**THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS**

**IN THE SMALL CLAIMS TRIBUNAL**

BETWEEN

**MAB CONSULT FZC**

Claimant

and

**MABEL CONTRACTING CO LLC**

Defendant

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**ORDER WITH REASONS OF SCT JUDGE HAYLEY NORTON**

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**UPON** this Claim having been called for a Consultation before SCT Judge Hayley Norton on 5 and 10 January 2021

**AND UPON** reviewing the case file for Claim SCT-336-2017

**AND UPON** reviewing the case file and submissions for this Claim

**IT IS HEREBY ORDERED THAT:**

1. This Claim be dismissed.

2. The Claimant is at liberty to apply for permission of the Court to set aside the Default Order and reinstate the 2017 Claim.

3. Each party shall bear their own costs.

Issued by:
**Ayesha Bin Kalban**
SCT Judge and Deputy Registrar
Date of Issue: 14 January 2021
At: 2pm

**THE REASONS**

**The Parties**

1. The Claimant is Mab Consult FZC, a company registered in the Ras Al Khaimah Economic Zone, UAE (the "Claimant").

2. The Defendant is Mabel Contracting Co LLC, a company registered in Dubai, UAE (the "Defendant").

**Background**

3. On 11 November 2020, the Claimant filed a claim with the DIFC Courts' Small Claims Tribunal (the "SCT") seeking sums allegedly owed to the Claimant by the Defendant in relation to a Professional Services Proposal entered into by the parties dated 18 July 2017 (the "Professional Services Proposal"). The Claimant is seeking payment in the amount of AED 436,900, which comprises the principal sum of AED 218,450, in addition to interest on the principal sum in the amount of AED 218,450.

4. The Defendant responded to this Claim on 29 November 2020 seeking to challenge the jurisdiction of the DIFC Courts. On 22 December 2020, a jurisdiction hearing was held before SCT Judge Delvin Sumo, pursuant to which it was determined that the DIFC Courts have jurisdiction to hear and determine this Claim.

5. On 29 and 30 December 2020, and 4 January 2021, the Defendant filed its submissions in defence of this Claim, and thereafter, a Consultation was listed before me on 5 and 10 January 2021 at which only the Claimant appeared, although the Defendant was served notice of the listings.

**Discussion**

6. Upon review of the Claimant's submissions filed in support of its claim, it appears that the Claimant has sought to bring this Claim as fresh proceedings for a matter that has previously been adjudicated upon, and for which this Court has already rendered its final judgment. I shall set out my reasons for making this finding below.

7. On 28 November 2017, Mr. Mustak (the Manager of the Claimant), initiated proceedings with the DIFC Courts' SCT under Claim No. SCT-336-2017, seeking payment allegedly owed by Mr. Mindi (a representative of the Defendant) in the amount of AED 218,450, along with payment of interest at a monthly rate of 12% (the "2017 Claim").

8. The 2017 Claim was served upon the Defendant by Mr. Mustak, and the matter was listed for a Consultation before SCT Judge Ayesha Bin Kalban on 28 December 2017. Following the Defendant's failure to appear at the Consultation, the Judge proceeded to issue an Order in the Claimant's favour (the "Default Order"), ordering as follows:

> "1. The Defendant shall pay the Claimant the amount of AED 218,450.
>
> 2. The Defendant shall pay the Claimant interest in the amount of AED 114,929.10 which will continue to accrue on a monthly basis at a rate of 12%.
>
> 3. The Defendant shall pay the Claimant the DIFC Courts Filing Fee in the amount of AED 10,992.50.
>
> 4. The Claimant shall serve this Order upon the Defendant.
>
> 5. The above shall be performed as full and final settlement of this Claim."

9. Upon review of the submissions filed in support of this Claim, it appears that the parties, and the cause of action, are the same as those set out within the 2017 Claim. I shall address each of these points in turn below.

*The Parties*

10. I am of the view that the parties for the 2017 Claim and this Claim are `one and the same', albeit, the 2017 Claim was filed against Mr. Mindi in his personal capacity, however, this appears to have been done so in error. Upon review of the Professional Services Proposal (which is relied upon by the Claimant as the basis for the 2017 Claim and this Claim), it is clear that the parties to the dispute are those cited within the relevant agreement, namely, Mab Consult FZC and Mabel Contracting Co LLC.

11. I further note that, the Claimant, upon filing the Claim Form, appears to have erroneously named the website of `Mab Consult.Com' to be the Claimant in this Claim, and not Mab Consult FZC. In light of this finding, I have determined that any reference to the Claimant in this matter is in fact made to Mab Consult FZC.

*The Cause of Action*

12. Upon review of the Claimant's Particulars of Claim filed with the Court on 11 November 2020 (the "Particulars of Claim"), it appears that the Claimant is seeking to rely upon the same set of facts, and series of events, which give rise to the 2017 Claim, namely, the Defendant's alleged breach of the Professional Services Proposal.

13. As identified at paragraph 3 above, the remedy sought by the Claimant in this Claim is payment in the sum of AED 436,900, which comprises the principal sum of AED 218,450, as well as accrued interest in the amount of AED 218,450 (calculated at a monthly rate of 12%). Upon review of the Default Order issued in 2017, it appears that the Claimant has already received an Order in its favour for this sum. The Default Order directs that the Defendant pay the Claimant the principal sum of AED 218,450, along with interest at a monthly rate of 12%, that shall continue to accrue until full payment of the judgment sum.

*Res Judicata*

14. In light of my findings above, I am of the view that the Claimant is seeking a `second attempt' at relitigating the same matter, (with the correct parties now identified). In support of my finding I refer to paragraph 17 of the Particulars of Claim, wherein the Claimant states that "this request herein constitutes a **second attempt** to obtain the stolen monies from the Defendant(s), Mabel Contracting Co LLC[emphasis added]." Such an attempt made by the Claimant runs contrary to the doctrine of res judicata which precludes a party from bringing a cause of action in a second case that involves the same subject matter and cause of action in the first case (Arnold v National Westminster Bank PLC [1991] 2 AC 93).

15. The doctrine further provides that where a party is successful in an action and he does not challenge the outcome, he may not bring a second action on the same cause of action (Conquer v Boot [1928] 2KB 336). From review of the 2017 case file, I find that the Claimant was successful in its 2017 Claim. I further note that the Claimant did not seek to challenge the Default Order nor attempt to file an appeal, therefore, it follows that the Default Order is final and unappealable, and that this second action must be barred by res judicata.

*Conclusion*

16. In light of my above reasons, I hereby dismiss this Claim, and order that the Claimant is at liberty to apply for permission of the Court to set aside the Default Order and reinstate the 2017 Claim.