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 NASSIR AL NASSER

BETWEEN

KAIF CONTRACTING LLC

Claimant

and

KALYANI

Defendant

Hearing: **23 September 2019**

Judgment:**29 September 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant and the Defendant's representative at the hearing;

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the total sum of AED 387,110.38 being the payments for the invoice plus interest at the rate of 9% per annum from the date that the Judgment is entered.

2. The Defendant shall return to the Claimant the security cheque No. 634 in the sum of AED 218,400 and the security cheque No. 763 in the sum of AED 162,750.

3. The Defendant shall pay the Claimant the court fee in the sum of AED 19,355.51.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 29 September 2019

THE REASONS

The Parties

1.The Claimant is Kaif Contracting LLC (hereafter "the Claimant"), a company registered in Dubai located in Dubai, UAE.

2. The Defendant is Kalyani Group DMCC (hereafter "the Defendant"), a company registered in Dubai, locatedin Dubai, UAE.

Background and the Preceding History

3. The underlying dispute arises over an agreement with regard to brig Beach profiling performed by the Claimant for the Defendant pursuant to an agreed and signed commercial offer ("the Agreement"), and the Defendant's failure to pay the Claimant the sums due pursuant to the Agreement.

4. On 20 February 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming the following:

(a) payment of outstanding dues in the sum of AED 412,627.14 which includes the outstanding dues plus interest at the rate of 9% per annum and the court fees;

(b) the return of security cheque No. 634 in the sum of AED 218,400; and

(c) the return of security cheque No. 763 in the sum of AED 162,750.

5. On 25 June 2019, the Defendant acknowledged the claim with an intention to defend all of the claim but failed to file a defence.

6. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 8 July 2019 and 16 July 2019 but were unable to reach a settlement.

7. On 5 and 23 September 2019, hearings were listed before me, at which only the Claimant and the Defendant's representatives attended.

The Claim

8. The Claimant's case is that they entered into an agreement with the Defendant for Brig Beach profiling.

9. The Claimant alleges that they have completed their obligation and handed over the project on 15 December 2018, along with the final invoice.

10. The Claimant also alleges that as per the payment terms, the Defendant is obligated to settle the final invoice within 15 days, which they failed to do. Furthermore, the Claimant chased the Defendant for the payment, but they failed to pay and responded by stating the Chairman's refusal to pay.

11. The Claimant also adds that they handed the Defendant two security cheques, however, the Defendant refused to release them.

12. Therefore, the Claimant filed a claim against the Defendant, claiming the following:

(a) payment of outstanding due in the sum of AED 412,627.14 which includes the outstanding dues plus interest at the rate of 9% per annum and the court fees;

(b) the return of security cheque No. 634 in the sum of AED 218,400; and

(c) the return of security cheque No. 763 in the sum of AED 162,750.

The Defence

13. The Defendant alleges that they contracted the Claimant for beach profiling and the terms of the contract were set out within a signed agreement which included the requirement that a number of different types of sand would be used for the beach profiling.

14. It is alleged by the Defendant that whilst the Claimant was conducting its work, they informed the Defendant that more sand was required to profile the beach and therefore, a further LPO was signed for an increased price.

15. The Defendant also adds that in January 2019, one of the Defendant's clients went for a swim and informed the Defendant that the beach still contained a lot of rocks. Furthermore, in January 2019, the Defendant contracted a different company called "Kelly Solutions" to inspect the work previously conducted by the Claimant.

16. The Defendant alleges that Kelly Solutions inspected the area below the waterline (which the Claimant worked to profile), and provided a report stating that the area still contained rocks.

17. The Defendant explained that Kelly Solutions provided a quotation to rectify the work that the Claimant had failed to complete. As such, it is the Defendant's position that the payment that the Claimant is seeking clearly does not cover the balance payment, therefore, the Defendant cashed the cheques to rectify the job.

Discussion

18. The parties are both registered and located outside of the DIFC but have opted into the DIFC Courts Jurisdiction as can be seen in Clause 2.8 of the Agreement which states the following:

> "In the event parties are not willing or able to resolve or one party is unwilling to enter adjudication or arbitration proceedings then the dispute may be escalated the DIFC Courts Small Claims Tribunal (SCT) by agreeing to this commercial offer and all terms contained within both parties electing that any claims be heard by the SCT. And accept that the claims may be heard within the jurisdiction of the DIFC Courts."

19. Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended 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."

20. 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.

21. As to the Claims, the Claimant argues that they have entered into an agreement with the Defendant for beach profiling. The scope of work was also to profile the shore and area under the water.

22. The Defendant has argued that the Claimant failed to complete the job as required or as per the scope of work. In addition, the Defendant argues that as per the Agreement, the parties agreed on a certain quantity of sand being utilised, however, the Claimant later requested for additional sand to complete the job which required an additional amount of money.

23. The Defendant also adds that the Claimant's work was handed over on December 2018. However, in January 2019, a client of the Defendant went swimming and they quickly became aware that the beach profiling was not completed as per the standards. Subsequently, the Defendant approached Kelly Solutions to examine the area and provide a report and a quotation.

24. Kelly Solutions provided a report which states that *"at the conclusion of each visit, the site should be clear of stones with more than 90% improvement (clearance from original condition). We need to note the as surrounding areas of the Brig hotel has rocks and these might wash with the current and settle inside the cleaned area, it is likely that the site will require cleaning again in the future*".

25. The Claimant argues that upon the handover the parties discussed a verbal snag list, following which, on 24 February 2019, the parties agreed upon the completion of beach Nourishment works at Brig Development. Both the parties signed on the document which states that the actions in the letter will settle the outstanding concerns raised by Brig to close the project.

26. The Claimant also adds that the agreement signed on 24 February 2019 was entered into after Kelly's Solution report and after the Defendant's allegation of their client swimming and complaining.

27. In addition, the Claimant adds that following the 24 February 2019 agreement there were two emails exchanged between the parties in which the Defendant approved the quantity and the quality of the sand. Upon completion, the Claimant sent the revised invoice in the sum of AED 387,110.38 but this has not been paid and the Defendant informed the Claimant that their Chairman has blocked the payment.

28. Due to the facts provided above, it is clear to me that the parties entered into a new agreement dated 24 February 2019 to resolve the underlying issues over this dispute. Subsequently, there were two emails regarding the quality and quantity of the sand required which were I note were approved by the Defendant. I also note that, upon the Claimant's request for the payment, the Defendant refused to pay and argued that the job was not completed according to the standards.

29. I find that the Defendant failed to provide any evidence post 24 February 2019 which indicates that the job was not completed as per the required standards. The Kelly Solutions report was submitted prior to the agreement entered between the parties in February 2019. As such, I find that the Defendant shall pay the Claimant the sums owed as per the Agreement plus interest at the rate of 9% per annum pursuant to Practice Direction No. 4 of 2017 from the date of this Judgment. In addition, the Defendant shall return to the Claimant the security cheque No. 634 in the sum of AED 218,400 and security cheque No. 763 in the sum of AED 162,750.

30. In its Claim Form, the Claimant claimed the sum of AED 412,627.14 which includes the following:

> (a) The invoice in the sum of AED 387,110.38
>
> (b) Interest at the rate of 9% per annum in the sum of AED 13,808

(c) The court fees in the sum of AED 20,632.

31. However, I find that the interest shall start from the date the Judgment is entered as per Practice Direction No. 4 of 2017.

32. In relation to the Court fees, I note that the Claimant has added this figure within the `Claimed Amount' instead of being listed as a remedy. Therefore, I will calculate the Court fee as following: AED 387,110.38/100 x 5% = AED 19,355.51.

Conclusion

33. In light of the aforementioned, I find that the Defendant shall pay the Claimant the total sum of AED 387,110.38 being the payments for the invoice plus interest at the rate of 9% per annum from the date the Judgment is entered.

34. The Defendant shall return to the Claimant the security cheque No. 634 in the sum of AED 218,400 and security cheque No. 763 in the sum of AED 162,750.

35. The Defendant shall pay the Claimant the court fee in the sum of AED 19,355.51.



Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 29 September 2019

At: 2pm