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

MOLLYCONSULTANCYLLC

Claimant

and

MEGAN LLC

Defendant

Hearing : **21 December 2020**
Judgment : **12 January 2021**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 5 November 2020

AND UPON the Claim being Amended on 24 November 2020

AND UPON the Defendant filing an Acknowledgment of Service indicating its intention to contest the jurisdiction of the DIFC Courts dated 6 December 2020

AND UPON a Jurisdiction Hearing having been held before SCT Judge Maha Al Mheiri on 21 December 2020, with the Claimant and the Defendant's representative 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: 12 January 2021
At: 10am

THE REASONS

The Parties

1. The Claimant is Molly Consultancy LLC (the "Claimant"), a web solution company registered in Dubai, UAE.

The Defendant is Megan LLC (the "Defendant"), a company registered and located in Abu Dhabi.

Background and the Preceding History

3. The underlying dispute arises over unpaid invoices in relation to a purchase order issued by the Claimant ("Purchase Order") dated 14 October 2018 requesting the provision of a marketing service by the Defendant, following which the Defendant failed to pay the Claimant the sums due under the Purchase Order.

4. On 5 October 2020, the Claimant filed a claim in the DIFC Courts Small Claims Tribunal (the "SCT") for payment of AED 90,000 in addition to Court fees.

5. The Defendant responded to the Amended Claim Form on 6 December 2020, indicating its intention to contest the jurisdiction of the DIFC Courts. On 21 December 2020, I heard the parties' arguments at a Hearing.

The Jurisdiction Application

6. The Claimant's case is that the Defendant confirmed its intention to procure a monthly retainer package for marketing services with the Claimant. The marketing services procured by the Defendant were to be provided in relation to its brand `Mili', a subsidiary of the Defendant.

7. Meuth, Assistant Marketing Manager at the Defendant agreed and accepted the Claimant's quote which set out the Terms and Conditions that would govern the relationship between the parties. A digital time-stamped document labelled `Approved Quote Number 1146' confirms this agreement.

8. The Defendant did not raise any objection to the Terms and Conditions at the time or at any time thereafter. Furthermore, the same Terms and Conditions are hosted publicly on the Claimant's website for reference.

9. The Claimant further asserted that the Defendant has, at no point in time, made any objection to the choice of dispute resolution contained within those terms.

10. In its submissions the Defendant contested the Jurisdiction of the DIFC Courts' SCT, stating that the Claimant appears to have brought this Amended Claim in relation to amounts allegedly owed to it for services to be provided under the Purchase Order made between the Claimant, which is a company registered and located in Dubai and the Defendant, a company registered and located in Abu Dhabi.

11. The Defendant denies that that the Terms and Conditions were ever accepted by the Defendant. The Defendant submits that the Purchase Order was unilaterally prepared by the Claimant and simply set out an offer in relation to the Claimant's services.

12. The Defendant notes they did not have a choice to accept or deny the Terms and Conditions as they were presented by the Claimant.

13. The Defendant contests the jurisdiction of the DIFC Courts and alleges that both parties are not registered in the DIFC and that they have not agreed to the jurisdiction of the DIFC Courts. Furthermore, the Defendant submits that neither party to this dispute is located in the DIFC or has any connection with the DIFC and the subject of the dispute has no connection with the DIFC whatsoever.

14. The Defendant alleges that, while Meuth is an employee of the Defendant, she does not have authority to accept any Terms and Conditions on behalf of the Defendant or take any decisions on behalf of the Defendant's company.

Discussion

15. 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, (the "JAL") which provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, namely:

> "(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."

16. The parties are both registered and located outside of the DIFC, therefore, the question which arises is whether the parties have successfully opted into the DIFC Courts jurisdiction by way of a contractual relationship.

17. The jurisdiction clause stated in the Terms and Conditions of the Purchase Order are as follows:

> "The Parties hereby agree that the sole and exclusive jurisdiction of any claim, action or proceeding arising under or in connection with this Agreement shall be the Dubai International Financial Centre Courts (DIFC). The language of any such hearing shall be English. Each Party hereby irrevocably consents and submits to such jurisdiction and venue."

18. The relationship between the parties began with the Defendant's employee accepting the Terms and conditions through the digital time stamp of the Defendant's employee.

> "Yes, I Meuth agree to and accept this quote, on December 31, 2018 at 2:53PM."

19. The Claimant then acted upon that request by providing retainer marketing services, and accordingly the invoices were sent.

20. Assuming that the terms of the Purchase Order were not acceptable by the Defendant, I note that the Defendant did not, at any stage, either deny the jurisdiction nor the services provided by the Claimant. The same Terms and Conditions are hosted visibly on the Claimant's website.

21. As such, I find that the terms and conditions accepted by the Defendant's employee are bound by the parties and make provision for the DIFC Courts to hear and determine this claim, as per the jurisdiction clause set out in paragraph 18 above.

22. Therefore, pursuant to Article (5)(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended, the DIFC Courts have the

authority to hear and determine this claim.

Conclusion

23. For the above cited reasons, I find that the Defendant's application to contest the jurisdiction of the DIFC Courts must be dismissed as the DIFC Courts and the Small Claims Tribunal, in particular, clearly have jurisdiction over this matter.

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: 12 January 2021
At: 10am