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 MHEIRI

BETWEEN

MERINA

Claimant

and

(1) MARWAN
(2) MARALD

Hearing : **22 February 2021**
Judgment : **1 March 2021**

ORDER WITH REASONS OF SCT JUDGE MAHA AL MHEIRI

UPON this Claim being filed on 7 February 2021

AND UPON the Defendants indicating their intention to contest jurisdiction and defend all of the Claim on 14 February 2021

AND UPON a Jurisdiction Hearing having been held before SCT Judge Maha Al Mheiri on 22 February 2021, with the Claimant and the Defendants' representative in attendance

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

IT IS HEREBY ORDERED THAT:

1. This Claim be dismissed due to lack of jurisdiction.

2. The DIFC Courts do not 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: 1 March 2021
At: 10am

THE REASONS

The Parties

1. The Claimant is Merina (the "Claimant"), a company that supplies rental equipment and material handling, for construction sites, located in Dubai, UAE.

2. The First Defendant is Merwan (the "First Defendant"), a contracting company located in Dubai, UAE.

3. The Second Defendant is Merald (the "Second Defendant"), a contracting company located in Abu Dhabi, UAE.

Background and the Preceding History

4. The underlying dispute arises over unpaid invoices issued in relation to the hire of supplied manlift machines supplied by the Claimant to the Defendants.

5. On 25 November 2019, the Second Defendant sent a Local Purchase Order 234 (the "LPO"), and as a result the Claimant sent a hire invoice for manlift machines. The parties' relationship continued until January 2020 when the Defendants went into arrears with regards to the payment owed to the Claimant for the hire of the manlift machines.

6. On 7 February 2021, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming AED 150,000 for unpaid rental charges in addition to court fees.

7. The Defendants responded to the Claim Form on 14 February 2021 indicating their intention to contest the jurisdiction of the DIFC Courts. On 22 February 2021, I heard the parties' arguments at a Hearing.

The Jurisdiction Application

8. In their submissions the Defendants submit that the DIFC Courts do not have jurisdiction in respect of the Claimant's claims under the LPO, Clause 17 of the LPO, which is headed Applicable Law/Dispute of the Plant Hire Order Terms and Conditions, states:

> "17 APPLICABLE LAW/DISPUTES
>
> 17.1 This Contract shall be subject to and construed in accordance with the laws of the country for the project/location relating to this Order.
>
> 17.2 Any dispute between the Purchaser and the Supplier in relation to any matter arising under this Contract shall be settled amicably by the senior management.
>
> 17.3 In the event of any unresolved dispute, the Supplier shall ensure that the Order is processed and continued without any effect.
>
> 17.4 If the dispute has not been resolved in accordance with the provisions of Clause 17.3 above within a period of twenty one (21) days of the service of written notice of dispute, or such other period as is subsequently agreed in writing by the Purchaser and the Supplier, then either party may give notice to the other party that the dispute shall be referred to arbitration and finally settled by three arbitrators in accordance with the arbitration rules applicable in the country relating to this Order. The place of arbitration shall be in the country relating to this Order, and the ruling language shall be English. The costs of the arbitration shall be borne by the claimant initially, pending any final award of the arbitration.
>
> 18 CONFIDENTIALITY
>
> 18.1 Any Confidential Information provided by the Purchaser to the Supplier, shall not be disclosed to any third party without the prior written consent of the Company. The Supplier shall keep the Confidential Information confidential and acknowledges that damages may be inadequate compensation for breach of this Contract and, at the discretion of the court; the Purchaser may seek and obtain injunctive relief or similar remedy against a threatened or actual breach of this Clause 18."

9. As such, the Defendants submit that it is clear from the LPO that the law to be applied on the parties is in accordance with the dispute provisions set out above. The Defendants are of the view that the LPO clearly provides under Clause 17 that any dispute shall be finally resolved by arbitration (failing amicable discussion by the parties' senior management) and that the governing law shall be UAE laws as applicable to the project location, being the Emirate of Abu Dhabi.

10. The Defendants argues that the Claimant is a Dubai Free Zone Entity and both the Defendants are UAE onshore entities rather than DIFC entities, and therefore the Defendants contend that the DIFC Courts has no jurisdiction over the Claim.

11. In addition, the Defendants submit that Clause 1.2 of the LPO clearly provides that its terms and Conditions shall prevail and override, over any other subsequent terms or conditions that the "Supplier" (Claimant) may impose, as shown below:

> "1.2 These terms override any other conditions which the Supplier may subsequently seek to impose."

12. In reply, the Claimant submits that the parties' agreement to opt-in to the DIFC Courts' jurisdiction has been stated clearly in the Claimant's terms & conditions under section 6 stated JURISDICTION:

> "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 Center ("DIFC Courts"). In the event a Disputes relates to a claim for an amount of AED 500,000/- or less (or the value of the subject matter of the claim is 500,000/ or less), the Hirer and Merina, agree that such claims shall be brought before the Small Claims Tribunal of the DIFC courts."

13. In addition, the Claimant argues that each invoice sent to the Defendants includes a clear Jurisdiction clause, as shown below:

> "Note: Any dispute about this invoice, it will be settled in DIFC courts relates to a claim for a mount of AED 500,000/- or less. Such claims shall be brought before the Small Claims Tribunal of the DIFC Courts. Merina terms & conditions applied."

14. The Claimant also adds that the Defendants stamp and sign each invoice received from the Claimant, all of which include a clause opting in to the DIFC Courts' Jurisdiction.

Discussion

15. It is important to establish that the relationship between the parties commenced after the Second Defendant sent the LPO to the Claimant, and an offer and acceptance was communicated between the parties.

16. A valid contract is formed "by the acceptance of an offer" (DIFC Contract Law, Article 14). Thus, the task is to determine whether a valid offer was given and whether it was duly accepted as allowed under the DIFC Contract Law. An "offer" to conclude a contract must be "sufficiently definite and indicate the intention of the offeror to be bound in case of acceptance" (DIFC Contract Law, Article 15).

17. After receiving the LPO the Claimant sent the hire invoice to the Defendants. The Claimant argues that these invoices it had included an opt-in to the DIFC Courts' Jurisdiction Clause on each invoice and these invoices are stamped and received by the Defendants.

18. This action does not qualify as an acceptance of the opt-in to the DIFC Courts' jurisdiction, as it does not constitute a proper offer. These invoices are a result of the offer sent by the Defendants being in the LPO, which the Claimant accepted by sending a hire invoice. As such, by the Claimant agreeing to work with the Defendants, the Claimant is accepting the terms and conditions of the LPO sent.

19. In the hearing, the Claimant argues that it did not sign the Defendants' LPO and as such the terms do not apply to the Claimant. It is true that the Claimant failed to sign the LPO, but the Claimant established the relationship based on that LPO and sent the first invoice in accordance with the LPO. As such the court is satisfied, that Clause 17 of the LPO shall prevail.

20. Article 5(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended, (the "JAL") sets out the DIFC Courts' jurisdiction over:

> "(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."

21. Pursuant to the JAL, the DIFC Courts can exercise its jurisdiction over a matter that is unrelated to the DIFC, should 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.

22. Based on the Courts finding that there is no jurisdiction, I have found that the parties have not validly `opted-in' to the DIFC Courts' jurisdiction, as required under the JAL, and no other jurisdictional gateways can be engaged.

23. In light of the above, I am satisfied that the SCT does not have the jurisdiction to hear this Claim. I make this finding by virtue of the inapplicability of the above provisions of the JAL, and the fact that there is no evidence before the Court to show that the parties have opted- into the DIFC Courts' jurisdiction by way of a contractual provision. In conclusion, I am of the view that this Claim cannot be heard nor determined by this Court and is hereby dismissed accordingly.

24. Each party shall bear their own costs as to the Application to contest jurisdiction.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 1 March 2021
At: 10am