**Claim No. SCT 120/2021**

**THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS**

**IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS**

BETWEEN

**LIBBY**

Claimant

and

**LEON**

Defendant

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**ORDER WITH REASONS OF SCT JUDGE DELVIN SUMO**

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**UPON** reviewing the Defendant's Application Notice dated 18 May 2021 seeking to set aside the Order of SCT Judge Delvin Sumo dated 9 May 2021 (the "Application")

**AND UPON** reviewing the Claim Form submitted by the Claimant dated 19 April 2021

**AND UPON** reviewing the court file and documents contained therein

**AND PURSUANT** to the Former Rules 53.28, 53.30, 53.31 and 53.32 of the Rules of the DIFC Courts (the "FRDC")

**IT IS HEREBY ORDERED THAT:**

1. The Defendant's Application be dismissed.

2. Each party shall bear their own costs.

Issued by:
**Ayesha Bin Kalban**
SCT Judge and Deputy Registrar
Date of issue: 15 June 2021
Time: 12pm

**SCHEDULE OF REASONS**

**The Parties**

1. The Claimant is Libby, a company registered in Abu Dhabi, UAE (the "Claimant").

2. The Defendant is Leon, a company registered in Abu Dhabi, UAE (the "Defendant").

**Background**

3. On 19 April 2021, the Claimant filed a Claim with the DIFC Courts' Small Claims Tribunal (the "SCT") seeking recovery of sums allegedly owed to the Claimant by the Defendant in relation to the supply of a boom lift to the Defendant in the sum of AED 12,915.

4. On 6 May 2021, a consultation was listed before me, at which the Claimant's representative attended, however, the Defendant failed to appear, although served notice of the Claim.

5. On 9 May 2021, a Default Order (the "Order") was issued pursuant to FRDC 53.28, following which the Defendant filed an Application on 18 May 2021 seeking to set aside the Order.

6. In its submissions dated 18 May 2021, the Defendant requested for the Application to be decided without a hearing.

**Discussion**

7. FRDC 53.30 reads as follows:

> "A party who was neither present nor represented at the consultation and against whom the claim has been decided in accordance with Rule 53.28 or Rule 53.29 may apply for that order to be set aside and the claim reinstated".

8. An application to set aside an order must be made not more than 7 days after the day on which the notice of the order was served on the defendant, in accordance with FRDC 53.31.

9. The Order was issued on 9 May 2021 and served upon the Defendant by way of email dated 9 May 2021. The Application was filed by the

Defendant on 18 May 2021, therefore, I find that the Application was filed out of time and fails to comply with the 7 days' requirement for filing pursuant to FRDC 53.31.

10. FRDC 53.32 reads as follows:

> "The SCT may grant an application under Rule 53.30 only if the applicant:
>
> (1) had a good reason for not attending the consultation; and
>
> (2) has a real prospect of success in the small claim"

11. In accordance with FRDC 53.32, an applicant must meet both requirements, namely to demonstrate that the applicant had a good reason for failing to attend the consultation, and also to demonstrate that the applicant has a real prospect of success in defending the claim.

12. The Defendant has failed to attend the Consultation, although served notice properly. In its submissions on 18 May 2021, the Defendant stated the following:

> "The claimant is asking for the abovementioned amount in which there's no proof of documents shown or given to me. Also, the given link for virtual hearing is not working and I keep on trying to call the center and their response is I have to wait for the judge's final decision".

13. It appears that the Defendant has t been in touch with the SCT Registry after the Consultation had taken place, however, the Defendant has failed to provide a good reason for failing to attend the Consultation. I requested that the Defendant provide further submissions to address this point, however, no such response was filed.

14. Furthermore, the Defendant has not filed any submissions nor evidence to demonstrate a real prospect of success in this small claim, therefore failing to meet both requirements set out in RDC 53.32.

15. In review of the court file and documents contained therein, I note that the Claimant has supported its Claim with the relevant documents which the Defendant had access to. Therefore, I dismiss the Application accordingly.

**Conclusion**

16. The Application be dismissed.

17. Each party shall bear their own costs.