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 MAHA AL MHEIRI

BETWEEN

LIV

Claimant

and

LEANNA

Defendant

Hearing : **18 May 2022**
Judgment : **27 May 2022**

JUDGMENT OF H.E. JUSTICE MAHA AL MHEIRI

UPON this claim being filed on 9 March 2022

AND UPON a Hearing being held before H.E. Justice Maha Al Mheiri on 18 May 2022, with the Claimant's representative and the Defendant in attendance

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 sum of AED 6,833.

2. The Defendant shall also pay the Claimant the Court fees in the sum of AED 367.50.

Issued by:
Ayesha Bin Kalban
SCT Judge and Registrar
Date of issue: 27 May 2022
At: 9am

THE REASONS

The Parties

1. The Claimant is Liv (hereafter "the Claimant"), a company registered in Dubai, UAE.

2. The Defendant is Leanna (hereafter "the Defendant"), an individual who engaged the services of the Claimant to lease a property located in Dubai, UAE.

Background and the Preceding History

3. The underlying dispute arises over broker fees to be paid by the Defendant to the Claimant pursuant to a lease brokerage agreement between the owner and broker (the "Broker Agreement") signed by the Claimant and the Defendant on 31 August 2020 in relation to Office Unit 001 , Dubai, UAE (the "Unit").

4. The Broker Agreement states that *"at the time of signing the tenancy contract the owner/landlord agrees to pay the broker a commission amount of one month of the average annual gross rent or AED 5000 if one month is below AED 5000"*.

5. On 17 May 2021, the Defendant and Lifn (the "Tenant") signed a tenancy agreement to lease the Unit for 1 year for the amount of AED 220,000 (the "Lease Agreement"). After which, with the presence of the Claimant, the Tenant's representative handed the Defendant the rent amount in cash and subsequently the Defendant paid the Claimant the amount AED 11,500, being 5% of the rent amount as broker fees.

6. On 18 May 2021, the Claimant issued a receipt in the name of the Tenant for the amount of AED 11,500 being the broker fees.

7. On 9 March 2022, the Claimant filed a claim against the Defendant in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking recovery of the agent fees allegedly owed by the Defendant to the Claimant in the sum of AED 18,333.

8. On 21 April 2022, the Defendant filed his Defence.

9. The parties met for a Consultation with SCT Judge Maitha AlShehhi on 27 April 2022 but were unable to reach a settlement. 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 May 2022.

The Claim

10. The Claimant submits that it has introduced the Tenant to the Defendant. The Claimant has provided the Lease Agreement signed by the Defendant and the Tenant whereby it sets the annual rent at the amount of AED 220,000.

11. The Claimant submits that, as detailed in the Broker Agreement, the Defendant agreed to pay the Claimant commission amounting to one month of the average annual gross rent at the time of signing the tenancy contract. Therefore, in accordance with the Agreement, the Claimant seeks payment in the sum of AED 18,333.

12. The Claimant does not deny receiving payment from the Defendant but the Claimant states that the payment received from the Defendant was the commission agreed between the Claimant and the Tenant being 5% of the rent amount and not the one-month commission.

The Defence

13. In response, the Defendant submits that there is a standard form that is used between landlord, tenant, and broker to regulate the relationship. The template form issued from The Real Estate Regulatory Agency under the Land Department has the tenant, landlord and broker under the same agreement which also includes an agreed commission amount.

14. When the Defendant signed the Broker Agreement, the Claimant used another template, which the Defendant states contains part of the terms and conditions of the original template and does not include the commission that the Tenant has to pay as commission to the Claimant. The Defendant did not notice this at the time that he signed the Broker Agreement.

15. The Defendant also submits that the WhatsApp conversation between the Defendant and Tenant's representative was a negotiation of the broker fees on behalf of the Defendant and the Tenant. The Defendant denies that the 5% paid to the Claimant was the broker fees on behalf of the Tenant.

16. The Defendant states that when the rent amount was handed to him in cash by the Tenant's representative in the amount of AED 220,000, the Defendant handed 5% in the amount of AED 11,500 to the Claimant's representative as the negotiated broker fees.

17. In addition, the Defendant provided a witness statement signed by two partners of the Tenant's company, which reads as follows:

> "The commission demanded by the agent was initially one month rental which the landlord had not accepted. We negotiated this down to 5% of the total contract value which was agreed at AED 220,000 for a one year period. As such an amount of AED 11,500.00 was paid in cash to the Landlord Leanna who in our presence handed it over to the agent at the time. We confirm the transaction took place in all our presence and the money was paid to the agent by Leanna."

Discussion

18. First and foremost, the Broker Agreement in relation to the Unit shall be governed by the prevailing law of the DIFC and upon failure to resolve any disputes connected to the Broker Agreement, the dispute shall be referred to the DIFC Courts, as decided in the Jurisdiction Order issued by H.E. Justice Nassir Al Nasser in this matter.

19. It is crucial to examine both Agreements, in conjunction with all the events leading to filing this claim, to understand the legal obligations of the parties.

20. The commission in the Broker Agreement is defined as follows:

> "At the time of signing the tenancy contract the owner/landlord agrees to pay the broker a commission amount of one month of the average annual gross rent or AED 5000 if one month is below AED 5000".

21. Although the Defendant argues that the broker fee was negotiated by the Tenant on their behalf, meaning the Tenant and the Defendant, this was not reflected clearly in the WhatsApp conversation. It is true that the Tenant was negotiating with the term "we" but it is not clear the term "we" was referring to whom exactly as it can refer to the Defendant or partners under the Tenant's company. In addition, this negotiation was not put formally in any documentation to include both parties, the Defendant and the Tenant.

22. In addition, the Claimant does not deny receiving money from the Defendant, but the purpose of that money is defined by the Claimant as the broker fee that should be payable by the Tenant to the Claimant.

23. In review of the Broker Lease Agreement, I note that Broker Agreement is valid and legally binding upon the parties, and the Claimant and Defendant have provided enough evidence to support their claims. It is unfortunate that there is a miscommunication problem between the parties, meaning that the Defendant assumed that the broker fee should be paid by him and the Tenant. Furthermore, when the Tenant negotiated the 5% broker fee, it was not made clear that the 5% would be from both parties, Defendant and Tenant.

24. The Broker Agreement signed only contains a broker fee that should be paid by the Defendant, and it is the Defendant's contractual obligation only. There is no other agreement signed between the Claimant and the Defendant to amend the agreed broker fee, as such the Defendant is obligated to fulfil this commitment.

25. In addition, it is a fact agreed by all parties being the Claimant, Defendant and Tenant that the amount of AED 11,500 was paid to the

Claimant by the Defendant. The purpose of that payment is disputed between the parties. The Court is satisfied that incidents surrounding the payment of the broker fee are clear. It is also satisfied that the broker fee paid shall be considered as partial payment paid by the Defendant to the Claimant, and the remainder of the amount should be paid to the Claimant.

26. Therefore, I find the Defendant is liable to pay the Claimant the remainder of the commission in the sum of AED 6,833.