account, and the sum of AED 2,625 for charges incurred for the return of the cheque. The Claimant is also claiming tickets, hotels and travel expenses in the sum of AED 10,000, compensation for psychological effects and suffering in the amount of AED 21,375, court fees and legal fees in sum of AED 8,075, all in the total claim value of AED 50,000.

6. In support of his Claim, the Claimant submitted copies of the cheques and the company's commercial licence.

7. The Defendant responded to the claim on 23 December 2018 by filing an application to contest the jurisdiction of the DIFC Courts. The Defendant submitted a document stating that the company is established in Dubai and therefore has a Dubai commercial licence.

8. The Defendant argued that if the Claimant wished to pursue legal action it should have been done so via the Dubai Courts. Moreover, the Defendant argues that the Agreement in existence between the parties fails to contain a jurisdiction clause that would bring the case within the DIFC jurisdiction and as such this claim should be rejected for lack of jurisdiction.

9. On 17 January 2019, I heard oral submissions from the Claimant and the Defendant.

Discussion

10. Having considered the written submissions and the arguments put forward at the jurisdiction hearing, I find that this dispute falls outside the jurisdiction of the DIFC Courts.

11. The Claimant holds the burden of proof to show that the DIFC Courts and the SCT have jurisdiction over the claim. The Claimant presented an argument regarding which gateway this case falls within pursuant to Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended; particularly, he stated that this issue relates to a loan between the parties and can be brought before the DIFC Courts as the DIFC Courts is a Court of Dubai, he also added that the case was filed and lodged with the DIFC Courts and therefore should be treated as accepting the jurisdiction.

12. Rule 53.2 of the Rules of the DIFC Courts ("RDC") require that the SCT hear only cases that fall "*within the jurisdiction of the DIFC Courts.*". 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, which 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."

13. There is no evidence that any of above-mentioned gateways have the potential to apply in this case. Neither of the parties are DIFC Bodies or Establishments. The relevant contracts were not partly or wholly concluded or performed within the DIFC. In fact, there is no alleged connection to the DIFC. There is no other relevant DIFC Law or Regulation granting jurisdiction in this matter. Finally, the parties have not agreed in writing to file such claim or action within the DIFC Courts. The Claimant has not presented any written contract or agreement including such a jurisdictional clause.

14. Pursuant to Article 5(A)(2) of the Judicial Authority Law, it is possible for the parties to agree in writing to the jurisdiction of the DIFC Courts after this dispute arose, however, the parties have failed to do this. The Defendant has contested jurisdiction of the DIFC Courts and as such this is considered a rejection to an opt-in of the DIFC Courts' jurisdiction.

15. Given the nature of the evidence submitted regarding the Agreement, it is clear that this matter relates to a dispute involving a company that is located outside the jurisdiction of the DIFC.

16. In addition, I draw the parties' attention to the fact that claims filed via the DIFC Courts online case management system are not filtered or reviewed in advance by the Courts' Registry staff. The onus falls upon the Claimant to conduct his or her own legal research before lodging a claim

or proceeding with any legal action. The filing of a Claim with the DIFC Courts is not determinative that the claim falls within the DIFC Courts jurisdiction.

17. Therefore, as none of the relevant jurisdictional gateways of the Judicial Authority Law apply to this case, I must conclude that this case falls outside of the jurisdiction of the DIFC Courts.

Finding

18. This is a very straightforward matter, the DIFC Courts and the Small Claims Tribunal do not have jurisdiction to hear this claim and therefore the claim must be dismissed in full for lack of jurisdiction.

19. Each party shall bear their own costs.



Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 27 January 2019

At: 10am