Claim No. SCT 068/2020

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 MAHA AL MEHAIRI

BETWEEN

LUERD COMMERCIAL BANK (PJSC)

Claimant

and

LADERN

Defendant

Hearing

: 29 April 2020

Judgment

: 4 May 2020

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 27 February 2020

AND UPON the Defendant filing an Acknowledgment of Service with an intention to defend all of this claim dated 24 March 2020

AND UPON the parties being called on 15 April 2020 for a Consultation with SCT Judge Ayesha Bin Kalban and the parties not having reached settlement

AND UPON a Hearing having been held before SCT Maha Al Mehairi on 29 April 2020, with the Claimant's representative 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 326,604.28 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 16,330.21.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 4 May 2020

At: 2pm

THE REASONS

Parties

1. The Claimant is Luerd Commercial Bank (), a bank providing financial products and services including personal loans to customers (the "Claimant").

2. The Defendant is Ladern, a customer of the Claimant Bank (the "Defendant").

Background

3. The parties entered into a written agreement on 11 August 2014, entitled `Luerd leun Loan, Credit Card Application Form' (the "Agreement"). Under the terms of the Agreement, the Claimant received a loan of AED 400,000 on 16 August 2014 (the "Loan"), to be repaid in 48 monthly installments of AED 9,828. The Defendant made regular repayments of the Loan until 30 January 2017, after which time he fell into arrears. The outstanding amount allegedly owed by the Defendant in relation to the Loan is AED 326,604.28.

4. Under the terms of the Agreement, the Defendant received a credit card with a credit limit of AED 30,000 (the "Master Card Platinum"). The Claimant also received another credit card (the "Visa Linda Platinum") with a limit of AED 20,000, (the "Credit Cards")

5. The Claimant alleges that the Defendant has failed to repay the amounts due under the Credit Cards and the sum owed by the Defendant to the Claimant in relation to the Credit Cards is in the sum of AED 55,087.75.

6. At the time of filing the Claim, the amount currently outstanding against the Loan and Credit Cards was in the amount of AED 382,092.03.

7. Following the Defendant's failure to keep up with his repayments, the Claimant filed a claim to recover the outstanding sum on 27 February 2020 (the "Claim").

8. No defence nor Acknowledgment of Service was submitted by the Defendant in relation to the claims brought by the Claimant.

9. On 29 April 2020, at a hearing listed before me, I heard submissions from the Claimant's representative and the Defendant.

Discussion

10. In its written submissions and in the Hearing, the Claimant relied on the terms of the Agreement, under which the Claimant approved the sale of a Loan to the Defendant in the sum of AED 400,000, which was to be repaid in 48 equal instalments. The Claimant confirmed that it sought repayment of the outstanding amounts of the Loan and the Credit Cards, which, at the time, amounted to AED 382,092.03, and recovery of costs.

11. In reviewing the documents filed by the Claimant, it appears that the application forms in respect of the Credit Cards do not contain an express clause by virtue of which the DIFC Courts would be able to exercise jurisdiction over the claim for the Credit Cards. Further to 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:

> "As agreed by the defendant the Luerd 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 Luerd's official website - http://www. luerd.com/Images/Luerd_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."

12. 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) 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 vs Licoln.

13. Therefore, I dismiss the Claimant's claim for AED 55,087.75 in relation to the outstanding sum owed pursuant to the Credit Cards.

14. Based on the evidence before me and in the absence of any substantial evidence being put forward by the Defendant in regards to this Claimant's Claim for sums owed pursuant to the Personal Loan, I am satisfied that the Agreement between the parties is valid and binding, and that the Claimant is owed a total of AED 326,604.28, being the sum of the Simply Life Personal Loan availed of by the Defendant.

Finding

15. In light of my finding above, it is hereby ordered that the Defendant shall pay the Claimant the amount of AED 326,604.28. 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 16,330.21.

16. 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:

Maha Al Mehairi

SCT Judge

Date of issue: 4 May 2020

At: 2pm