THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

LATINS

Claimant

and

LIDINA

Defendant

JUDGMENT OF JUSTICE LORD ANGUS GLENNIE

Hearing : **29 November 2021**

Counsel : Nikhat Sardar Khan instructed by Kochhar & Co Legal Consultants on behalf of the Applicant
Company Partner, as a litigant in person on behalf of the Respondent

Judgment : **7 December 2021**

UPON considering the Small Claims Tribunal Claim filed on 8 September 2020 and amended on 1 October 2020 (the **"SCT Claim"**)

AND UPON the Defendant filing an Acknowledgment of Service dated 12 October 2020 indicating its intention to contest the jurisdiction of the DIFC Courts (**"Acknowledgment of Service"**)

AND UPON a Jurisdiction Hearing having been held before the Small Claims Tribunal Judge Maha Al Mheiri on 25 October 2020

AND UPON the Small Claims Tribunal Judge Maha Al Mheiri giving judgment on 8 November 2020, holding that the DIFC Courts do not have jurisdiction and therefore dismissing the claim

AND UPON the Claimant's application for permission to appeal against that judgment

AND UPON permission to appeal being granted by H.E. Justice Nassir Al Nasser on 8 April 2021

AND UPON reading the Claimant's/Appellant's Grounds of Appeal dated 13 October 2021

AND UPON reading the Skeleton Argument for the Claimant/Appellant dated 24 November 2021

AND UPON hearing Counsel for the Claimants/ Appellant and Respondent at the Appeal hearing on 29 November 2021

IT IS HEREBY ORDERED THAT:

1. The appeal be granted.

2. The Dubai International Financial Centre Courts have jurisdiction over the subject matter of this action.

3. The case be remitted to the Small Claims Tribunal to make such directions as are appropriate for the resolution of the dispute between the parties.

4. Each party shall bear its own costs of this appeal.

REASONS

1. This is an appeal by the Claimant against the Order of SCT Judge Maha Al Mheiri dated 8 November 2020, in terms of which she upheld the Defendant's challenge to the jurisdiction of the DIFC Courts, held that the DIFC Courts did not have jurisdiction over the claim and dismissed the case. Permission to appeal was granted by H.E. Justice Nassir Al Nasser on 8 April 2021.

2. I heard submissions on behalf of the Claimant and the Defendant. The Defendant, who appeared by Mr Lutan, its CEO, asked for an adjournment of no more than 10 days so that a lawyer could be instructed. I refused that application. I was satisfied that there would be no undue prejudice to the Defendant. There has already been considerable delay in this case and the judgment appealed against already sets out cogently and in some detail the arguments which the Defendant wishes to advance.

3. The underlying dispute arises under an agreement or agreements entered into between the parties regarding warehousing activities and freight forwarding services. The Claimant is a company offering warehousing activities registered in Dubai. The Defendant provides services relating to hotel and hospital supply solutions located in Dubai. According to the Claimant, the Defendant is the owner or consignee of movable goods that require the logistics and warehousing services provided by the Claimant.

4. On 15 December 2017, the Claimant and Defendant signed a "Contract Logistics Service Agreement" relating to services to be provided by the Claimant in the Jebel Ali Free Zone (the **"JAFZA Contract"**). On 1 April 2018, the same parties signed a "Contract Logistics Service Agreement" relating to services to be provided by the Claimant at Rashidiya (the **"Rashidiya Contract"**). So far as is material, both contracts are in substantially the same terms, though the Rashidiya contract was for an initial term of 12 months from 1 April 2018 whereas the JAFZA Contract was for an initial term of six months from 15 December 2017. I shall refer to them together as "the contracts".

5. The contracts both contained at clause 19 a "Dispute Resolution" clause in the following terms:

> "19 DISPUTE RESOLUTION
>
> 19.1 Any dispute, controversy or claim in connection with, arising out of, or relating to formation, performance [or] interpretation [of] this Agreement (including any provision of any Annexure or Exhibit thereto) or the breach, termination or validity thereof shall, in the first instance, be settled amicably by consultation among the parties. If for any reason no satisfactory settlement has been reached within thirty (30) calendar days of receipt by a party of a notice of dispute then such dispute shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre (DIFC)."

I have inserted "[or]" in two places to tidy up the grammar but this does not alter the meaning of the clause. By clause 20 the parties also agreed that:

> "the validity, interpretation and construction of this Agreement shall be governed by and construed in accordance with the governing law of the DIFC Courts."

6. As the SCT Judge records in her judgment, the underlying dispute arises over an agreement with regard to warehousing activities and freight forwarding services entered into by the parties. That is a reference to the two contracts referred to above. On 8 September 2020 the Claimant filed a claim in the SCT seeking payment of unpaid invoices totalling in excess of AED 200,000. The Defendant acknowledged service without giving any indication that it wished to challenge the jurisdiction of the DIFC Courts. The claim was amended on 1 October 2020 to correct an error in the name of the Claimant and the amended claim form was served on the Defendant. On 12 October 2020 the Defendant filed a further Acknowledgment of Service, this time indicating its intent to challenge the DIFC Courts' jurisdiction.

7. After a hearing on 25 October 2020 the SCT Judge issued a judgment upholding that challenge to the jurisdiction of the DIFC Courts. Her reasoning, set out in paras 17-23 onwards, was to this effect: that the contracts were contracts for the lease or rental of real property, namely the warehouses used for storage of the goods; that the claim was therefore a claim for rent for real property (i.e. the warehouses) within Dubai; such an action was properly categorised as a claim in personam in respect of real property; and jurisdiction was therefore vested in the courts where the real property was located or where the Defendant had his domicile, in both cases those being the courts of Dubai and not those of the DIFC: see Articles 31(5) and 32(2) of Federal Law No 11 of 1992 Concerning Civil Procedures. Those provisions over-rode the parties' agreement to opt-in to DIFC Court jurisdiction as set out in clauses 19-20 of the contracts.

8. The Claimant did not challenge the legal reasoning based on those Articles of Federal Law No 11 of 1992 Concerning Civil Procedures, but it did challenge the SCT Judge's characterisation of the claim as being a claim for rent of the warehouses. It was clear from the terms of the contracts that the claim was not a claim for rent of the warehouses but a claim for payment for services.

9. Having considered the documents carefully, I have come to the view that the Claimant is correct in that submission. On a proper consideration of the contracts, it is clear that the agreement is for the provision by the Claimant of warehousing and logistical services; the holding of goods in a warehouse being but one part of the Claimant's obligations thereunder. I do not propose to set out every clause of the contracts which lead me to this view, but I mention the following points in particular:

a) The Claimant is called Latins and is referred to in the heading to the contracts and throughout as "3rd Party Logistic Services Provider/ 3PL"

b) In clause 1.1.6 it is stated that the Fee is payable by the Defendant to the Claimant, 3PL, for "the services rendered in terms of this Agreement" as set out in Annexure A. "Services" are defined in clause 1.1.11 as "the warehousing, distribution and ancillary services" rendered by the Claimant, as set out in Annexure A.

c) Annexure A itself identifies the "Scope of Work/ Services", with a unit rate against each item, including "Covered Warehouse", a "Warehouse Management System" with "Web Portal Access", "Handling Charges" (with specific rates for Handling In, Handling Out, Palletizing and Labor) and "Transportation". The payment terms include monthly billing of the warehouse rental of AED 8,500 per month payable monthly in advance, with payment for other services at 30 days from invoice date. Although the term "warehouse rental" is used, it is clear that the contracts cover more than that.

d) Clause 2.1 defines the "Scope of Services". The Claimant shall be completely responsible for the supply of labour, equipment and supervision. The Claimant is required to exercise due diligence and care in the performance of the services.

e) Under clause 3.1, dealing with "Warehouse Facilities", the Claimant is responsible for selecting and/or leasing of the facilities for storage to be managed by it under the contract.

f) Under clause 4, "Equipment", the Claimant is to "provide all the necessary material for handling, storage and equipment to perform the Services".

g) Under clause 5, "Operating Supplies", the Claimant is to provide all pallets and operating supplies such as shrink wrap.

h) In terms of clause 8, the Claimant is responsible for maintaining insurance over the warehouse and other leased storage facilities.

i) Clause 10 contains provisions as to liability, which impose obligations of reasonable care on the Claimant in safeguarding the goods while in the warehouse (10.1.3) and provision that the Claimant's care, custody and control over the goods shall commence when the goods have been safely unloaded and stored in the Claimant's warehouse and terminates when the goods have been loaded onto the vehicle nominated by the Defendant.

j) In terms of clause 11, access to the warehouse is restricted to the Claimant and to authorised representatives of the Defendant.

10. All these provisions go to paint the following picture of the relationship between the parties under the contracts. The Claimant unloads and stores goods delivered to a warehouse owned or leased by it, stores them safely, and in due course loads them onto vehicles nominated by the Defendant. The Claimant's employees are responsible for all operations within the warehouse, and the Claimant owes duties of care in respect of their activities. The Claimant insures the warehouse and controls access to it. The contract is for the provision of services by the Claimant, which services include the storage of goods in a warehouse. The Defendant pays for such services; but in no sense does this amount to a lease of the warehouse by the Defendant, nor do the fees charged by the Claimant fall properly to be described as rent paid for possession of the warehouse.

11. In those circumstances I am firmly of the opinion that the claim is not a claim in respect of real property, it is a claim for payment for warehousing and related handling and logistic services carried out by the Claimant is a warehouse owned or leased by it.

12. There is therefore no reason not to give effect to the DIFC jurisdiction clause in the contract (clause 19). I shall allow the appeal, hold that the DIFC Courts have jurisdiction over the claim and remit the case to the SCT to take such steps as are appropriate for the future progress of the action.

13. I should mention that I was addressed on behalf of the Claimant about the Defendant's failure to challenge jurisdiction within the time allowed and in accordance with the procedures stipulated in the RDC. Since I have come to the view that the appeal should be allowed for the reasons set out above, it is unnecessary for me to go into this point.

14. Having regard to RDC Rule 53.70, I consider that each party should bear its own costs of this appeal. I am not persuaded that the Defendant has behaved unreasonably and, having regard both to that and to the numerous issues still to be decided, I do not think it appropriate to make any specific order as regards Court fees.

Issued by:
Nour Hineidi
Registrar
Date of Issue: 7 December 2021
At: 2.30pm