Claim No: SCT 318/2019

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS
BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

LEXI CONSULTING (LANA)

Claimant/Counter-Defendant

and

LAYTON

Defendant/Counter-Claimant

Hearing

: 26 September 2019

Judgment

: 18 February 2020

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 27 June 2019

AND UPON an Acknowledgment of Service being filed on 4 July 2019

AND UPON the Reply to Defence being filed on 18 July and 5 August 2019

AND UPON the Defendant's Counterclaim being filed on 24 July 2019

AND UPON an Amended Claim Form being filed on 6 August 2019

AND UPON the Response to the Amended Claim Form being filed on 14 August 2019and further particulars and documents related to be the claim thereafter

AND UPON a Consultation being held on 29 August 2019 before SCT Judge Delvin Sumo

AND UPON the parties failing to reach a settlement at the Consultation

AND UPON a hearing having been listed before SCT Judge Maha Al Mehairi on 26 September 2019

AND UPON the parties filing post hearing submissions dated 3 and 31 October 2019, 3 and 17 November 2019, and 26 and 29 December 2019

AND UPON reviewing all documents and evidence submitted on the Court file

IT IS HEREBY ORDERED THAT:

1. The Claimant's claim is dismissed in its entirety.

2. The Defendant's Counterclaim succeeds in part.

3. The Claimant shall pay the Defendant the sum of AED 147,000.

4. The Claimant shall pay the Defendant's Court fees in the amount of AED 7,350.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of issue: 18 February 2020

At: 1pm

THE REASONS

Parties

1. The Claimant is Lexi Consulting (the "Claimant" or "Lexi Consulting"), a bespoke hospitality/food and beverage ("F&B") consulting business company located at, Dubai, UAE. The claim is brought by Lia, a representative of the company.

2. The Defendant is Layton (the "Defendant" or "Mr Layton"), an individual based in Dubai who engaged the services of the Claimant company in order to develop and subsequently manage a board game themed caf&#65533;' (the "Caf&#65533;" or the "Project").

Background and Procedural History

3. The parties entered into a contract on 20 June 2018 (the "Contract") which stipulated that Lexi Consultancy was to provide consultancy services in facilitating the development and overseeing the opening of a board-game themed Caf&#65533;. The existence of the Contract itself is not in dispute, but rather, the issue of performance.

4. On 27 June 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for the sum of AED 149,000, a sum allegedly entitled owed by the Defendant as a result of the Contract.

5. The Defendant filed a counterclaim on 24 July 2019 for the sum of AED 242,812.50 (the "Counterclaim") and on 6 August 2019 the Claimant filed an amended Claim Form (the "Amended Claim"). The Amended Claim was for the sum of AED 116,750.

6. The matter was called for a Consultation before SCT Judge Delvin Sumo on 29 August 2019, with the Claimant's representative and the Defendant in attendance. However, the parties failed to reach a settlement.

7. Consequently, a hearing was listed before me on 26 September 2019. Despite the volume of documentation presented before me, there was a distinct lack of evidence in submissions pertaining to the (partial) performance of the Contract. I therefore directed that judgment be adjourned and I requested further submissions from the parties with regard to quantum. The Defendant filed its submissions by way of email dated 26 December 2019 and the Claimant uploaded further submissions and documents onto the Court file on the 29 December 2020 pertaining the costing of deliverables of the Project.

The Claim

8. The Claimant's account of events is as follows. The parties entered into the Contract which stipulated that Lexi Consultancy was to provide consultancy services in facilitating the development and overseeing the opening of a board-game themed Caf&#65533;, the purpose of which was for the Claimant's consultancy and advisory services to be engaged; to provide `hands on' support to attain vendors, assist in the development of the brand and generally facilitate with the Project.

9. On the Claimant's account, the Defendant requested a mezzanine level (the "Mezzanine") when designing the Caf&#65533;, and this caused unexpected delays. The Claimant explains that the contractors (the "Contractors") were required to obtain approvals from the Dubai Municipality and the landlord of the Caf&#65533;, Lily (the "Landlord" or "Lily") and for various reasons which were allegedly not attributable to the Claimant, towards the end of completion date, the Caf&#65533; was still not ready.

10. In the knowledge that the Contract could not be performed as anticipated by the original completion date, it is alleged that the parties agreed to an extension until the end of the `Set Up Period' or 31 May 2019, whichever date came sooner (the "Set Up Period or the "Extension"). An addendum to the Contract was executed at this point (the "Addendum") and the parties allegedly agreed for three months of services being offered by the Claimant to the Defendant for the discounted price of one month.

11. On the Claimant's account, there were then further delays caused by the Contractors. Subsequently, the Defendant proposed a `freeze' on payments (the "Payment Freeze") to the Claimant for one month commencing at the beginning of May 2019. The Claimant contends that the Defendant was meant to pay a portion of the agreed retainer at the end of March 2019, however, payment was not made.

12. The Claimant further contends that, at this point in time, the parties had agreed (in principle) to the Payment Freeze, and that the Defendant had suggested that he may not proceed with the `Post Opening General Management Scope' of the Contract. The Claimant allegedly asked for written assurance, at which point the Defendant stopped communication.

13. On 22 May 2019, via telephone, the Defendant allegedly told the Claimant of his wish to terminate the Contract. At this stage, the Claimant admits to having sent a final notice to the client `mentioning that the project is considered terminated and that Lexi needs to exercise the termination fee on the contract and collect all dues owed'.

14. Based on these events, the Claimant originally claimed that it is owed AED 149,000, which comprised of the following:

(a) AED 29,000 for the three months extension as per the signed Addendum executed on 28 April 2019;

(b) AED 15,000 x six months (as per the Contract dated 20 June 2018, which stipulates that the General Management Scope cannot be terminated during the first six months as per Schedule F of the Contract);

(c) AED 15,000 x two months `General Management' retainer as termination fee as per Schedule F of the Contract.

15. The Amended Claim comprised of:

(a) AED 26,750 based on the pro-rata calculation of the fees pertaining to the addendum for the duration of 1 March 2019 to 22 May 2019.

(b) AED 90,000 based on the - "Project Termination Fee" as per Schedule D in relation to Phase 2, which is stated to be "three months instalments payable within 30 days of termination of the Project". As set out in Schedule D, the project term for Phase 2 was to last until the first day of operations of the caf&#65533;, with the result that the term was still ongoing at the date of termination.

The Defence and Counterclaim

16. The Defendant refutes the Amended Claim in its entirety arguing that Lexi simply did not do the vast majority of the work they had been contracted to carry out. On the Defendant's account, the parties did enter into the Contract, and the work done was structured to be executed in three specific phases; (Phase 1 - including Interior Design and Menu Development, Phase 2 - Location Analysis, Fit-Out, HR, PR, Vendor Sourcing, etc, and Phase 3 - First Day of Operations/ opening of the Caf&#65533;). The Defendant disputes the performance of the Contract, addressing each project phase in turn:

> i) Phase 1 - allegedly Lexi Consulting did not complete/deliver services set out in Schedule A of the Service Agreement in accordance with the expectations of `Phase 1'. Mr Layton contends that he has paid 75% of the fees agreed upon in Schedule B, in the sum of AED 59,062.50.
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> ii) Phase 2 - allegedly Lexi Consulting did not complete/deliver services set out in Schedule C of the Service Agreement in accordance with the expectations of `Phase 2'. Mr Layton contends that he has paid 100% of the fees agreed upon in Schedule B, in the sum of AED 183,750.
>
> iii) Phase 3 - allegedly as Lexi Consulting did not complete/deliver services as set out above, the project never completed `Phase 2' and thus the first day of operations did not occur, henceforth the payment for Phase 3 has not been made by the client.

17. On the Defendant's account, the Claimant has failed to `demonstrate and provide sufficient proof of how they have delivered what they were contracted' to do which was to `deliver and handover a completed operational restaurant, a trunkey [sic] solution'. On the Defendant's account, the `fact that the restaurant was not opened or operational until 8 October, 2019, which was solely executed and delivered by the Client himself' is clear proof Lexi Consulting did not carry out their contractual obligations.

18. The Defendant contends, in short, that the mismanagement of the project by Lexi Consulting caused a `major' delay; namely, the Landlord not approving the fit-out contractor, Lindsy (the "Fit-Out Contractor", or "Lindsy"). The Defendant highlights that the service agreement (the "Service Agreement") clearly states in Schedule C on page 20 that under Lexi Consulting's scope of services, one of their responsibilities/obligations was to ensure that contractors adhere to specific timelines.

19. The Defendant admits that Lexi Consulting informed him, as the client, that there may be delays due to the Mezzanine but Mr Layton argues that Lexi Consulting did not raise any of these concerns at the beginning of the Project. On his account, discussions regarding the Mezzanine were taking place as early as 3 September 2018 with no warning of delays communicated by Lexi Consulting.

20. The Defendant contends Lexi Consulting lost various staff members and failed to remedy this alleged shortfall with suitable replacements to guide and manage the Project. Between the months of October, and until December 2018, three key staff members left Lexi Consulting including Mr Lait (Operations and Project Manager), Lait (Operations Manager and Human Resources Manager) and Miss Lilian (Accounts Services Manager). The lack of sufficient staff meant that Lexi Consulting did not have the human resources ("HR") to complete the Project.

21. With regards to the termination of the Contract, the Defendant states that this is an entirely false allegation. On his account, it was in fact the Claimant who stated it was considering terminating for non-payment, as per the email correspondence on 8 May 2018 between the parties. The Defendant argues that the Claimant, Lexi Consulting, did not act in good faith even though most of the fees were paid, and they decided to terminate the Contract without completing the services they were contractually obliged to carry out.

22. On the Defendant's account, Lexi Consulting's argument that a termination fee is payable is invalid, and unsupported by the Contract construction. Henceforth, this argument has no weight and no payments are due for any termination.

23. The Defendant argues the Amended Claim is an entirely false claim with various false allegations. As per Schedule D of the Service Agreement, the agreed amount for Phase 2 is AED 175,000. This amount was divided into six instalments payable to Lexi Consulting. The Defendant alleges that he has completed all of these six instalments in full, and on his account no instalments remain outstanding.

24. Consequently, the Defendant requests AED 242,812.50 `compensation' comprising of:

> (i) AED 59,062.50 being the amount paid (75% of the agreed fee) thus far towards Phase 1; and
>
> (ii) AED 183,750 (100% of the agreed fee) of Phase 2.

25. The Claimant's responses to this Counterclaim, as well as all other documentation on the Court file has of course been considered, but in the interests of brevity is not replicated here.

DISCUSSION

Jurisdiction and applicable law

26. Firstly, it must be noted that by virtue of an opt-in clause at 17.1 of the Contract, this agreement is governed by and construed in accordance with the laws of the DIFC. As per clause 17.2 of the Contract, the parties agreed that any dispute connected with the formation, performance,

interpretation, notification, termination or invalidation of the agreement would be referred to the Court of the DIFC.

27. As the opt-in clause is clear, and as the amount in question is less than AED 500,000, I am satisfied that the DIFC Courts has jurisdiction over this matter.

28. This dispute is governed by the DIFC Law No. 6 of 2004 (the "DIFC Contract Law") in conjunction with the agreements between the parties and any relevant case law of England and Wales pertaining to this matter.

The Contract in question

29. In essence, the disagreement between the parties pertains to relatively simple matters; that of alleged termination, the Addendum, and partial performance. Before we delve into the larger discussion and legal analysis, it is important to start with a detailed look at the Contract in question, to outline the main tenants of the agreement between parties.

30. The duties of Lexi Consulting are outlined in part 4 of the Contract. The obligations of Lexi Consulting are clearly stipulated in parts 4.1 to 4.3, and as such, Lexi Consulting were to be responsible for providing services in respect of the Project, and to provide the `full benefit of its knowledge expertise technical resources in connection with the provision of the services'. They also had an obligation to consult with Mr Layton to remain informed of the client's requirements throughout the term of the agreement.

31. The duties of Mr Layton, as the client, are clearly outlined in section 5 of the Contract, in which he agreed and undertook to pay the fees as set out in the attached requisite schedules. Section 5.5 clearly states "if Lexi's performance of its obligations under this agreement is prevented or delayed by any act or omission of the client, it's agents, subcontractors, consultants or employees, Lexi shall not be liable for any costs, charges or losses sustained or incurred by client that arise directly or indirectly from such prevention or delay'.

32. Schedule 8 of the Contract sets out the terms for payment and fees. As per clause 8.9, for any invoice not settled by the client on its due date, Lexi Consulting would subsequently provide a notice period of seven days, failing which a late monthly payment fee of 1% shall be charged to the client on the amount due. All fees and expenses related to any services supplied were exclusive of any tax as 5% of VAT, which was due after 1 January 2018 in accordance with the UAE Federal Law Number 7 of 2017.

The 3 Phases - divisible obligations

33. The phases of the Contract were, as previously mentioned, divided into distinct parts with a different payment specified for each part, and these are `divisible obligations' i.e. each part is treated like a separate contract.

34. As is evident from the December 2017 proposal (the "December Deliverables") there were specific services for each phase of the Project.

35. The revised proposal ("February Deliverables") dated February 2018 further outlines the `Project Commercials' (i.e. provides a breakdown of key deliverables expected. Here, it is worth summarising and compartmentalising the main issues pertaining to each phase:

Phase 1

- Devoted to `Concept Development' and `Menu Development' (specifically, six appetizers or snacks, four salads, eight mains, four desserts, and six `Signature Beverages').

- Payment from Mr Layton was to be in two instalments of AED 50,000 and AED 35,000, respectively (75% upfront and 25% on completion).

- On Mr Layton's account, allegedly Lexi Consulting did not complete/deliver all of the services in accordance with this phase, however he has nonetheless paid 75% in the sum of AED 59,062.50.

Phase 2

- Devoted to `Project Execution', pertaining to real estate selection, company formation, supply chain management, fit-out, kitchen equipment, PR, marketing, pre-opening and a soft opening.

- Payment of AED 180,000 across a six-month period, in equal monthly installments within seven days of the date any invoice was required from Mr Layton.

- On Mr Layton's account, allegedly Lexi Consulting did not complete/deliver all services in accordance with this phase, however he has nonetheless paid 100% in the sum of AED 183,750.

Phase 3

- Devoted to `General Management' of the Caf&#xfffd;, (i.e. post-opening).

- This phase never took place. As such, no monies have been paid. There is no claim before the Court pertaining to this phase and thus it would be superfluous to go into detail here, save for simply to say that in any event, the Defendant himself admits that Lexi Consulting informed him that there may be delays due to the Mezzanine. It was not within Lexi Consulting's control nor remit (i.e. obligation) to ensure that the Contractors adhere to specific timelines and complete the approvals within the allotted timeframe. In fact, as mentioned in paragraph 32, section 5.5 of the Contract clearly states `if Lexi's performance of its obligations under this agreement is prevented or delayed by any act or omission of the client, it's agents, subcontractors, consultants or employees, Lexi shall not be liable for any costs, charges or losses sustained or incurred by client that arise directly or indirectly from such prevention or delay".

THE CLAIM

Termination

36. Firstly, I wish to address the issue of the alleged termination. In accordance with clause 9.4 of the Contract, either party could have terminated the Agreement by giving not less than one months' written notice.

37. Though both sides have made allegations of termination, before the Court is only the allusion to termination in email correspondence, not definitive evidence; indeed, neither party formally terminated the contract in writing.

38. The contention of the Claimant that the client, Mr Layton, terminated the Contract over the telephone, however, this is not enough to trigger the termination fee, and although I see that the termination fee invoice (`INV-0040' dated 20 June 2018) was sent to Mr Layton, it is illogical to have a Contract which clearly states termination must be given in writing, and then argue, after an alleged telephone conversation (but no written notice), that such termination notice be valid.

39. In the absence of any substantive evidence of termination, I find that the fee is not triggered, and the Claimant's claim of AED 90,000 entitled "Project Termination Fee" is to be dismissed.

40. Now that this issue is dispensed of, what remains is the Claimant's claim for AED 26,750 relating to the Addendum, to which I shall now turn, and indeed the Defendant's Counterclaim, which I shall deal with thereafter.

The Addendum

41. The Addendum was signed on 24 April 2018. The Addendum stipulated that Phase 1 and Phase 2 of the project would be extended until 31 May 2019, or the end of Phase 2, whichever is sooner.

42. The fees for this extended duration of Phase 2 were, in theory, subject to an additional one-time retainer. As is evident from the parties' submissions and evidence on the Court file, the Addendum fee was not paid. It is disputed between the parties as to whether services were delivered during the Addendum period and therefore whether the fee is due at all.

43. From reviewing the evidence on the Court file, an operations manager was hired on 26 April 2019, during the Addendum period, to follow through Phase 3 of the Contract, but this is besides the main point; the Addendum simply stated that the Project was extended, this was agreed between the parties, and as such the Defendant was obligated to pay the requisite fee.

44. In theory, Mr Layton is contractually bound to pay the fees associated with the Project extension. Mr Layton himself apologised for the delay to Lexi Consulting on 18 August 2018 at 13.34pm. Mr Layton was well aware of the risks at this stage, and correspondence indicates a high degree of awareness and knowledge of the issues with the Mezzanine and the associated delays to the Caf opening.

45. However, the Addendum was signed in good faith that the Project would eventually be completed by Lexi. As I shall now come to explain, the Contract has not been performed to even 50% completion, and the vast majority of the services promised within the Service Agreement were not delivered.

46. The Claimant's claim for AED 26,750 is therefore unsuccessful, as an implied term of the agreement for the extension was that the Project would be completed.

THE COUNTERCLAIM

Compensation

47. On the one hand, Mr Layton argues the management consultancy services were not delivered as agreed between the parties, but rather only partially performed, and as such he is entitled to compensation, whilst on the other hand, Lexi Consulting contends they performed the entirety of Phase 1 and Phase 2, and the only reason they have not completed Phase 3 is due to the delays caused by the Mezzanine.

48. It is not contested that the `major' delay to the Project was due to the Mezzanine. As is evident from evidence submitted on the Court file, the approvals from the Landlord were not obtained. However, it must be stressed that Phase 3 was very clearly an anticipatory breach. Lexi Consulting indicated in advance that they would not be able to perform the contractual obligations for Phase 3 and the parties agreed. Phases 1 and 2 of the Contract were treated as continuing (as per the Addendum).

49. The pertinent question therefore is not whether the delay was attributable to Lexi Consulting, and thus hindered them from performing the Contract in full, as no monies are being claimed with regards to Phase 3. Rather, the question is whether Phases 1 and 2 were properly executed by Lexi Consulting, (i.e. performed in full) and whether the agreed anticipatory breach meant that certain services were or were not delivered.

50. If they were not, the basic premise is that if Mr Layton can be placed in the position he would have been in if the Contract had been properly performed, he will generally be able to recover for the loss of the benefit which he would have obtained had the contract been properly performed. Damages would be assessed by the SCT on an `expectation loss' basis where the Claimant would be compensated for his lost expectation of the Caf business functioning. When the SCT makes a judgment on such matters, we are mindful that damages are designed to compensate for an established loss and not to provide a gratuitous benefit to the client.

51. It would also be taken into account that Mr Layton should have made steps to mitigate his loss as identified in (British Westinghouse Electric & Manufacturing Co Ltd v Underground Electric Railway Company of London Ltd [1912] AC 673). This would mean that Mr Layton has taken reasonable steps to ensure that his losses were kept to a minimum. In short, Mr Layton cannot recover damages for losses which he could have avoided by taking reasonable steps.

52. The most important rule for these purposes is the remoteness rule; the loss must have been within the reasonable contemplation of the parties at the time of the Contract as the probable result of the breach. There are two limbs to the remoteness rule (as established in Hadley v Baxendale

[1854] EWHC J70) which would be considered.

53. However, despite the large amount of documentation on the Court file, and although I requested further submissions from both parties, I find that there is not enough information before the Court with regards to quantum. I cannot compensate the Defendant for a loss which is not established. This said, I do recognise that the Defendant took time off work (though this is not supported by documentary evidence), and that he has contracted Liuke ("EM") consulting firm to carry out the work that Lexi Consulting should have done in full. Nonetheless, I cannot compensate the Defendant for an unquantified loss, and so the focus is on determining the extent to which the Contract was performed, if it is appropriate to return the monies paid in part, or indeed to return the parties to the position they were in prior to embarking on the Contract.

Analysis - Phase 1

54. From my analysis of the court file, I can see that Lexi Consulting have put in some time and effort in developing the Project; indeed there is a breakdown of the current F&B market, alongside various specific documents pertaining to the Caf&#65533; including `Revenue Drivers', `Sales Projections', analysis of sales costs, and more detailed plans for HR (`Staffing Schedule'), likewise a marketing strategy document and proposed profit and loss summaries for both the Jumeriah Beach Road and Business Bay as potential sites.

55. With regard to Phase 1 in particular, there is some evidence of branding and naming, including brainstorming for various caf&#65533; names that would appeal to the Dubai public. `Positioning' was also completed, with the establishment of `priority clientele and [a] study competitors in the UAE and further afield', to consider their strategies and align the positioning of the caf&#65533; accordingly. Similarly, there is evidence of `Brand Development', `Brand Visual Language' and the outcome of the `Brand Pitch Book' that was to be used to represent the brand to landlords when scouting for locations.

56. With this said, Phase 1 work is simply not up to the standard that one would expect of a boutique management consultancy such as Lexi Consulting. Take for example the Concept Development and Menu Development (specifically, six appetizers or snacks, four salads, eight mains, four desserts, six Signature Beverage Items). There has only been very preliminary draft work submitted by Lexi Consulting.

57. If one compares this work to the work EM has since carried out for the client, I must agree with the Defendant that the `drafts and line items put forward to try to better understand the direction for the menu' are not sufficient to not constitute final documents. Indeed, the sample provided by EM `shows what proper Restaurant SOP Recipe Menu should look like.' `Positioning' was also not completed, with the `study' of competitors and the consider of the strategies very basic and not rigorous nor completed., It is true to say that `[m]ost of the documents provided in the Hard Copy Submissions follow suit to the above explanation [for menu development but also with regards to other `deliverables' in Phase 1) as they are preliminary work, quotation or proposals and not the actual implementation and execution of the work that Lexi Consulting was contracted to deliver and finalize to the Client'.

58. In my judgment, the Claimant, Lexi Consulting, owed a duty of care to the Defendant, Mr Layton, to carry out their services with reasonable care and skill, and to fulfill the entirety of Phase 1 to that standard. I cannot see evidence that the work carried out to the standard expected in the industry. In my opinion, based solely from my analysis of the different `deliverables', I consider approximately 10% of Phase 1 to have been completed by Lexi Consulting, and this partial performance to have been completed to a poor standard.

59. However, when calculating any reimbursement we can offer the Counterclaimant (Defendant), a complexity arises from the construction of the Contract. It cannot be ignored that a clear tenant of the agreement between the parties was that the 75% fee was `up-front', and this fee was not triggered by completion of various deliverables.

60. Although the Claimant, Lexi Consulting, did not complete/deliver all of the services in accordance with this phase, the Defendant Mr Lexi nonetheless agreed to pay 75% of the sum of AED 59,062.50 on the basis of an `up front' payment and this is a legally binding agreement which cannot be overridden. It would not be just to return the Claimant to the position he was in prior to the Contract and to disregard the Contract construction, and so the Claimant's counterclaim with regards to Phase 1 fails.

Phase 2

61. No such up-front payment stipulation exists in relation to Phase 2. In terms of partial performance, the same legal analysis offered in paragraphs 54 - 58 pertains to Phase 2. I can see the implied terms of this stage of the Project were to include the following services:

- Logo Suite: Primary and Secondary
- Stationery Suite: Letterhead (Word Template), Business Cards
- Uniforms Designs: Manager (Male and Female), Back of House (Male and Female), Front of House (Male and Female), Delivery Driver
- Outlet / Vehicle Graphics: A graphical depiction of the store (NOT 3D Renders - this will come from Interior Designer), Visual Icons / Illustrations
- Packaging: Takeaway Bags, Takeaway Cups (Hot and Cold), Container Boxes (Salads, Sandwiches, Soups)
- Disposables: Stickers, Sleeves, Sandwich Paper, Serviettes, Wet Wipes, Placemats
- Menu Design: Dine In, Takeaway Key Deliverables - Project Execution
- Interior Design
- Kitchen Design
- Real Estate Search and Analysis

- Fit Out Project Management (Fit Out and all related Sub-contractors, Kitchen Equipment, Fire Fighting Contractors)
- Vendor Sourcing and Management (Printing and Collateral, Digital, Small wares, Crockery and Glass wares, Uniforms, Fire Suppression, Grease Trap, Pest Control, Point of Sale, Audio / CCTV)
- Supply Chain Sourcing and Management
- Human Resources
- Public Relations and Marketing Strategy
- Pre-Opening Management

62. In my assessment of the evidence on the Court file, there has simply not been substantial performance of this part of the Contract. For example, there are no completed PDFs for business cards, stationery or uniform designs, nor proper graphical depictions of the cafe, packaging designs, disposable stickers and sleeves, etc.
I do not agree with the Claimant's assessment of 80% overall, rather, I would say 20% of the work which was set out above was done in relation to Phase 2 - and even this work was in draft form, or simply quotations. This work was simply not to the standard one would expect, and the same reasoning I have offered in paragraphs 54 - 58 above applies here; that is, that Lexi Consulting owed a duty of care to the Defendant to carry out their services. They did not carry out the work they were contractually obliged to carry out with reasonable care and skill, rather offering drafts, quotes, and half-finished ideas.

63. Whether or not Lexi Consulting had sufficient staff to complete this part of the Project is a moot point. Ultimately, they were contractually obliged to perform this part of the Contract, as agreed between the parties.

64. The counterclaim succeeds in the respect that as the Contract was partially performed, and Mr Layton shall receive partial reimbursement of the fees paid. In my judgment, 20% was completed and so 80% of the AED 183,750 shall be returned to the Defendant.

Summary

65. A concept caf takes a great deal of work to design and prepare to open. This is why the Defendant engaged the services of the Claimant, to execute various phases of the Project and get the caf ready to open. However, the Contract in question (Phase 1 and Phase 2) have only been partially performed.

66. The Defendant is at a loss, yet due to the construction of the contract cannot be returned to his previous position. Therefore:

i. AED 59,062.50 being the amount paid (75% of the agreed fee) thus far towards Phase 1 is non-refundable; however

ii. AED 147,000 (80% of the agreed fee) of Phase 2 is to be reimbursed to the Defendant, Mr Layton.

Conclusion

67. In conclusion, I find as set out below:

(a) The Claimant's claim is dismissed in its entirety.

(b) The Defendant's Counterclaim succeeds in part.

(c) The Claimant shall pay the Defendant the sum of AED 147,000.

(d) The Claimant shall pay the Defendant's Court fees in the amount of AED 7,350.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of issue: 18 February 2020

At: 1pm