THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

ASW HOSPITALITY AG

Claimant

and

MAG OF LIFE FZ-LLC

Defendant

AMENDED CASE MANAGEMENT ORDER OF H.E. JUSTICE NASSIR AL NASSER

UPON reviewing the Court file

AND UPON reading the Case Management Bundle

AND UPON reviewing the Rules of the DIFC Courts (the "RDC")

AND UPON the Case Management Conference listed for 21 March 2023 being vacated, in light of the Parties consenting to the terms of this Order

IT IS HEREBY ORDERED BY CONSENT THAT:

List of Issues

1. The list of issues adopted by the Court is set out at Appendix A of this Order.

Production of Documents (RDC Part 28)

2. Standard production of documents shall be made by each party by no later than **4pm on 28 April 2023.**

3. The parties shall file and serve a Request to Produce, if any, within 14 days from the date of the Standard production, and in any event by no later than **4pm on 2 May 2023.**

4. Where there are no objections to a particular Request contained in a Request to Produce, documents responsive to that request shall be produced within 14 days and by no later than **4pm on 16 May 2023.**

5. Objections to Requests to Produce, if any, may be filed and served within 14 days from the date of the Request to Produce, and in any event by no later than **4pm on 16 May 2023.**

6. If a party not satisfied with the objections to any Requests to Produce it may apply to the Court for a Document Production Order immediately using the Part 23 Form (the "Document Production Application"). The usual timelines under RDC 23, for progression of such an application, will apply.

7. Once the Document Production Application is fully progressed, the matter will be put before the Court for determination.

8. The parties shall comply with the terms of any Disclosure Order and file a Document Production Statement within the following 14 days and by no later than **4pm on 27 June 2023.**

Witness Statements (RDC Part 29)

9. Signed statements of witnesses of fact, and hearsay notices where required by the RDC, shall be exchanged 8 weeks following the close of the disclosure stage, and by no later than **4pm on 22 August 2023.**

10. Any witness statement evidence in reply shall be filed and served within 3 weeks thereafter and by no later than **4pm on 12 September 2023.**

11. Unless otherwise ordered, witness statements shall stand as evidence in chief of the witness at trial.

Expert Reports (RDC Part 31)

12. The Claimant shall serve a signed statement of its expert witnesses on the issue of quantum 2 weeks following closure of witness evidence and by no later than **4pm on 26 September 2023.**

13. The Defendant shall file and serve expert evidence in reply (if so advised) within 6 weeks thereafter and by no later than **4pm on 7 November 2023.**

14. The Claimant shall file and serve expert evidence in response (if so advised) within 3 weeks thereafter and by no later than **4pm on 28 November 2023.**

15. If applicable, unless the reports are agreed, there must be a without prejudice discussion between the experts of like discipline by **4pm on 19 December 2023,** in which the experts will identify the issues between them and reach agreement if possible. The experts will prepare for the court and sign a statement of the issues on which they agree and on which they disagree with a summary of their reasons, and each statement must be sent to the parties to be received by **4pm on 9 January 2024.**

Progress Monitoring Date (RDC Part 26)

16. The Progress Monitoring Date shall be listed no earlier than 23 January 2024.

17. The parties shall file and serve a Progress Monitoring Information Sheet at least three clear days before the Progress Monitoring Date.

Pre-Trial Review and Progress Monitoring Hearing (RDC Part 26)

18. A pre-trial review shall be listed no earlier than 30 January 2024.

Trial Bundles (RDC Part 35)

19. Agreed trial bundles shall be filed and served no later than 2 weeks before the trial commencement date.

Reading List and Trial Timetable (RDC Part 35)

20. An agreed reading list for trial along with an estimated time required for reading and an estimated timetable for trial shall be filed with the Court by the Claimant no later than two clear days before trial and in any event by no earlier than 7 clear days before trial.

Skeleton Argument and Chronology (RDC Part 35)

21. Skeleton Arguments shall not exceed 25 pages and shall be filed and served two clear days before the start of trial.

22. The parties shall prepare an agreed Chronology of significant events cross-referenced to significant documents, pleadings and witness statements which shall be filed with the Court by the Claimant no earlier than five clear days before the start of trial.

23. In the event there are areas of disagreement, the Chronology shall include an agreed Chronology and a Chronology of events which are disputed, with the parties' respective positions outlined therein.

Trial (RDC Part 35)

24. This matter be listed for trial no earlier than 12 March 2024 and, in any event, at least 6 weeks from pre-trial review, with an estimated duration of 3 to 5 days.

25. The dates contained herein may be revised on agreement between the parties as may be appropriate.

Costs

26. Costs of the case management shall be costs in the case.

27. The parties shall have liberty to apply.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 31 March 2023
Date of re-issue: 19 April 2023
At: 10am

Appendix A - Agreed List of Issues

This List of Issues is drafted without prejudice to the positions or arguments that the Parties will advance at trial. Unless otherwise stated, abbreviations used are those set out in the Parties' pleadings.

Interpretation of the SCA

1. Is there a rule of law which states that where an agreement is drafted by one party, that it "should be construed against" that party? (Defence 13; Reply 3)

Commission under the SCA

2. What scope of services was the Claimant engaged to perform under the SCA? (POC 11-13); Defence 18; Reply 6- 7)

3. What were the conditions / requirements for the payment of commission under the SCA having regard to clauses 3.2 and 3.3? (POC 14-17; Defence 23-32; Reply 9-16)

4. When did the first and second performance reviews commence and end under clause 4.3? (POC 44-45; Defence 75.2; Reply 12). In particular, did the first review commence on:

a. 16 February 2022? (Defence 75.2)

b. 15 March 2022? (POC 45)

c. 13 April 2022? (POC 44)

d. Some other date?

5. What was the *"minimum review target"* under clause 4.4. for the first and second review periods? (POC 44-45; Defence 75; Reply 39-40)

6. Did ASW meet such targets by the first and second performance review date in accordance with clause 4.4? (POC 44-45; Defence 75; Reply 39-40)

7. If not::

a. was the failure to meet the minimum revenue target attributable to MAG's action or inaction; (POC 35-39, 57; Defence 65; Reply 13(j), 44, 46) and/or

b. was the failure otherwise attributable to a cause outside ASW's control (POC 35-39, 57; Defence 65; Reply 13(j), 44, 46); and

c. while targets were not being met, did ASW perform the Services under SCA with the reasonable skill and care expected form an experienced international sales coordination and management company while performing the Services? (POC 35-39, 57; Defence 65; Reply 13(j), 44, 46)

d. if targets were not met, was MAG required to, and did it, give ASW notice of any such failure or of any requirement to remedy such failure? (POC 57(f)-(g); Defence 83; Reply 20)

8. By the second performance review date, had the other conditions / requirements to commission payment been fulfilled? (Defence 8, 87; Reply 9(g) and (h))

MAG's Termination

9. If ASW failed to meet the *"minimum review target"* in the first and second review periods, would such failure amount to a material breach under the SCA? (Defence 56-62; Reply 34-41)

10. Was such breach remediable? (Defence 62, 83; Reply 41, 56)

11. Was MAG required to provide ASW with notice of any such breach and/or to remedy its breaches within 30 days, pursuant to Clause 11.2 of the SCA, and did it do so? (POC 57(f); Defence 62; Reply 41)

12. Was MAG entitled to terminate the SCA on 18 August 2022? (POC 57-58; Defence 56-62; Reply 34-41)

13. If it wasn't so entitled, did MAG act in repudiatory breach of the SCA? (POC 58; Defence 84; Reply 57)

ASW's Entitlement on Termination

14. What rights to commission under the SCA, if any, had accrued to ASW prior to the date of termination (i.e., 18 August 2022) (clause 11.5)? (POC 65-69; Defence 88; Reply 58)

Alleged Damages for Repudiatory Breach

15. If MAG's termination on 18 August 2022 was unlawful, would MAG have otherwise been entitled to lawfully terminate the SCA on any other date, (and if so, when)? (POC 61 to 64; Defence 86; Reply 58)

16. What commissions would have been due to ASW as at: (i) the date of such termination, if applicable; or (ii) alternatively at the end of the performance of the SCA? (POC 61 to 64; Defence 86; Reply 58)