Claim No. SCT 162/2020

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 MAHA AL MEHAIRI

BETWEEN

LENNOX LLC

Claimant

and

LARYN ENGINEERING LLC

Defendant

Hearing

: 28 May 2020

Judgment

: 4 June 2020

JUDGMENT OF SCT JUDGE MAHA ALMEHAIRI

UPON this Claim being filed on 6 May 2020

AND UPON the Defendant filing an Acknowledgment of Service indicating its intention to contest the jurisdiction of the DIFC Courts dated 13 May 2020

AND UPON a Jurisdiction Hearing having been held before SCT Judge Maha Al Mehairi on 28 May 2020, with the Claimant and the Defendant's representatives in attendance

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

IT IS HEREBY ORDERED THAT:

1. The Defendant's application to contest jurisdiction is denied.

2. The DIFC Courts have jurisdiction to hear and determine this claim.

3. Each party shall bear their own costs.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of Issue: 4 June 2020

At: 1pm

THE REASONS

The Parties

1. The Claimant is Lennox LLC (hereafter "the Claimant"), a company registered in Dubai, UAE.

2. The Defendant is Laryn Engineering LLC (hereafter "the Defendant"), a construction company located within Dubai, UAE.

Background and the Preceding History

3. The underlying dispute arises over alleged unpaid invoices pursuant to a Hire Agreement signed by the Claimant and the Defendant, following

which the Defendant failed to pay the Claimant the sums due under the said Hire Agreement.

4. On 6 May 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of AED 446,448.92, in addition to the Court fees.

5. The Defendant responded to the claim on 13 May 2020 indicating its intent to contest the jurisdiction of the DIFC Courts. On 28 May 2020, I heard the parties' arguments at a Jurisdiction Hearing.

The Claim

6. The Claimant's case is that they entered into an agreement with the Defendant to rent equipment for the Defendant's use during the period between 2018 to 2019. However, it is alleged that the Defendant failed to pay the Claimant for the rental of the equipment despite numerous requests.

7. The Defendant argues that both companies are located outside of the jurisdiction of the DIFC and that the trade licences state that both of the companies are located in onshore Dubai, and not the DIFC, therefore, the applicable law and Courts should be the `Courts of Dubai'.

8. At the Hearing, the Claimant argued that the Defendant had agreed to the terms of the Hire Agreement and accepted the invoices that were submitted to it for payment, both of which contain a clause opting into the jurisdiction of the DIFC Courts. The Claimant argues that the Defendant's acceptance of the invoices and Hire Agreement supersede any argument that the locale of parties should determine which Court hears and determines any claim arising between the parties. As such, the Claimant asserts that, the Defendant's actions, by agreeing and paying previous invoices (which included a clause opting into the jurisdiction of the DIFC Courts), should demonstrate the Defendant's agreement to the jurisdiction of the DIFC Courts.

Discussion

9. The parties are both registered and located outside of the DIFC but have sought to opt into the jurisdiction of the DIFC Courts by virtue of Clause 9.1 of the Hire Agreement, which states the following: *"any dispute, difference, controversy or claim ("dispute") arising out of or in connection with this Hire Agreement, including (but not limited to) any question regarding its existence, validity, interpretation, performance, discharge and applicable remedies, shall be referred to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre (the "DIFC Courts"). In the event a Dispute relates to a claim for an amount of AED 500,000/- or less (or the value of the subject matter of the claim is AED 500,00/- or less), the hirer and Lennox L.L.C agree that such claims shall be brought before the Small Claims Tribunal of the DIFC Courts."*

10. The jurisdiction of the DIFC Courts is determined by Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004 ("JAL"), as amended which provides a number of limited gateways through which the DIFC Courts can exercise 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) . . . 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."