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 NASSIR AL NASSER

BETWEEN

JAAL BANK (PJSC)

Claimant

and

JASA

Defendant

Hearing:**13 June 2019**

Judgment:**19 June 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant at the Hearing on 13 June 2019;

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 400,494.08 plus interest at the rate of 9% per annum.

2. The Defendant shall pay the Claimant the Court fees in the sum of AED 20,024.70.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 19 June 2019

At: 9am

THE REASONS

Parties

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

2. The Defendant is Jasa, an individual and Canadian National (the "Defendant").

Background

3. The parties entered into a written agreement on 12 August 2017, entitled `Jaal bank Personal Finance Smart Finance' (the "Original Agreement"). Under the terms of the Original Agreement, the Claimant was to receive a loan of AED 470,000 with a repayment schedule of 48 instalments.

4. On 2018, the Claimant applied to restructure the loan, which was approved by the bank and the loan amount was AED 392,137.11 and the monthly instalment was AED 13,383.08 (the "Loan").

5. The Defendant fell into arrears since November 2018. According to the Claimant, the remaining amount currently outstanding on the Loan is AED 400,494.08.

6. Following the Defendant's failure to keep up with his repayments, the Claimant filed a claim with the DIFC Courts' Small Claims Tribunal (the "SCT") to recover the amounts on 3 March 2019 (the "Claim").

7. The Defendant responded to the Claim on 15 April 2019 intending to defend all of the claim. On 22 April 2019, the Defendant attended the Consultation scheduled by the SCT but the parties were unable to reach a settlement at the Consultation.

8. Subsequently, a hearing was listed before me on 13 June 2019, at which the Claimant's representative attended via teleconference and the Defendant's representative in person.

Parties' Submissions and Procedural History

9. The Claimant's Claim Form detailed the provisions of the Original Agreement and alleged that the Defendant owed the Claimant AED 400,494.08 in repayment for the Loan. The Claimant contended that the DIFC Courts and the SCT had jurisdiction over the claim via Clause 22 of the Original Agreement. The Claim Form included attachments in support of the claims and set out details of the Loan.

10. The Claimant also claimed post Judgment interest along with the Court fees.

11. The Defendant submitted an Acknowledgement of Service on 15 April 2019 along with a defence filed on 16 April 2019.

12. The Defendant alleges that the Loan was taken for the company named Jinn Design LLC (the "Company"), for which the Defendant acted as a Manager on behalf of the Company.

13. The Defendant alleges that the claim should be initiated against the company and not the Defendant in his individual capacity. Furthermore, the Defendant is a shareholder in the company, therefore, since the Defendant acted with the consent of the shareholders and for the company's interest, the Defendant shall not be liable but rather the company shall be liable for this claim.

14. The Defendant also alleges that there is a Bankruptcy case registered in Dubai Courts against the Company which is still pending. Therefore, the Defendant requested that the DIFC Courts await the decision of the Dubai Courts before issuing the Judgment.

15. In sum, the Defendant rejects that there is a valid claim against him in his individual capacity but rather it should be against the Company.

Discussion

16. This Claim must be assessed based on the documentary evidence provided to adjudicate whether the Defendant is in arrears and how much remains owing to the Claimant.

17. The Claimant argues that the Original Agreement remains valid between the parties and was signed by the Defendant on 12 August 2017 (a copy of the Agreement was attached to the case file). The amount of the Loan was AED 470,000 at the rate of 16.99% per annum.

18. The Claimant also argues that in 2018 the Defendant applied to restructure the Loan which was approved by the Claimant and the Loan amount was reduced to AED 392,137.11 with the monthly instalments being AED 13,383.08. Following this, from November 2018, the Defendant fell into arrears and the remaining amount currently outstanding on the Loan is AED 400,494.08.

19. The Defendant argues that the Loan was taken for the purpose of the Company and that therefore the Company should be liable for the Loan and not the Defendant in his individual capacity.

20. The Defendant also argues that the Loan was taken with the Consent of the shareholders and for the purpose of the Company. Furthermore, the Defendant requested the Courts to await the decision of the Dubai Courts in relation to the Company's Bankruptcy case which is still pending.

21. Based on the documentary evidence provided by the Claimant, the Original Agreement was applied for by the Defendant in his individual capacity and the signed Loan Form was entitled `Jaal Bank Personal Finance Smart Finance'. Subsequently, the Defendant requested for a restructure of the amount, which the Claimant approved.

22. On the other hand, the Defendant argues that the Loan amount was taken for the purpose of the Company with the consent of the Shareholders and deposited to the Company's Bank account (evidence was provided by the Defendant in the form of a Memorandum of Association). It is therefore asserted by the Defendant that, as such, the Company should be liable to repay the amount to the Claimant.

23. Firstly, in relation to the question of liability, I find that the Defendant is liable in his individual capacity as the Loan or the Application of the Loan was for a `Personal Finance Smart Finance' under the Defendant's personal capacity as an Applicant to the Loan.

24. Secondly, in relation to the Memorandum of Association, under which the Defendant alleges that the Loan was taken out pursuant to the Defendant's consent. The Memorandum of Association appoints the Defendant as a `Managing Director', a position for which he has the authorities and the rights to enter into contracts in the name of the Company, however, the Defendant failed to file documentary evidence demonstrating that the shareholders provided their consent for the Defendant to apply for a Loan in his personal capacity for the Company.

25. Thirdly, in relation to the Loan amount deposited in the Company's account, I find that the Loan was taken out by the Defendant in his personal capacity, and that depositing the Loan amount into the Company's account does not relieve the Defendant from his responsibility towards the Claimant.

26. Finally, in relation to the Bankruptcy case registered in the Dubai Courts against the Company. I find that since the I have determined that the Defendant is liable for this Claim, in his personal capacity, there is no reason as to why the DIFC Courts should await the decision of the Dubai Courts.

Conclusion

27. In light of the aforementioned, I find the Defendant liable to repay the Loan amount to the Claimant in the sum of AED 400,494.08 plus interest at the rate of 9% per annum pursuant to the DIFC Courts Practice Direction No. 4 of 2017.

28. The Defendant shall pay the Claimant the Court fee in the sum of AED 20,024.70.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 19 June 2019

At: 9am