Claim No. SCT 335/2018

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 OF DIFC COURTS

BEFORE SCT JUDGE NASSIR AL NASSER

BETWEEN

JAYDEN FINANCIAL SERVICES LLC

Claimant

and

JOSI'S RESTAURANT & COFFEE SHOP LLC

Defendant

Hearing: **30 January 2019**

Judgment: **7 February 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON this claim having been called for a hearing, the Claimant and the Defendant attended the hearing;

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 47,187 of the lease.

2. The Defendant shall pay the Claimant the Court Fees in the sum of AED 2,359.35.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 7 February 2019

At: 2pm

THE REASONS

The Parties

1. The Claimant is Jaden Financial Services LLC (herein "the Claimant"), the Landlord of Emirates Financial Towers, DIFC, Dubai, UAE.

2. The Defendant is Josi's Restaurant & Coffee Shop LLC (herein "the Defendant"), a tenant of the Claimant at DIFC, Dubai.

Background and the Preceding History

3. The underlying dispute arises over the tenancy contract between the parties dated 21 January 2016 (the "Contract"). The Contract provided that the Claimant would rent the units # 123 and 154 for 3 years in return for AED 292,560.10 per year.

4. The annual rent of AED 292,560.10 consisted of four (4) cheques every year in the sum of AED 73,141.

5. On 22 October 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") against the Defendant Jacon Restaurant & Coffee Shop claiming non-payment of rent in the sum of AED 240,318.22.

6. On 5 November 2018, the parties met for a consultation before SCT Judge Maha Al Mehairi in which the parties settled the claim by way of a consent order issued on 6 November 2018.

7. On 19 December 2018, the Claimant filed an Application Notice seeking to amend the Defendant's name to Josi's Restaurant & Coffee Shop LLC.

8. On 25 December 2018, the Defendant filed an Application Notice seeking to set aside the Consent Order dated 6 November 2018.

9. On 10 January 2019, a hearing was held before SCT Judge Maha Al Mehairi.

10. On 15 January 2019, SCT Judge Maha Al Mehairi issued an Order granting the Defendant's Application to set aside the Consent Order and stayed the Order of Execution dated 18 December 2018 pending the determination of the Claimant's claim.

11. On 27 January 2019, the Defendant intended to defend all of the claim and filed a defence.

12. A Hearing before me was scheduled on 30 January 2019, at which both parties attended.

The Claim

13. The Claimant's case is that the Defendant breached clauses 31 and 32 of the lease by not paying the rent balance for the period from 21 October 2017 and 20 October 2018 and VAT from 1 January 2018 and 31 December 2018 in the total amount of AED 240,318.22.

The Defence

14. The Defendant alleges that the rent payments were made by way of several cheques, cash and bank transfer payments. Furthermore, the Defendant alleges that rent has been paid until 1 March 2019. The Defendant also alleges that it has paid a security deposit in accordance with the terms of the Contract in the sum of AED 29,256.01 (the "Deposit"), which the Claimant continues to retain.

15. The Defendant alleges that it does not seek to recover the deposit as of the date of the present proceedings and has not included this payment in its calculation of the total rent payments made to date.

16. In their submissions, the Defendant attached a schedule of payment which demonstrates that the Defendant has paid to the Claimant a total sum of AED 891,377, including the deposit.

17. The Defendant reiterates that the total rent payments made to the Defendant, amounting to AED 862,120 do not include the deposit in accordance with the terms of the lease.

18. The Defendant alleges that the only outstanding amount due is the sum of AED 30,187.00.

Discussion

19. The Claimant argues that the Defendant entered into a sales and purchase agreement (the "SPA") with Joe House LLC (the "Third Party") who was previously the Tenant of the Claimant. The Third Party defaulted on the rent prior to completion of the SPA. Following, which the Claimant filed a claim against the Defendant for the sum of AED 269,420. During that period, the Claimant alleges that the Defendant had agreed to settle the sum of AED 269,420 to the Claimant on behalf of the Third Party in order to release the unit for the Defendant.

20. The Claimant argues that the Claimant received three cheques from the Defendant in the sum of AED 269,420 which was in relation to the tenancy with the Third Party. However, the cheques were not cashed, as the Claimant alleges that the Defendant settled the amount in cash.

21. Furthermore, in relation to the Contract between the Claimant and the Defendant, the Claimant argues that the Contract was for the period of three years with an annual rent of AED 292,560.10, which consisted of four (4) cheques, each year in the sum of AED 73,141.00.

22. Therefore, the Claimant alleges that the Defendant settled the Third party's rent and its own rent for the period of 2 years but failed to settle the rent due for the period from 21 October 2017 and 20 October 2018 and VAT from 1 January 2018 and 31 December 2018 in the amount of AED 240,318.22.2

23. The Claimant also provided a witness statement made by Mr. Jak (a representative of the Third Party) in which he states that he had introduced the Defendant to the Claimant to take his position and responsibility for the Unit G 123 & G 154 located at DIFC, UAE, including payment of the outstanding balance amount in the sum of AED 269,420, inclusive of the Court fee. The Third Party also adds that the Defendant agreed to take all the responsibilities and liabilities of the above-mentioned unit and sign a new lease with the Claimant on 6 January 2016.

24. On the other hand, the Defendant argues that the Claimant is seeking payment of money owed to it under a different lease that it entered into with the Third Party, which is not an agreement or claim that is a subject of these proceedings.

25. The Defendant continued to concede that the Third Party later changed its name to Jacon Restaurant & Coffee Shop, an entity which the Defendant purchased by way of a SPA dated 25 July 2016. Furthermore, the Defendant argues that it has no liability for any arrears of rent owed by the Third Party prior to 25 July 2016.

26. The Defendant also refers to clause 2.6 of the SPA, which provides as follows:

"The First Party and the Second Party admit that the Company (Joe House LLC) and the shares are free from any mortgages, attachments or any rights due to any third parties. In case it has been found that there are any obligations on the Company prior to the execution of this Agreement, the First Party and Second Party shall solely and fully be held responsible in respect of all such obligations up to the date of completing the sale and registration procedures."

27. The Defendant argues that the Claimant has not brought any such claim against it and that the Claimant's entitlement in these proceedings is limited to the Claimant's claim for unpaid rent payments under the lease.

28. I find that the Claimant failed to provide any evidence that the payment in the sum of AED 269,420 was paid by the Defendant in relation to the Third Party. I am also not satisfied with the witness statement filed by the Claimant as there is supporting evidence attached to it. Therefore, I find that the payments paid by the Defendant were in relation to their Contract with the Claimant and not related to the Third Party.

29. The Claimant argues that the sum of AED 73,000 paid on 7 January 2016 was never received by the Claimant. However, the Defendant argues that they had paid the sum of AED 73,000 which is in relation to the cheque No. XXXX dated 6 January 2016 and they provided a copy of the bank transfer as evidence.

30. Accordingly, I find that the Defendant has paid the amount of AED 73,000 to the Claimant.

31. The Claimant also argues that the Defendant paid the sum of AED 17,000 to the District Cooling and not to the Claimant. The Claimant also provided confirmation of the payment signed by the Building Manager which states that the sum of AED 17,000 was received by the building management in relation to District Cooling.

32. I find that the Claimant is entitled to the sum of AED 17,000, which in my opinion is clear that it was not paid to the Claimant and was paid to the Building Management in relation to District Cooling.

33. The Defendant provided a Schedule which states the following:

(a) Deposit in the sum of AED 29,256.

(b) Total rent in the sum of AED 877,680.

(c) VAT in the sum of AED 14,628. (Applicable to 2018 only).

(d) Total payable under Contract AED 921,564.

(e) Total Cash paid to the Claimant in the sum of AED 710,377.

(f) Total cheques paid to the Claimant in the sum of AED 90,000.

(g) Total Bank transfers to the Claimant in the sum of AED 91,000.

(h) Total amount paid to the Claimant in the sum of AED 891,377.

(i) Total Outstanding in the sum of AED 30,187.

34. The Defendant confirms that the total amount outstanding is in the sum of AED 30,187.

35. Therefore, I find that the Claimant is entitled to the sum of AED 47,187 which consists of the sum of AED 30,187 as confirmed by the Defendant and the sum of AED 17,000 which was paid to the Building Management and not the Claimant.

Conclusion

36. In conclusion, I find that the Defendant shall pay the Claimant the sum of AED 47,187 of the lease.

37. The Defendant shall also pay the Claimant the Court fee in the sum of AED 2,359.35.



Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 7 February 2019

At: 2pm