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 H.E. JUSTICE NASSIR AL NASSER

BETWEEN

(1) LAJVATI
(2) LAGHUVI

Claimants

and

(1) LANKESH
(2) LARRAJ

Defendants

Hearing : **18 July 2021**
Further Submissions : **28 September 2021**
Judgment : **5 October 2021**

JUDGMENT OF H.E. JUSTICE NASSIR AL NASSER

UPON a hearing having been listed before H.E Justice Nassir Al Nasser on 18 July 2021 and 28 September 2021, with the Claimants and the Defendants in attendance

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

IT IS HEREBY ORDERED THAT:

1. The Claimants' Claim shall be dismissed.

2. The Defendants' Counterclaim shall be dismissed.

3. The Parties shall bear their own costs.

Issued by:
Nassir Al Nasser
SCT Registrar
Date of Issue: 5 October 2021
At: 3pm

THE REASONS

Parties

1. The First Claimant is Lajvati (the "First Claimant"), an individual residing in Dubai, UAE.

2. The Second Claimant is Laghuvi (the "Second Claimant"), an individual residing in Ras Al Khaimah, UAE.

3. The First Defendant is Lankesh (the "First Defendant"), an individual residing in Dubai, UAE.

4. The Second Defendant is Larraj (the "Second Defendant"), an individual residing in Dubai, UAE.

Background and Procedural History

1. The underlying dispute arises in regard to the Claimants' claim that the Defendants had allegedly breached the Share Purchase Agreement dated 6th July 2016, relating to the acquisition of the entire issued share capital of Latinu (the "Agreement") and the Amendment to the Share Purchase Agreement dated 6 September 2016.

2. On 23 and 24 June 2021, the Defendants filed an Acknowledgment of Service setting out their intention to defend all of the Claim.

3. On 30 June 2021, the Defendants filed a counterclaim, claiming the sum of AED 40,000 in relation to legal costs and alleged stress and trauma.

4. The parties met for a Consultation with SCT Judge Delvin Sumo on 7 July 2021 but were unable to reach a settlement.

5. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 18 July 2021 with the parties in attendance.

6. At the Hearing, the parties were directed to agree upon an expert to provide the Courts with a report setting out the loss suffered by the Claimants. However, the parties have failed to comply with the Courts' direction, to which a Second Hearing has been listed on 28 September 2021.

Claim

7. The Claimants submit that they had entered into the Agreement with the Defendants relating to Share Purchase Agreement in the company Latinu (the "Company"). Prior to the completion of the sale and purchase of the shares as contemplated by the Agreement, the company was loaned the sum of AED 150,000 by a third party, namely the CFO of the company.

8. The Claimants alleged that this amount is due to them on two separate bases. First, as per the terms of the Agreement, the amount is considered as a leakage, and should result in a reduction of the purchase price of an equivalent amount.

9. Second, as per the terms of the Agreement, the Defendants warranted at the time of completion that the "Company will have no debt at the completion date except an amount of AED 400,000 owing to the Second Defendant".

10. The Claimants alleged that this additional debt of AED 150,000 being in existence at the time of completion, gives rise to a warranty claim for an equivalent amount, being the effective loss to the Claimants as result of the loan existing.

11. The Claimants also claim interest at the rate of 9.75% per annum from the period of February 2018 to June 2021, being 3 years and 4 months. The Claimants claim this interest rate being the same rate charged by the Defendants in relation to loans provided for the Claimants' business. Therefore, the Claimants argue that they have suffered loss of interests of 9.75% x 3.33 years x AED 150,000, being the sum of AED 48,701.25.

12. Additionally, the Claimants claim the Court fees in the sum of AED 9,935.06.

Defence

13. In response to the Claimants, the Defendants alleged that the third party was not a party to the Agreement, therefore, this matter is not related to neither the Agreement nor the Defendants.

14. The Defendants provided an email sent by the First Claimant on 22 March 2018 "in the days immediately prior to closing (21 September 2016) which then the CFO made an AED 150,000 cash loan into the business. This was without any written documentation and hence was not made with the knowledge of the CEO/Seller. Thus, this was a pure financial loan which the CFO asked to be repaid shortly after closing".

15. The Defendants argue that this is a clear admission in writing by the First Claimant confirming that the Defendants had no knowledge of the AED 150,000 loan, which the First Claimant has accepted from the then CFO. Furthermore, the First Claimant conceded that this was a purely financial loan (which was used as a working capital for his business before repaying the amount in full to the CFO some three weeks later, on 10 October 2016).

Counterclaim

16. On 30 June 2021, the Defendants have filed a counterclaim, claiming the sum of AED 40,000.

17. The Defendants alleged that the Claimants' claim is a duplicate of what they had attempted to claim three years ago, however the Claim was rejected. The Defendants also claim that they had incurred legal costs of AED 10,000 at the time (an invoice dated 17 April 2018 was provided by Lodo LLP) which they seek to recover. In addition, the Defendants claim the sum of AED 30,000 for alleged stress and trauma.

18. In response to the Defendants, the Claimants allege that the invoice issued by Lodo LLP on 17 April 2018 is related to work carried out between 25 March 2018 and 8 April 2018. Specifically, the work performed is described in the invoice as "warranty claims relating to the purchase of Latinu ".

19. The Claimants add that the Defendants regard the claim for the sum of AED 10,000 of incurred legal costs as actually being composed of two separate claims by the Claimants. First, a claim for approximately 10% of the total Lodo LLP invoice that is in relation to the Main Claim (i.e., AED 1,000) and second, a claim for approximately 90% of the Lodo LLP invoice that is in relation to other claims which have not yet been subject to any formal legal action (i.e., AED 9,000), and are most definitely not part of the subject matter of the main claim.

20. In relation to the Defendants' claim for the sum of AED 30,000 for stress and trauma, the Claimants set forth that no evidence has been presented in relation to the alleged stress and trauma. As per DIFC Law No. 7 of 2005, Paragraph 27(1) states "compensation is due only for loss, including future loss, that is established with a reasonable degree of certainty".

Discussion

21. The Claimants argue that, as outlined in paragraph 1.1 of the Agreement, Leakage is defined as: "any of the following, save to the extent they are permitted leakage: (e) any liabilities assumed or incurred for the benefit of the sellers or their related parties by the company".

22. The Claimants add that the loan has been granted by the CFO of the company. The loan was necessary in order to ensure that the cheque signed by the Second Defendant, Larraj, and issued in the name of the company, does not bounce as a result of insufficient funds in the company's account in Bank. The Claimants argue that the amount paid into the company's account was most certainly for the benefit of the sellers. Hence the Claimants argue that the loan of AED 150,000 was classified as Leakage under the Agreement.

23. The Claimants also add that as per Paragraph 4.2 of the Agreement: "in the event of any Leakage between the Accounts Date and the Completion Date, the Purchase price shall be reduced by an amount equal to the value of such Leakage or as agreed in writing between the parties prior to the Completion Date".

24. The Claimants also argue that the Defendants warranted in schedule 4, Part 1, Paragraph 17.1 of the Agreement, which was revised in the Amended Agreement that: "the Company will have no debt at the completion Date except an amount of AED 400,000 owing to Larraj".

25. The Claimants put forward that in Paragraph 1.1 of the Agreement, the definition of Debt is "the aggregate amount of all debt of the Company at Completion including the aggregate amount of all (b) money owing by the Company to: (iii) any executive". Executive is defined under paragraph 1.1 of the Agreement as "an Employee, Director, agent or officer of the Company".

26. Therefore, the Claimants submit that the loan of AED 150,000 was made from the Chief Financial Officer of the Company, prior to the Completion being a Debt as contemplated by Warranty 17.1 of the Agreement.

27. In response to the Claimants, the Defendants argue that the CFO is a non-party to the Agreement between the parties. In addition, the Defendants argue that they were never aware of the Loan made by the CFO to the Company prior the Completion Date. The same was made clear by the First Claimant in an email dated 22 March 2018, in which the First Claimant confirmed that the Defendants had no knowledge of the loan.

28. At the Hearing, the First Claimant also confirmed that the Defendants had no knowledge of the Loan.

29. I find that, since the Defendants had no knowledge of the Loan, it cannot be considered that they have breached the warranties; the loan made to the Company was by the CFO himself. There is no evidence before the Courts that stipulates the Defendants' having instructed the CFO to make such Loan.

30. As per the Amended Agreement, the Completion date was on 6 September 2016. At the Hearing, the Claimants confirmed that the Loan was made after 6 September 2016.

31. The Claimants argue that the full transfer of shares did not occur until 21 September 2016, and this should be considered as the completion date.

32. I do not agree with the Claimants, as the Agreement between the parties clearly states that the Completion date is 6 September 2016. Furthermore, the Agreement does not make any reference to "the completion will be upon the full transfer of shares".

33. In addition, the Claimants have failed to provide any evidence of the alleged damages suffered by the Defendants' actions. But in fact, the Claimants confirmed that the Defendants had no knowledge of the Loan made by the CFO.

34. Therefore, I shall dismiss the Claimants' claim, and since I have concluded that the Claimants are not entitled to claim the loan amount from the Defendants, the claim for interest raised by the Claimants shall also be dismissed.

Counterclaim

35. In relation to the Defendants' claim for legal costs in the sum of AED 10,000, the Defendants failed to provide sufficient evidence that proves the legal costs incurred is related to the warranty discussed in this claim.

36. The Claimants provided that this invoice is related to the response to several warranty claims in the total sum of AED 3,880,665.17 and had attached sufficient evidence to support their argument.

37. The evidence provided does not detail the sum in relation to this claim. Therefore, I am not satisfied with the evidence provided by the Defendants, and I shall dismiss the claim of AED 10,000 for legal costs.

38. In relation to the Defendants' claim for alleged Stress and Trauma in the sum of AED 30,000, the Defendants have also failed to provide evidence to support their Claim. Therefore, I shall dismiss the Defendants' counterclaim for stress and trauma in the sum of AED 30,000.

Conclusion

39. In light of the aforementioned, I dismiss the Claimants Claim and the Defendants Counterclaim.

40. The Parties shall bear their own costs.