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
BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

MARK L.L.C

Claimant

and

MARTHA CONTRACTING LLC

Defendant

Hearing : **17 December 2020**
Judgment : **7 January 2021**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 15 November 2020

AND UPON the Defendant filing an Acknowledgment of Service intending to defend all of this Claim dated 22 November 2020

AND UPON a Hearing being held before SCT Judge Maha Al Mehairi on 17 December 2020, with the Claimant's and the Defendant's representatives in attendance

AND UPON reviewing the documents and evidence filed on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the amount of AED 759,273.15.

2. The Defendant shall pay interest on the judgment sum to the Claimant from the date of this judgment, until the date of full payment, at the rate of 9% annually.

3. The Defendant shall pay the Claimant the Court fee in the amount of AED 37,989.50.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 7 January 2021
At: 4pm

THE REASONS

Parties

1. The Claimant is Mark (the "Claimant"), a company in the business of producing adhesives and chemical products for the building industry, located in Dubai.

2. The Defendant is Martha, a construction company, located in Dubai.

Background and Hearing

3. The underling dispute arises over the recovery of unpaid debt by the Defendant to the Claimant together with associated penalties, interest and costs.

4. The Claimant started supplying construction materials to the Defendant on 15 May 2018 and continued supplying such materials until May 2019. When providing the Defendant with quotations for the prices, the quotation contained terms and conditions, to which the Defendant agreed.

5. The supplying of materials goes through a process which involves the client putting forward an inquiry about the material. After which, the Claimant supplies the materials to the Defendant, as required, and accordingly issues invoices on an ongoing basis, and such invoices were paid by the Defendant pursuant to the Terms of Business.

6. Unfortunately, a majority of the invoices were left unpaid thereby accumulating the total amount owed to the Claimant in the sum of AED

759,273.15 (the Debt). These outstanding invoices relate to the goods and materials supplied to the Defendant in the years 2018 and 2019.

7. The Defendant has not contested the Debt, however the Debt remains unpaid despite numerous reminders being sent by the Claimant to the Defendant requesting settlement of the Debt.

8. On 25 June 2019, the Claimant received an acknowledgement from the Defendant explaining to them the reasons for delay and requesting for a payment plan for the total Debt owed to the Claimant.

9. The Claimant gave the Defendant several opportunities to settle the Debt but unfortunately the Debt was never settled. Therefore, on 11 March 2020 the Claimant served the Defendant with a notice, wherein it requested for the Debt to be settled without further delay.

10. The Defendant failed to respond to the Letter and failed to settle the Debt, despite repeated follow up and requests for settlement.

11. On 15 November 2020 the Claimant filed a case against the Defendant in the DIFC Courts Small Claims Tribunal ("SCT") requesting that as per the Terms and Conditions, the Defendant be required to pay the following

(a) AED 759,273.15 being pending invoices for 2018 and 2019 in the amount of the amount of the Debt

(b) 9% legal interest on AED 759,273.15 from the date of filing this claim until collection of funds

(c) Court Fees

(d) Any further relief the Court may deem just and proper

12. The parties met for a Consultation before SCT Judge Delvin Sumo on 26 November 2020, however, the parties failed to reach a settlement.

13. Pursuant to the Rules of the DIFC Courts a Hearing was then listed before me on 17 December 2020. Both parties' representatives were in attendance.

14. The Claimant submitted the original invoices and explained the process by which each invoice is generated and how the supplies were delivered to the client - having the client sign on each invoice for confirmation of receipt. The Claimant also added that the invoices in question were generated from 2018 and 2019 and have not been paid to date.

15. The Defendant's representative did not oppose the invoices submitted by the Claimant and confirmed that they are valid and still pending payment, however, it argued that some of the products provided by the Claimant were faulty and effected the overall quality of the work which resulted in the Defendant's client's rejecting the works that have been presented and hiring another contractor. This led to the Defendant's significant loss in money and clients.

Discussion

16. The Terms and Conditions were signed by the Defendant and are not disputed by the parties. The dispute is governed by the DIFC Law of Contract and the relevant case law and principles concerning a breach of contract. Pursuant to Clause 13 of the Terms of Business, the parties have agreed that claims of up to AED 1,000,000 may be heard in the SCT, neither party has disputed the jurisdiction of the DIFC Courts, as stated in the terms and Conditions under Clause 13:

> "13. Jurisdiction and Applicable Law
> The law of the United Arab Emirates shall exclusively govern these Terms. The DIFC Courts shall have exclusive jurisdiction to decide any dispute arising out of or in connection with these Terms and the parties agree that without prejudice to any other rights Mark may have, Mark may bring any and all claims against the Buyer in the DIFC Small Claims Tribunal up the maximum monetary threshold of United Arab Emirates Dirham One Million(AED1,000,000) (and as may be amended by the DIFC Courts from time to time)."

17. This is a very straightforward matter. The Claimant delivered the materials requested by the Defendant to the site and each invoice has been signed by the Defendant's representatives, as such it is owed, and the Defendant did not oppose this.

18. In relation to the Defendant's allegation that faulty products were provided by the Claimant, the Defendant failed to provide any evidence to support this Claim, and as such the Court dismisses the Defendant's arguments.

Conclusion

19. As such, it is hereby ordered that the Defendant shall pay the Claimant the amount of AED 759,273.15 for the pending invoices. The Defendant shall pay the Claimant the DIFC Court filing fee in the amount of AED 37,989.50.

20. In addition, pursuant to DIFC Courts Practice Direction 4 of 2017 the Defendant shall pay interest on the judgment sum to the Claimant from the date of this judgment, until the date of full payment, at the rate of 9% annually.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
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