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

JAASIEL

Claimant

and

JEECIA

Defendant

Hearing:**11 June 2019**

Judgment:**23 June 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON the Claim Form being filed on 13 November 2018;

UPON a defence being filed by the Defendant on 20 November 2018;

AND UPONreviewing 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 60,000.

2. The Claimant's claims as to due diligence costs are dismissed.

3. The Defendant shall pay the Claimant the Court Fees the sum of AED 3,000.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 23 June 2019

At: 12pm

THE REASONS

Parties

1. The Claimant is Mr. Jaasiel (the "Claimant"), an individual who entered into an agreement with the Defendant to purchase a small business.

2. The Defendant is Ms. Jeecia (the "Defendant"), owner of "Jagrati Ladies Saloon" (sic. Salon), located in, Dubai.

Preceding History

3. On 13 November 2018 the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for certain sums allegedly entitled to him; namely a deposit and due diligence costs in relation to the prospective acquisition of the Defendant's business.

4. On 20 March 2019 the matter came before me and subsequently, I issued an Order on 17 April 2019 (the "Order"), which stated that:

(a) unless the Defendant cooperated with an audit report (as previously directed at the hearing of 20 March 2019) and did so by 7

May 2019, that the defence was to be struck out and judgment entered on the Claimant;

(b) the auditors were to submit their report to the Claimant by 21 May 2019;

(c) comments were to be made by the Claimant by 28 May 2019; and

(d) a hearing to be listed on 30 May 2019.

5. The Defendant failed to adhere to the Order and consequently the hearing of 30 May 2019 was adjourned.

6. The matter was instead called before me on 11 June 2019, with both parties acting as litigants in person.

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

The Claim

8. The Claimant's claim pertains to the prospective acquisition of the Defendant's beauty salon, which they assert was only subject to satisfactory due diligence. On the Claimant's account, the picture of the business' financial state for the year 2017 which was provided by the Defendant prior to the signing of the Letter of Intent ("LOI") is very different to the reality of the business as evident from due diligence reports, and that there exist serious issues with regards to the liquidity of the business, due to a large cash withdrawal shortly before the Claimant entered into acquisition agreements. It is the Claimant's case that these constitute a material adverse change in the business.

9. The Claimant signed an LOI on 5 August 2018 and paid a deposit of AED 60,000 and assumed due diligence costs of AED 34,125 which as per the agreement, the Defendant would have to return if they breached any of the LOI terms. On the Claimant's account, the Defendant did in fact violate 4 terms from the LOI, and yet despite a letter dated 19 September 2018 setting out the violations and requesting the requisite monies owed, the Defendant refused to return the deposit or the due diligence fees.

10. Therefore, the Claimant seeks that the Defendant pay a total sum of AED 93,125 comprised of:

(a) AED 60,000 as returned deposit; and

(b) AED 34,125 due diligence costs.

The Defence

11. On the Defendant's version of events, the salon was put up for sale and several buyers approached them, one of whom was the Claimant. On the Defendant's account, the Claimant agreed to sign the LOI and pay the deposit after he had seen the full year Financial Audit of 2017. Thereafter, the Claimant's son visited the salon and was satisfied, hence, as the Defendant contends, the only conditions in the LOI which are relevant to the deposit are those that state that if the buyer changes his mind, he would lose the deposit.

12. The Defendant contends that it was always agreed between the parties that the Claimant, as the potential buyer, was to carry out his own due diligence, hence the third-party audit company was hired. The Defendant states that they shared all documentation requested, as per the Claimant's instructions. On the Defendant's account they were entirely co-operative with the audit and those working for the Claimant confirmed they had all necessary documents.

13. The Defendant rejects the Claimant's claims in their entirety and relies upon the argument that at the previous SCT hearing before Judge Maha Al Mehairi the parties discussed the period from 5 August to 30 November 2018 and that this was agreed upon by the parties.

Discussion

14. The dispute is governed by DIFC Contract law and relevant case law and principles concerning the acquisition of a business. The LOI between the parties has a clear opt-in clause to the jurisdiction of the DIFC Courts (at Clause 14), which is not disputed by the parties.

15. Firstly, I would like to address the Defendant's failure to adhere to the Order, which very clearly stipulated that unless the Defendant co-operated with the audit report, that the defence was to be struck out and judgment entered for the Claimant. This was not the first time the Defendant had been asked by the Court to co-operate with the audit report; indeed I have previously directed such at the hearing of 20 March 2019, and the parties were encouraged to discuss matters between themselves and both make their best efforts to agree upon a scope of work and instruct an auditor to carry out the necessary work, so that the Claimant was equipped with the knowledge he sought about the Defendant's business.

16. The main issue of contention is the aforementioned sum of AED 247,000 which, as per a report supplied by the Defendant to the Claimant from January 2018 to July 2018 after the Claimant signed the LOI, appears to show monies drawn in cash from the business in during the said period, potentially just days before the Claimant signed the LOI on 5 August 2018. Clearly, any report produced by the auditor should have addressed this query. However, the Defendant instructed the auditors on his own accord and they were specifically advised to take a `snapshot' of the business from the dates 5 August 2018 - 30 November 2018. These were the dates discussed and agreed upon in the previous consultations.

17. With regards to this short timeframe, it must be noted that whatever was discussed in previous SCT consultation is without prejudice and is not binding, however it was agreed that the parties would discuss matters amongst themselves in order for unanswered questions about the business to be addressed. The Order clearly stipulates a requirement for Defendant to co-operate with the Claimant. The Order does not specify the timeframe, nor the scope of the work. Evidence submitted to the Court clearly shows that the scope and timeframe were agreed by the Claimant

via email, but this is largely a moot point. Ultimately, the salient facts are that:

(a) questions raised about the sum of AED 247,000 remain unanswered by the most recent report;

(b) the Defendant did not co-operate with the Claimant as directed by myself at the hearing of 20 March 2019;

(c) the Defendant then failed to comply with the Order;

(d) the Defendant failed to update the Court; and

(e) the Defendant then presented the report in hard copy at the SCT hearing on 11 June 2019, but this report was not discussed amongst the parties prior to the firm being instructed, as was originally agreed by the parties.

18. Secondly, I would like to address the LOI. It is not disputed that the Claimant signed the LOI on 5 August 2019. However, on the Claimant's account the Defendant is in breach of various terms within the LOI and therefore breaks the agreement between the parties, hence his claim for his deposit and due diligence fees to be returned and reimbursed to him. By turning to the letter of 19 September 2018, I see the various violations cited by the Claimant, notably Clause 5 concerning material evidence.

19. Having analysed the LOI and having reviewed the various documents on the Court file, and indeed having heard both parties' arguments at the hearing, I make the following findings:

(a) the purchase price of the company was provisional only, and was subject to timely operational, financial and legal due diligence on the business by the Claimant. The payment structure for the purchase price was 15% as deposit (i.e AED 60,000) and was paid in good faith that the material submitted after the signing of the LOI would be similar to, or reflective of, previous financial reports shown to the Claimant during discussion relating to the acquisition prior to the LOI signing on the 5 August 2018; however

(b) once they had conducted further and thorough due diligence on the business, the Claimant found the beauty salon was not in the financial state as promised by the Defendant. Thus, as per the completion conditions as set out in Clause 5 of the LOI, which clearly state that acquisition is only subject to satisfaction of the conditions customary to transactions of this type including absence of a `material adverse change in the condition (financial or otherwise) of the business [.] or prospects of the business', there was an absence of material provided by the Defendant in the first instance, and upon receiving the later audit report, the Claimant only became aware of the adverse financial change of the beauty salon after the signing of the LOI; furthermore

(c) as per Clause 6 of the LOI, the Defendant should have provided the Claimant full access to all files pertaining to the business, all documents, contracts, books, records and operations of the business. This clearly was not the case as evidenced in the documentation before this court. It is notable that the report provided prior to the prospective acquisition of the beauty salon is very different to the report provided after the LOI was signed, clearly showing a large withdrawal of cash from the business. When asked on two occasions in the hearing about this significant sum, the Defendant was unable to provide a credible explanation as to what this withdrawal related to, though seemingly something relating to cash wages. However, the Defendant failed to provide any evidence supporting his justification; and furthermore,

(d) as per Clause 15 of the LOI pertaining to valuable consideration, the Defendant agreed to cooperate fully and in good faith to complete the acquisition of the sale of the beauty salon as expeditiously as possible after the date confirmed by the Claimant, and subject to the due diligence investigation being to the Claimant's satisfaction. As is clearly evidenced in the various audit reports, submissions, and various documents provided to this Court, the Claimant was not provided with a true picture of the business and was subsequently not able to undertake proper consideration.

20. It is therefore my finding that the LOI terms have been breached and valuable consideration has not taken place. Consequently, the Claimant is entitled to the deposit to be returned.

21. Thirdly, and finally, remains the issue of the due diligence fees. Notably, nowhere in the documentation is there a clear nor explicit clause that stipulates that the fees would be returned to the Claimant should the Defendant break the contract. Though on the Claimant's account, this was the agreement between the parties, such goes against usual business conventions of this kind and in any event, is not evidenced by the documentation before this Court.

22. I therefore find that the due diligence costs are not to be paid by the Defendant.

Conclusion

23. The Defendant shall pay the Claimant a total sum of AED 60,000.

24. The Claimant's claims as to due diligence costs are dismissed.

25. The Defendant shall pay the Claimant the Court Fees the sum of AED 3,000.

Issued by:

Nassir Al Nasser

SCT Judge

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