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 SCT JUDGE AND DEPUTY REGISTRAR AYESHA BIN KALBAN

BETWEEN

LUCY

Claimant

and

LEVI

Defendant

Hearing

: 20 January 2020

Judgment

: 6 February 2020

JUDGMENT OF SCT JUDGE AND DEPUTY REGISTRAR AYESHA BIN KALBAN

UPON the Claim Form being filed on 25 November 2019

AND UPON the parties being called on 12 December 2019 for a Consultation with SCT Judge Hayley Norton and the parties not having reached settlement

AND UPON a Hearing having been held before SCT Judge Ayesha Bin Kalban on 20 January 2020, with the Claimant's representative appearing by way of telephone and the Defendant in attendance

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant AED 89,727.17 in respect of the sums owed to the Claimant by the Defendant, plus interest at the rate of 9% per annum.

2. The Defendant shall pay the Claimant the Court Fee in the sum of AED 4,486.35.

Issued by:

Hayley Norton

SCT Judge

Date of issue: 6 February 2020

At: 12pm

THE REASONS

Parties

1. The Claimant is Lucy, a bank providing financial services to customers (the "Claimant").

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

The Claim

3. The parties entered into a written agreement on 14 August 2016, entitled `LUCY Personal Loan Application and Credit Card Application

Form' (the "Simply Life Loan and Credit Card Agreement"). Under the terms of the Simply Life Loan and Credit Card Agreement, the Claimant approved the sale of 2 bank products to the Defendant. The Claimant also claims sums owed to it pursuant to a separate agreement entered into by the parties for the sale of a Mastercard gold credit card. This agreement, titled `LUCY Credit Card Application Form' was dated 4 June 2014 (the "Mastercard Credit Card Agreement"). I shall discuss each of these products below.

The Personal Loan

4. Pursuant to the Simply Life Loan and Credit Card Agreement, the Defendant received an amount of AED 175,000 on 15 September 2016, to be repaid in 50 monthly instalments in the amount of AED 4,303 under the product titled the `Personal Loan' (the "Personal Loan"). The Claimant alleges that the Defendant fell into arrears on 9 August 2019 and claims that the outstanding sum of the Personal Loan amounts to AED 85,462.79.

The Simply Life Credit Card

5. The Simply Life Loan and Credit Card Agreement also provided for the Defendant to receive a credit card with a limited of AED 3,000 on 14 August 2016. The Claimant claims that the Defendant fell into arrears and that the outstanding amount owed to the Claimant in relation to this product is AED 4,264.38.

The Mastercard Gold Credit Card

6. The Defendant also availed a credit card with a limit of AED 26,000 and allegedly fell into arrears in relation to it. The Claimant claims the outstanding sum owed to it pursuant to the Mastercard Gold Credit Card Agreement to be AED 26,535.74.

7. Following the Defendant's failure to settle the amounts outstanding, the Claimant proceeded to file its claim for the recovery of the sums due and owed to it with the Small Claims Tribunal (the "SCT").

8. The parties met for a Consultation with SCT Judge Hayley Norton on 12 December 2019 but were unable to reach a settlement.

The Defence

9. In his response dated 12 January 2020, the Defendant submits that, in regards to the Mastercard Gold Credit Card Application, there is no clause within this Agreement providing an opt-in to the DIFC Courts' jurisdiction. Therefore, it is the Defendant's submission that the Claimant's claim for the sum owed to it under the Mastercard Gold Credit Card Application for the sum of AED 26,535.74 must be denied, due to the fact that the DIFC Courts do not have jurisdiction over the sale of this product.

10. In relation to the Personal Loan, the Defendant submits that he had attempted to cancel the Simply Life Loan and Credit Card Application by way of an email to a representative of the Claimant dated 23 November 2016. The Defendant alleges that no disbursal of funds was made to the Defendant by the Claimant on 15 September 2016.

11. The Defendant submits that the sum that the Claimant has claimed in regards to the Simply Life Credit Card amount to charges and fees imposed by the Claimant, and states that he has already settled the principal sum. It is the Defendant's submission that these amounts should be waived in light of the fact that there is no principal sum outstanding.

Discussion

12. In its written submissions and in the Hearing, the Claimant relied on the terms of the Agreements which set out the sums owed to it by the Defendant and the dates by which the Defendant was to settle its liabilities to the Claimant. The Claimant confirmed that it sought repayment of the outstanding amounts of the products it provided to the Defendant, which, as of the hearing date, amounted to AED 119,263.41. It also confirmed that it is seeking post-judgment interest on the sums due, as well as the recovery of the fee paid to the Court for the filing of this Claim, in the amount of AED 5,963.16.

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:

> "(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;
>
> (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;
>
> (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; . . .
>
> (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, should 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.

15. In reviewing the two Agreements filed by the Claimant, it appears that the Mastercard Gold Credit Card Agreement does not contain an

express clause by virtue of which the DIFC Courts' would be able to exercise jurisdiction over the Claim. In the Hearing, I asked the Claimant to provide further submissions in regards to this and its submissions provided by way of email to the Registry are as follows:

> "The DIFC Courts have jurisdiction over this claim by the claimant against the defendant pursuant to Dubai Law No. 12 of 2004 as amended by Dubai Law No. 16 of 2011 (together the Judicial Authority Law). Under Article 5(A)(2) of the Judicial Authority Law, contracting parties may opt into the jurisdiction of the DIFC Courts by written agreement.
> As agreed by the defendant the LUCY Credit Card holder agreement and the service and price guide were provided in any form including but not limited to in either printed or digital form along with credit card. As mentioned in welcome kit, the detailed Terms and condition is always available on LUCY's official website - http://www.LUCY.com/Images/LUCY_CC_TC__Aug11.pdf
> "Governing Law clause 16" that the DIFC Courts have jurisdiction over all matters arising under the agreement. This contractual provision constitutes a submission to the DIFC Courts' jurisdiction by the parties. Due to the value of this claim, the SCT has jurisdiction to hear it."

16. In my view, a referral from a welcome kit to terms and conditions available on the Claimant's website cannot be construed to be a valid opt-in clause. The wording of Article 5(A) of the JAL sets out that there must be a form of written agreement between the parties to refer their disputes to the DIFC Courts, whereby each party agrees to submit to the DIFC Courts' jurisdiction. A referral to terms and conditions that are available in digital form do not constitute to be a written agreement, as it does not guarantee in any form that the Defendant may have seen them, or that the Defendant agrees to submit to the DIFC Courts' jurisdiction. My finding in relation to this claim is also made in accordance with His Excellency Justice Shamlan Al Sawalehi's decision in [2019] CFI 70 Limsy v Licoln

17. I note that, in regards to the Simply Life Personal Loan and Credit Card Agreement, Clause 18 sets out a valid opt-in, whereby the parties agree to submit to the DIFC Courts' jurisdiction. This Agreement was signed by the Defendant in 2016, and the Defendant has not made any challenge to the jurisdiction of this Court to determine the Claimant's entitlement on the Personal Loan and Simply Life Credit Card.

18. Therefore, I dismiss the Claimant's claim for AED 26,535,74 in relation to the outstanding sum owed pursuant to the Mastercard Gold Credit Card Agreement.

19. In relation to the Defendant's submissions in regards to his request by way of email to cancel the disbursement of the Personal Loan from the Claimant, I find that the Defendant has failed to provide evidence demonstrating that an email would suffice to terminate the agreement entered into between the parties for the Defendant to avail of the Personal Loan. To add to this, even if the amount of the Personal Loan was disbursed to the Defendant on a later date, it remains that the Defendant did in fact receive the sum and did not draw the Claimant's attention to his decision to not avail of the Personal Loan. Therefore, I am of the view that the Claimant is entitled to the sum of AED 85,462.79, being the total amount outstanding for the Personal Loan provided to the Defendant.

20. As set out above, another argument of the Defendant is that the outstanding sum applicable to the Simply Life Credit Card consists of penalties, charges and other figures imposed by the Claimant that do not form part of the principal sum of the Credit Card. In review of the Simply Life Loan and Credit Card Agreement, the Defendant has agreed to bear these charges and it is unimaginable that the Defendant would be able to avail of such a product without the Claimant receiving some form of remuneration on its service. Therefore, I dismiss this submission and order the Defendant to pay the outstanding sum of the Simply Life Credit Card, amounting to AED 4,264.38.

Finding

21. In light of my finding above, it is hereby ordered that the Defendant shall pay the Claimant the amount of AED 89,727.17 for the sums owed to it under the Simply Life Personal Loan and Credit Card Agreement. The Claimant is also entitled to the Court fee paid for the filing of this Claim, and in taking into consideration the Claimant's failure to succeed on all its claims, I find it appropriate that the Defendant be ordered to pay the Court fee applicable to the judgment sum set out above, in the amount of AED 4,486.35.

22. The Claimant shall also be entitled to post-judgment interest at a rate of 9% per annum pursuant to the DIFC Courts' Practice Direction No. 4 of 2017.

Issued by:

Hayley Norton

SCT Judge

Date of issue: 6 February 2020

At: 12pm