Claim No: SCT 313/2019

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

LUBEN

Claimant

and

LUFINI

Defendant

Hearing	**: 12 September 2019**
Further Submissions	**: 22 April 2020**
Judgment	**: 13 May 2020**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 24 June 2019

AND UPON the Defendant filing an Acknowledgment of Service with an intention to defend all of the claim dated 15 July 2019

AND UPON the parties being called on 30 July 2019 for a Consultation before SCT Judge Nassir Al Nasser

AND UPON the parties failing to reach a settlement

AND UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 12 September 2019, with the Claimant's representative and the Defendant in attendance

AND UPON reading the submissions and evidence filed and recorded on the Court file

AND UPON reviewing the Expert Report filed with the Court on 4 March 2020 and further evidence dated 22 April 2020

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant a total sum of **AED 52,406.63**.

2. The Defendant shall pay the DIFC Courts' filing fee in the amount of **AED 2,620.33**.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 13 May 2020
At: 9am

THE REASONS

Parties

1. The Claimant is Luben, (the "Claimant"), an entity that manages and maintains the residential building `Sky Gardens', located in the DIFC.

2. The Defendant is Lufini (the "Defendant"), an individual renting Unit 123, Luben, DIFC, Dubai.

Background and the Preceding History

3. The underlying dispute arises over a rental dispute between the Claimant and the Defendant pursuant to a tenancy agreement dated 10 April 2018 (the "Tenancy Agreement").

4. On 24 June 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking the sum of AED 104,813.25 allegedly owed to the Claimant due to the Defendant's failure to pay the district cooling bills in relation to residential Unit No. 3804 (the

"Premises"), in addition to the Court fees.

5. On 15 July 2019, the Defendant filed an Acknowledgment of Service intending to defend all of the claim.

6. The parties met for a Consultation with SCT Judge Nassir Al Nasser on 30 July 2019 but were unable to reach a settlement. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 12 September2019.

7. On 19 September 2019, I gave post-hearing directions, requesting that the parties jointly appoint an expert to provide an expert report to address specific issues within the claim, in particular, the analysis and functionality of the Fan Coil Unit (the "FCU") in the rented apartment.

8. The parties filed an Expert Report on 4 March 2020 (the "Expert Report"), and thereafter, requested additional submissions that were filed by the parties on 22 April 2020.

9. Upon reviewing all of the documentation on the Court file to date, I hereby give my judgment.

The Claim

10. On 10 April 2018, the parties signed the Tenancy Agreement for a period of 1 year, in the amount of AED 200,000, which was later renewed for a second year. During the tenancy period, it is claimed that the Defendant faced a number of issues relating to the air conditioning of the "Premises. The Claimant provided maintenance services during the tenancy period to try and fix the issues that the Defendant was facing.

11. The dispute arising between the parties is in regard to the Defendant's alleged failure to pay the district cooling bills for the Premises, for the period of 30 March 2017 to 30 April 2019, (i.e. the period of the Tenancy Agreement). The Claimant asserts that the Defendant failed to pay the district cooling charges as he believed that the bills were very high due to the faults of the FCU installed in the Premises.

12. The Claimant contends that, despite a number of follow-ups and letters to the Defendant, he failed to pay the outstanding district cooling charges and has made no effort to pay any of his bills for the entire tenancy period.

13. An inspection of the Premises was conducted by the Claimant, following which , the inspectors found several small defects, however, it was concluded that none of the defects would lead to high billing. Therefore, the Claimant proceeded to file its Claim with the SCT. I shall elaborate on each of the Claimant's claims in the discussion below.

14. The total sum claimed by the Claimant as set out in the Claim Form is the sum of AED 104,813.25, in addition to legal costs associated with the filing of this Claim.

The Defence

15. The Defendant submits that he is not living in the Premises full time, as he works outside of Dubai for long period of times and therefore the Premises often remains unoccupied. He also adds that he has been facing issues with the FCU from the beginning of his Tenancy Agreement.

16. The Defendant states that the FCU is an ongoing issue that the Claimant failed to take the proper measures to rectify, and the maintenance team that were dealing with the issues were not capable of tracking the main issue behind the faults.

17. The Defendant's defence to each of the Claimant's claims are set out in the Discussion below.

Discussion

18. First and foremost, the relevant Tenancy Agreement is in relation to a premises that is located in the DIFC, therefore, by default, any agreement shall be governed by the prevailing law of the DIFC, United Arab Emirates, and that upon failure to resolve any disputes connected to the Tenancy Agreement, the dispute shall be referred to the DIFC Courts. Therefore, it is clear and undisputed that the DIFC Courts have jurisdiction to decide this matter. As the claim value is less than AED 500,000, this claim is properly before the SCT.

19. The Court will first address the Defendant's submission wherein he states that `Leut Utilities District Cooling Services L.L.C' ("Logic") had entered into an End User Agreement with the Defendant, and that Logic was obliged to bill and collect sums owed from its end users, in this case, the Defendant.

20. The Defendant also submits that there is no privity of contract between the Claimant and the Defendant for the purpose of billing and collection of services as mentioned in the End User Agreement.

21. The Defendant also adds that the service contract dated 1 February 2018 ("Service Contract") is signed between the Claimant and Logic, and the Defendant is not a party to that Service Contract. Hence, the Defendant is not obligated to adhere to the terms and conditions of the Service Contract.

22. Moreover, the End User Agreement and Tenancy Agreement clarify that there is no mention of a Service Contract within the same. Therefore, no obligation arises directly or indirectly against the Defendant under the Service Contract.

23. In reply, the Claimant submits that they are billed by Logic for the full amount of chilled water coming into the Sky Gardens building, including all of the common areas and privately-owned apartments. The Claimant contracts Logic for billing and collection services for the private apartments. Once Logic have collected the sums owed by the residents of the private apartments, they transfer the full amount to the Claimant for reconciliation.

24. In practice, the residents enter into a contract with Logic in the form of an End User Agreement. Logic are contracted by the Claimant to engage each resident in signing the End User Agreements on behalf of the Claimant.

25. Since the Defendant has failed to meet his contractual obligations and pay his outstanding bills, the matter falls to the Claimant to recover the arrears owed to them.

26. The parties both agree that the Defendant has failed to pay his district cooling bills on time and has already vacated the Premises. It should be noted that, Logic had previously made a claim for the unpaid bills, and the Claimant has already settled this amount with Logic. As such, the Claimant is responsible to pay any of the Defendant's pending district cooling bills, after which they can file a claim before this Court for the outstanding amount.

27. The Court dismisses the Defendant's statement wherein it is argued that Logic can only file a Claim against the Defendant in relation to the outstanding district cooling bills, and accepts that the Claimant has a legal right to pursue the district cooling bills against the Defendant.

District Cooling Bills

28. Moving on to the crux of the Claim, I must first consider whether the district cooling bills have been invoiced properly, and determine whether the Premises faced issues relating to the FCU during the tenancy period.

29. The Claimant submits that the Defendant's high billing is due to the Premises being a large 3 bedroom duplex with high cooling consumption. The Claimant accepts that the Defendant is not always occupying the Premises, but submits that the Premises is occupied by a co-habitant even when the Defendant is not in the country.

30. In addition, there are 8 FCUs within the property, which act as a mechanism to transfer chilled water into cool air. A faulty FCU may lead to slightly higher consumption as the remaining FCUs in the property would have to work harder to achieve the desired temperature, however, it is asserted by the Claimant that the difference would be marginal. Following the Claimant's inspection of the Premises, it was concluded that the thermostat was always set to the lowest points.

31. The Claimant submits that it is the landlord's responsibility to repair the FCUs and the Claimant does not fall responsible for repairs that exceed the sum of AED 100, inside the privately-owned apartments, however they will assist landlords and tenants by carrying out inspections and providing quotations for work where required.

32. Typically, the Claimant would contract the FM team to carry out planned preventative maintenance works inside the Premises, plus any reactive works up to the value of AED 100. Anything over the sum of AED 100 would be quoted and sent to the landlord for processing.

33. Below, I shall set out the list of issues that were found within the Premises following the Claimant's examination of the FCUs and the Chilled water meter, and the parties' reply.

FCU

34. There are 8 FCUs in the Apartment, 1 of those 8 was deemed faulty throughout two periods; between 26 September to 18 December 2018, and from 8 April 2019 onwards, however, the tenant was vacating the Premises at this stage.

35. Therefore, there is approximately a 3-month period where there was an issue with the FCU which, as identified above, was the responsibility of the landlord to remedy. Whilst the FCU was faulty, the remaining 7 FCUs may have had to work that bit harder to reach the desired temperature of 15 degrees, this being the temperature that the Defendant had set within the thermostat. The Claimant asserts that the difference in consumption and cost is minor, but the Defendant could escalate this with his landlord should he choose to do so.

36. The Claimant submits that the Defendant's billing decreased at similar rates to other units as the winter months arrived, i.e. from September to December 2018, which indicates that the meters have been working properly.

Defective Meter

37. In his submission, the Defendant made reference to a faulty meter, and that the Claimant and Logic are responsible for the BTU meters, however, after inspection of the meter, it was found to be in working condition. The BTU meter is the only asset associated to the chilled water that the Claimant and Logic are responsible for regardless of cost.

Old style thermostat

38. The Defendant also mentioned that the readings in the old thermostat were not efficient compared to the new style thermostat. The Claimant refutes the Defendant's assertion, stating that both thermostats are equally efficient and thatthe new style and would not lead to high billing merely due to its age. If the user set the temperature to 23 degrees on either of the thermostats, the billing would be the same and the room temperature would be same.

39. However, following the Claimant's inspection during April 2019, they did find that the cooling was set to 9 degrees, however, the room was achieving a temperature of around 20 degrees (grill temperature 15 degrees). Whilst 20 degrees is still significantly below the recommended levels and would be very expensive to run, it shows that the cooling was working as normal. The Claimant argues that any user continually running their cooling at these grill temperatures would inevitably have high billing as a result.

40. The thermostats, as well as the FCUs, are the responsibility of the landlord to remedy, and the recommendation to change them was provided.

41. When switched off, all AC Unit BTU Meters displayed a zero value for chilled water flow rate, which signifies efficient working of HVAC fittings for regulating flow according to requirement.

42. In reply to the Claimant's submissions, the Defendant submits that that the Claimant has released itself from any responsibilities towards faulty meters/BTU meters ,FUCs and thermostat, and has clearly stated that any rectification and maintenance of the faults falls under the responsibility of

the Landlord. This clearly indicates that the Claimant is under no position to determine the issue related to the increase of the billing and that Claimant has no knowledge of the technicalities involved in the billing of the Premises.

43. Thus, the Claimant cannot determine the high billing as "slight" or "marginal", as it is not an industry expert in District Cooling billing, or the Services of Logic. Moreover, the Claimant categorically states any difference in the Billing shall be taken up with the Landlord, this further indicates that any matter arising in connection with district cooling and services either comes under the scope of the Landlord or Logic, respectively.

44. The Defendant submits that, he has complained about the "AC issues" and "increased billing" persistently which is clearly reflected under the complaint timeline itself. In addition to the above, the Defendant submits that no proper or timely action was taken at any time after the complaint was made. For instance, reference is made to the action taken under the submitted timeline, where the complaint is concurrently made under 3 occasions and the only action taken was "cleaning and cleared the filter and checking the power." It is essential to note that the FCUs were not checked. Whereas finally on 26 September 2018, upon another complaint, the quotation was made to the Landlord with respect to faulty FCU which took more than 1 month to approve and was later fixed on 16 December 2018.

45. The Defendant also adds that upon the inspection during April 2019, another 2 FCUs were found to be faulty. It is essential to point out that these faulty FCUs were not discovered and quoted during the maintenance conducted on 26 September 2018. This raises doubt as to how many FCUs were actually not working over the period of 2 years. Thereby, the Defendant avers that the FCUs were faulty from the very beginning.

46. The Defendant denies, where it is alleged that the temperature of the thermostat was set to 9 degrees. One of the Defendant's constant complaints about the air conditioning was that the temperature never set below 24 degrees in the thermostat, hence, the complaint that the air conditioning was unable to cool the Premises. In furtherance to the above, under the inspection report it was recommended that the thermostats be changed. The Defendant argues that if there is no problem with the old thermostat, then why was a rectification proposed within the Inspection Report.

Expert Report

47. The Expert Report was made in consideration of the information provided by the parties and the appropriate research in the matter. From testing the FCUs and the thermostat systems, the Expert concluded that the system was found to be functioning properly, components were maintained, and sensors were providing accurate values between actual and measured readings.

48. Based on the historical data provided by the parties, that maintenance issues were attended to during the period of the dispute, being 2018. The issues highlighted in the maintenance report can cause excessive chilled water consumption leading to higher charges.

49. Based on the Expert's current assessment of the air conditioning and FCUs, and taking into account the previous historical data, it is possible that excess consumption occurred which led to the high charges of the Premises. It should be noted that the issues highlighted do not affect the entire air conditioning system and only apply on selected FCUs within the Premises.

50. The Expert gave a recommendation that a certain percentage of the consumption could be attributed to the historical faults and issues as generated during the period of tenancy. The Expert adds that the faults causing the extra charges are considered common in building operations and the rectification would also be subject to unit access and responsiveness of the maintenance team.

Conclusion

51. The Court has thoroughly reviewed the parties' oral submissions presented at the hearing, read the evidence on the case file, and reviewed the Expert Report, and is satisfied that the air conditioning and FUCs had issues at the time that the Defendant was occupying the Premises. These issues may have been fixed at the time that the Defendant vacated the Premises as confirmed by the Expert report.

52. The facts that are before the Court persuade me to believe that the Defendant started complaining about these issues from the beginning of his tenancy period, and although the Claimant submits that any major faults fall upon the landlord, the maintenance team provided by the Claimant failed to detect the main source of the problem that was reoccurring with the Defendant.

53. The Claimant submits that the Defendant was not the only person occupying the Premises and that the Court cannot rely on the fact that the Defendant was absent from the Premises all the time. The parties failed to prove that the Defendant or the person occupying the Premises with him is not there all the time and we cannot use that as evidence of occupancy of the Premises as an indication of the AC usage.

54. The Court will rely on the fact that there were FCU's that were not working properly, thermostats that were showing inaccurate temperatures and the Expert Report that indicates that the maintenance team did not detected the problem and issues with the Ac system.

55. The Court is satisfied that the Defendant did occupy the Premises and there was a problem with the AC, that the Defendant constantly raised with the Claimant. the Court can't put a percentage on how much consumption was added to the bill due to the matter happening in the past. The Court also cannot state that the Defendant was not occupying the Premises all the time, as such the Court will rule that 50% of the pending district cooling bill be deducted due to these issues.

56. Accordingly, I find that the Defendant shall pay the Claimant a total sum of AED 52,406.63.

57. The Defendant shall pay the DIFC Courts' filing fee in the amount of AED 2,620.33.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 13 May 2020
At: 9am