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

BEFORE SCT JUDGE MARIAM DEEN

BETWEEN

ICHRO FZE

Claimant

and

IESHA

Defendant

Hearing: **4 February 2018**

Judgment: **5 February 2018**

JUDGMENT OF SCT JUDGE MARIAM DEEN

UPON the Claim Form being filed on 15 January 2018;

AND UPON the Defendant filing an Acknowledgment of Service on 18 January 2018 and indicating its intention to contest jurisdiction;

AND UPON a Jurisdiction Hearing having been held before SCT Judge Mariam Deen on 4 February 2018, with the Claimant's representative in attendance and the Defendant failing to attend;

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1. The Defendants' application to contest jurisdiction is granted.

2. The DIFC Courts do not have jurisdiction to hear and determine this claim.

3. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 5 February 2018

At: 12pm

THE REASONS

Discussion

1. The Claimant's case is that it provided photography services to the Defendant on 6 December 2017 for which it has not been paid. The unpaid invoice in the amount of AED 6,200 (Inv No: 0117/045) is dated 6 December and the Claimant submits that it was received and acknowledged by the Defendant on 5 December, prior to the services being provided (the "**Unpaid Invoice**").

2. Following the refusal of the Defendant's request for the Hearing to be postponed, due to lack of notice (it was provided out of office hours), the Defendant failed to attend the Hearing, however, its written submissions dated 28 January 2018 shall be considered in this Judgment. Essentially, the Defendant disputes the jurisdiction of the DIFC Courts on the basis that the parties have not agreed in writing, or otherwise, to DIFC Courts jurisdiction.

3. At the Hearing, the Claimant reiterated its written submissions that it had sought to opt into the DIFC Courts Small Claims Tribunal ("SCT") by including a provision in its invoices since February 2017. In the Unpaid Invoice there is a clause (the "**Invoice Clause**") which reads as follows:

> "NB: Any dispute, difference, controversy or claim, authorised settlement delay arising out of or in connection with this payment, including (but not limited to) any question regarding its existence, validity, interpretation, performance, discharge and applicable remedies, shall be subject to the exclusive jurisdiction of the Courts of Dubai International Financial Centre ("the DIFC Courts"). Payment is strictly to terms unless agrees and signed in writing between."

4. The Claimant seeks to rely on the Invoice Clause to demonstrate that the parties intended to `opt-in' to the jurisdiction of the DIFC Courts' SCT in the event that a dispute arose within the limits of the SCT. The Claimant also relies on previous dealings with the Defendant, which it alleges involved invoices containing the same Invoice Clause, which was never disputed or challenged by the Defendant. The Claimant submits that the Defendant has also failed to pay previous invoices, which resulted in the Claimant commencing SCT proceedings which were ultimately not pursued due to the Defendant's subsequent payment. The Claimant highlights that the Defendant did not dispute jurisdiction at that time or any other time and has been provided invoice copies on numerous occasions without any concern regarding jurisdiction being raised.

Finding

5. Rule 53.2 of the Rules of the DIFC Courts ("RDC") requires that the Small Claims Tribunal ("SCT") hear only cases that fall "within the jurisdiction of the DIFC Courts." 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, which provides a number of limited gateways through which the DIFC Courts have 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."

6. For cases to be heard in the SCT they must first fall within the DIFC Courts' jurisdiction, as addressed above, and second, the case must also be appropriate for the SCT.

7. Neither party is, or was, a DIFC registered or licensed entity and there is no evidence to suggest that the transactions were partly or wholly performed within the DIFC or related to DIFC activities. In the absence of sufficient nexus between the Claim and the DIFC, the DIFC Courts may still have jurisdiction over the Claim if it can be shown that the parties sought to `opt in' to the jurisdiction of the DIFC Courts, pursuant to Article 5(A)(2) of the Judicial Authority Law.

8. In order to successfully opt in to the DIFC Courts jurisdiction, Article 5(A)(2) of the Judicial Authority Law requires that the "parties agree in writing to file such claim or action with [the DIFC Courts] whether before or after the dispute arises". Therefore, although I am satisfied that the wording of the Invoice Clause amounts to "specific, clear and express provisions" I am not of the view that the parties have mutually agreed this. As I indicated at the Hearing, the Invoice is not legally binding contract and in the absence of evidence demonstrating that the Defendant accepted that Invoice Clause (through signing the Invoice or any other contractual document), I find that the parties have failed to "agree in writing" for the DIFC Courts to have jurisdiction. Accordingly, the DIFC Courts do not have jurisdiction to hear and determine this Claim.

9. I have not been persuaded by the Claimant's argument that the Defendant's payment of previous invoices containing the same Invoice Clause indicates an acceptance of the Invoice Clause; nor am I convinced by the Claimant's assertion that the Defendant's failure to challenge the Invoice Clause amounts to an implied agreement to it.

10. Therefore, the Defendants' application to contest jurisdiction is granted and the merits of the case shall not be considered.

11. The parties shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 5 February 2018

At: 12pm

