**Claim No: SCT 559/2019**

**THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS**

**In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai**

**IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS**
**BEFORE SCT JUDGE MAHA AL MEHAIRI**

BETWEEN

**LAYLA MANAGEMENT INC**

Claimant

**V**

**(1) LUCAS**

First Defendant

**(2) LANDY**

Second Defendant

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Hearing

: 29 January 2020

Judgment

: 24 February 2020

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**JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI**

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**UPON** the Claim Form being filed on 15 December 2019

**AND UPON** the Defendant filing an Acknowledgment of Service with an intention to defend part of the claim dated 29 December 2019

**AND UPON** a Consultation being listed before SCT Judge Nassir Al Nasser on 13 January 2020

**AND UPON** the parties failing to reach a settlement at the Consultation

**AND UPON** a Hearing being listed before SCT Judge Maha Al Mehairi on 29 January 2020

**AND UPON** reviewing all documents and evidence submitted on the Court file;

**IT IS HEREBY ORDERED THAT:**

1. The Defendants shall pay the Claimant a total sum of **AED 131,250.**

2. The Defendants shall retrieve all of their belongings if they have not already done so, and return the key for the aforementioned property to the Claimant within 7 days of this judgment.

3. There shall be no order as to costs.

Issued by:

**Nassir Al Nasser**

SCT Judge

Date of issue: 24 February 2020

At: 10am

**THE REASONS**

**Parties**

1. The Claimant is `Layla Management Inc', ("Lemune" or the "Claimant"), a property owner/management company located in London.

2. The Defendants are `Mr Lucas' ("Mr Lucas" or the "First Defendant") and Miss Landy ("Miss Landy" or the "Second Defendant") were tenants of Apartment 123Park Towerin, DIFC, Dubai, (the "Park Tower Apartment") owned by the Claimant, Lemune.

**Background**

3. On 15 December 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for the sum of AED 196,875.00, allegedly owed by the Defendants in relation to the Park Tower Apartment for a period of 18 months unpaid rent.

4. The matter was called before me on 29 January 2019, with the parties acting as litigants in person; Mrs Limna (the "Landlady") acting for the Claimant and Miss Lucy appearing for the Defendants.

**The Claim**

5. On the Claimant's account, the Defendants owe large sums for their rental of the Park Tower Apartment; firstly, for the sum of AED 131,250 for a 1-year period from 1 July 2018 to 30 June 2019 ("Period One") and secondly for the sum of AED 65,625 for the following 6-month period from 1 July 2019 to 31 December 2019 ("Period Two"). The Claimant contends that as the property keys have still not been handed back, the Defendants continue to be liable to pay the monthly rental sum of AED 10,937.

6. The Claimant further submits that no written rental contract has been signed for the periods mentioned above. The last and only properly executed agreement for the property is for the year prior, from 1 July 2017 - 30 June 2018, for which the only tenant is the First Defendant, Mr Lucas. The Claimant contends that the Defendants are currently in possession of the apartment and the First Defendant has `failed to execute a renewal of his tenancy agreement and is refusing to pay rent [.] even though he and/or his wife continue to enjoy the property'. The Claimant alleges that the Second Defendant has `fabricated a tenancy agreement falsely showing she was sole tenant for the property'.

7. The Claimant therefore requests the following:

(a). rent due from 1 July 2018 up until the date the Defendants hand over the keys to the Apartment;

(b). that the Apartment is handed over in good condition and all utility charges are paid by the Defendant; and

(c). compensation for legal costs incurred for recovery of rent via the DIFC Courts' Small Claims Tribunal.

**The Defence**

8. The Second Defendant does not dispute rent pertaining to Period One being owed. She claims the reason for non-payment was that she had requested from the Landlady a written renewed contract in her name only, several times, to no avail. Moreover, the Landlady repeatedly asked for cash as opposed to the cheques she was given.

9. Period Two for the 6-month extension is, however, contested. On the First Defendant's account, the Landlady's daughter, Ms Linda (the "Landlady's Daughter") assisted with the extension negotiations, alongside a representative for Lemune, Mr Lotely (the "Broker"). According to the submissions of the First Defendant, the Landlady herself had agreed upon the sum of AED 60,000. This deal was allegedly `done over the phone with Mr Lune [.] who was acting as a broker'.

10. Thereafter, on the Second Defendant's account, the Broker drew up a draft agreement citing the agreed amount of AED 60,000 but was promptly fired before the document was sent out. When the Landlady's Daughter asked the Second Defendant to wait for Lemune's lawyer to provide the contract for the further 6 months `I obliged and informed Linda (the Landlady's Daughter) that the agreed amount for the 6-month extension was 60,000AED'. When this information was communicated to the Landlady's Daughter this was accepted.

11. The First Defendant thus defends the Claimant's claims in part; admitting liability to pay the sum for Period One as agreed, and Period Two in the sum of AED 60,000.

**Discussion**

12. The dispute is governed by DIFC contract law and the relevant case law of England and Wales and principles concerning contract formation. Neither party has disputed the jurisdiction of the DIFC and thus the Court assumes jurisdiction of this matter.

13. The contracts in question are for Period One and Period Two; AED 131,250 for the 1-year period and AED 65,625 for the following 6-month extension. In the absence of a written or signed contract for either period, I shall refer to them as `Verbal Contract One' and `Verbal Contract Two', collectively as the `Verbal Contacts'. Verbal contracts are indeed binding and enforceable, providing they are properly formed in line with the principles of contract law in England and Wales.

14. As there is no dispute pertaining to Period One and the sum owed for this particular period, I shall not delve into a discussion of this first year; as I understand from the hearing, and can clearly see from the evidence on the Court file, the First Defendant has tried to pay her rent for this period. It is entirely understandable that she would not want to pay in cash considering the breakdown of communication and relationship between her and the Landlady. The other facts before the Court pertaining to this period are not relevant, as both parties agree that the sum of AED 131,250 for a 1-year period from 1 July 2018 to 30 June 2019 is outstanding. This part of the claim thus succeeds.

15. Period Two is slightly more complex as it is contested that there is an agreement between the Landlady and the First Defendant for the 6-month extension.

16. Firstly, whilst I accept from the evidence on the Court file that the Broker and the Landlady's Daughter had the agency to act on Lemune's

behalf, there is not enough evidence to show the existence of a legally binding agreement between the Claimant and Defendant. For there to be a contract, there must be offer and acceptance (as well as consideration). Even if I take the First Defendant's account prima facie that the offer of AED 60,000 was made via telephone, full acceptance of this offer from the Landlady's Daughter is absent from the Court file. Though I note the WhatsApp message entitled `Lent.pdf' and uploaded onto the eRegistry system by the First Defendant on 27 January 2020 clearly refers to Period Two and the sum of AED 60,000, for the Landlady's Daughter to reply simply to say `ok' does not surmount to acceptance. Acceptance is an unqualified expression of assent to the terms of an offer. An acceptance is distinguished from a counter-offer, acceptance must be communicated, and silence will not normally amount to acceptance. A simple `ok' in this context could translate to `ok, noted', or indeed `ok, let me check', not necessarily, `ok, agreed'.

17. Whilst it is not the case that there is a legally binding verbal contract for Period Two for the sum of AED 60,000, neither is there any evidence to show a valid and binding agreement for the sum of AED 65,625. At the hearing, it was clear that parties, at this point in time, had been in dispute about a) the need for a written contract and b) the extension for many months. The First Defendant had tried time and time again to formalise the tenancy with a written agreement, in her name, which the Landlady refused to provide.

18. In the absence of a legally binding agreement, this part of the claim fails. The First Defendant is not liable to pay rent for a period of time at a rate she did not agree to.

19. The final issue is whether or not the rent remains to accrue; the Claimant contends that as the property keys have still not been handed back, the Defendants continue to be liable to pay the monthly rental sum of AED 10,937. This part of the claim also fails, both for the legal reasoning as applied above, and as it transpires that the Defendants did not occupy the Park Tower Apartment after Period Two.

20. At the hearing, I asked the Claimant to provide proof of the First Defendant's occupancy and she was unable to do so. With reference to the most recent submissions and emails on the Court file, whilst I accept the security services of Park Tower may not be able to hand over (documentary or video) evidence pertaining to the resident, I do accept the evidence uploaded by the First Defendant on 5 February 2020, notably proof from the Dubai Land Department and various other documentation showing she has signed another rental contract for another property during the period in question.

21. In my judgment, the ample evidence on the Court file shows the First Defendant was not resident in the Park Towers Apartment after Period Two, and in the absence of a legally binding agreement, no monies are due or continue to accrue.

22. At the hearing, I requested the First Respondent to return the key, and take any last items from the Part Tower Apartment imminently (i.e. within 72 hours). I trust she has done so by the date this judgment is delivered, and if this is not the case, I order the Defendants to retrieve all of their belongings if they have not already done so, by 7 days of this judgment, and return the key to the Landlady. The Landlady must repay any deposits owed to the Defendants.

23. The claim for costs fails.

**Conclusion**

24. For the avoidance of doubt, it is hereby ordered that:

(a). the Defendants shall pay the Claimant a total sum of **AED 131,250** for the rental of Park Towers Apartment 1345 for the period from 1 July 2018 to 30 June 2019.

(b). the Defendants shall retrieve all of their belongings if they have not already done so, and return the key for the aforementioned property to the Claimant within 7 days of this judgment.

(c). there shall be no order as to costs.

Issued by:

**Nassir Al Nasser**

SCT Judge

Date of issue: 24 February 2020

At: 10am