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
BEFORE H.E JUSTICE NASSIR AL NASSER

BETWEEN

LICONA

Claimant

and

LAVIN

Defendant

Hearing : **30 March 2021**
Judgment : **5 April 2021**

JUDGMENT OF H.E. JUSTICE NASSIR AL NASSER

UPON hearing the Claimant and the Defendant at the Hearing dated 30 March 2021

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 322,675.25 plus interest at the rate of 9% per annum pursuant to the Practice Direction No. 4 of 2017.

2. The Claimant's claim in relation to the Car Loan Agreement and the Mastercard shall be dismissed for lack of jurisdiction.

3. The Defendant shall pay the Claimant the Court Fee in the sum of AED 16,133.76.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 5 April 2021
At: 9am

THE REASONS

Parties

1. The Claimant is Licona, a bank providing financial services including credit cards and personal loans to customers (the "Claimant").

2. The Defendant is Lavin, an individual customer of the Claimant Bank (the "Defendant").

Background

3. The parties entered into a written agreement on 31 July 2019, entitled `Licona Liut Personal Loan (the "Loan Agreement"). Under the terms of the Agreement, the Claimant was to receive a loan of AED 391,000 with a repayment schedule of 48 instalments in the amount of AED 9,390.

4. The Parties also entered into a written agreement on 25 February 2019 (the "Car Loan Agreement"). Under the terms of the Car Loan Agreement, the Claimant was to receive a car loan of AED 86,802 with a repayment schedule of 48 instalments of AED 1,997.

5. The Claimant also provided the Defendant with a product entitled `Mastercard' on 24 April 2010 with a limit of AED 48,000.

6. The Defendant entered into arrears on 24 October 2020 in relation to the Loan Agreement where the current outstanding amount is AED 322,675.25. The Defendant also entered into arrears on 16 January 2021 in relation to the Car Loan Agreement and the outstanding balance is AED 57,340.58. The Defendant also entered into arrears in relation to the Mastercard on 9 September 2020 and the outstanding balance is AED 50,957.94. According to the Claimant, the remaining amount currently outstanding against the Defendant is AED 430,973.77.

7. Following the Defendant's failure to keep up with his repayments, the Claimant filed a claim on 2 February 2021 with the DIFC Courts' Small Claims Tribunal (the "SCT") to recover the amounts owed to it (the "Claim").

8. The Defendant responded to the Claim on 28 February 2021 intending to defend all of the claim.

9. On 3 and 10 March 2021, the parties attended the Consultation before SCT Judge Delvin Sumo but the parties were unable to reach a settlement at the Consultation.

10. A hearing was listed before me on 30 March 2021, in which the Claimant's representative and the Defendant attended.

Discussion

11. This Claim includes two main elements. First, it must be established that the DIFC Courts have jurisdiction over all of the parts of the Claim, including the Loan Claim, Car Loan and the Credit Card Claim. Second, the Claim must be assessed based on the documentary evidence provided to determine whether the Defendant is in arrears and what amount remains owing to the Claimant.

12. This Claim is related to reimbursement in regards to the Defendant's failure to repay amounts paid to him under the Loan Agreement, Car Loan Agreement and Mastercard credit card.

13. Article of 5(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended, (the "JAL") sets out the DIFC Courts' jurisdiction over;

> i. "(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;
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> ii. (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;
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> iii. (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; . . .
>
> iv. (e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations. . .
>
> . . . 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."

14. Pursuant to the JAL, the DIFC Courts can exercise its jurisdiction over a matter that is unrelated to the DIFC, where the parties have agreed in writing that any dispute arising between them would be referred to the DIFC Courts for adjudication. Such a provision would allow the parties to `opt-in' to the DIFC Courts' jurisdiction, provided that it clearly demonstrates the parties' intention to do so.

The Loan Agreement

15. The Claimant submits that the DIFC Courts and the SCT retain jurisdiction over the claim as the Defendant agreed to the terms and conditions set forth in Loan Agreement, as presented on the Licona system, which states at Clause 18:

> "the Civil Court of the Individual Emirates. The Federal Civil Courts of the United Arab Emirates, and the Courts of the Dubai International Financial Centre (including without limitation the Small Claims Tribunal of the DIFC). Shall have non-exclusive jurisdiction over all matters arising under the products' terms and conditions save that bank shall have the right to file actions in any court with jurisdiction over you or your assets."

16. I find that the parties have clearly and expressly agreed, in accordance with the JAL, to refer their dispute for adjudication by the DIFC Courts, as set out in Clause 18 of the Terms and Conditions.

17. In relation to Loan claim and based on the documentary evidence, I am satisfied that the Defendant has been in arrears since 24 October 2020 and the remaining balance of the Loan is the sum of AED 322,675.25.

18. The Defendant, at the Hearing, did not challenge the Claimant's claim but explained to the Courts that he is currently facing financial difficulty and thus submitted that he would be unable to settle the amounts owing by him.

19. Therefore, the Claimant is entitled to the Loan amount in the sum of AED 322,675.25, plus interest at the rate of 9% per annum as per the DIFC Courts Practice Direction No. 4 of 2017 - Interest on Judgments.

The Car Loan Agreement and the Mastercard Credit Card

20. The Claimant provided the Car Loan Agreement as part of its submissions but did not provide the Mastercard Credit Card Application Form.

21. The Car Loan Agreement document was not clear; therefore, the Claimant was given the opportunity to resubmit the document, but it was not clear.

22. I note that neither of the parties are a DIFC entity nor did they consent in writing to opt-in to the jurisdiction of the DIFC Courts. The SCT's jurisdiction over the Claim relies upon the parties having validly `opted-in' to the SCT's jurisdiction. I find that this does not apply to the Car Loan Agreement and the Mastercard claims as it fails to satisfy the gateway requirements set out in the JAL.

23. Therefore, I shall dismiss the Claimant's claim for the sum of AED 57,340.58 in respect of the Car Loan Agreement. I also dismiss the Claimant's claim for the sum of AED 50,957.94 in relation to the Mastercard.

Finding

24. The Defendant shall pay the Claimant the Personal Loan amount in the sum of AED 322,675.25 plus interest at the rate of 9% per annum pursuant to the Practice Direction No. 4 of 2017.

25. The Claimant's claim in relation to the Car Loan Agreement and the Mastercard shall be dismissed for lack of jurisdiction.

26. The Defendant shall pay the Claimant the Court Fee in the sum of AED 16,133.76.

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