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

MURAN

Claimant

and

MILIND

Defendant

Hearing : **13 December 2020**
Judgment : **6 January 2021**

JUDGMENT OF SCT JUDGE MAHA AL MHEIRI

UPON this Claim being filed on 10 September 2020

AND UPON the Defendant filing an Acknowledgment of Service intending to defend all of this Claim dated 1 October 2020

AND UPON the Defendant filing Counterclaim on 4 October 2020

AND UPON a Consultation being held before SCT Judge Delvin Sumo on 8 October 2020

AND UPON the parties failing to reach a settlement at the Consultation

AND UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 6 and 13 December 2020, with the Claimant's representative in attendance and the Defendant failing to attend although served notice of the Hearing

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

AND PURSUANT TO Rule 53.61 of the Rules of the DIFC Courts (the "RDC")

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant a total sum of **AED 492,764.09.**

2. The Defendant's Counterclaim is dismissed.

3. The Defendant shall pay the Claimant the DIFC Courts' filing fee in the amount of **AED 24,654.99.**

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 6 January 2021
At: 2pm

THE REASONS

Parties

1. The Claimant is Muran, (the "Claimant"), an entity specialised in engineering, design and the construction of swimming pools and water features facilities located in Dubai.

2. The Defendant is Milind (the "Defendant"), an individual that retained the Defendant to carry out works in regards to her residence located in Dubai, UAE.

Preceding History

3. On 10 September 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking the sum of AED 492,764.09 allegedly owed to the Claimant by the Defendant for unpaid invoices.

4. On 4 October 2020, the Defendant filed a Counterclaim requesting the sum of AED 1,700,202.

5. The parties met for a Consultation before SCT Judge Delvin Sumo on 8 October 2020, however, the parties failed to reach a settlement.

6. On 22 October 2020, the Defendant wrote to the SCT Registry requesting that the Counterclaim be determined by the SCT, the Claimant agreed to the Defendant's proposal.

7. Upon the receipt of the parties' agreement, the SCT Registry proceeded to obtain the approval of the Chief Justice of the DIFC Courts for the parties' claims to be determined by the SCT, despite the Counterclaim's monetary value.

8. The Chief Justice then proceeded to confirm the parties' agreement by way of an Order dated 28 October 2020 whereby it was ordered, by consent, that the parties' claims be determined by the SCT.

9. A Hearing was listed before me on 19 November 2020 to determine the merits of the case and was adjourned to allow the Defendant to seek representation, in accordance with her request to be represented. The Defendant wrote to the SCT Registry on 19 November seeking to revoke her proposal for the parties' claims to be determined by the SCT.

10. On 10 December 2020, I dismissed the Defendant's application and directed that the Counterclaim and Claim shall be heard in the SCT.

11. The SCT Registry proceeded to re-list this Claim for a Second Hearing which was duly held on 13 December 2020 with the Claimant's representative in attendance and the Defendant absent although served with notice.

12. RDC 53.61 of the Rules of the DIFC Courts stipulates that "if a defendant does not attend the hearing and the claimant does attend the hearing, the SCT may decide the claim on basis of the evidence of the Claimant only".

The Claim

13. The Claimant and the Defendant have entered into previous agreements for the execution of `Design and Build Landscape Works' for the Project known as Mansion No. 0 at Mui Residences (the "Residences"). These agreements have become subject to various amendments and clarifications.

14. The parties then further agreed on a final approved design and price for the works in a separate signed agreement for the completion of the works performed in the Residence (the "Completion Agreement"). The Completion Agreement was signed on 5 February 2020 and set out that it shall supersede any and all prior correspondence, communication or agreement provided by either party, and further determined that the Claimant shall provide all necessary facilities, services, supervision, manpower, material, plant and equipment to carry out the completion of the works at the Residences.

15. The Completion Agreement was signed for the purpose of completion of landscaping works at the Residences for the value of AED 2,331,023.62. The Defendant provided a payment in advance, and the outstanding amount owed to the Claimant was to be AED 1,470,403.88.

16. The scope of work agreed between the parties in the Completion Agreement was defined in the Bill of Quantity (the "BOQ"), and set out the agreed finishes and the design of the works, and was approved by the Defendant.

17. The Defendant hired another consultant to produce a report detailing the work carried out by the Claimant in the Defendant's residence. On 29 May 2020, the Defendant submits that this report provided by the consultants she had hired identified the poor quality of works executed by the Claimant on site. The Claimant was provided with a copy of the report and, in the Defendant's submission, failed to act and rectify the deficiencies. This allegedly led to the Defendant losing faith in the Claimant and its ability to complete the works to a standard acceptable to the Defendant.

18. On 7 June 2020, the Defendant terminated the Completion Agreement by letter and the Defendant employed another consultant to undertake a full inspection of the landscaping works completed by the Claimant at the Residences.

19. As a result of the Defendant's alleged unlawful termination, the Claimant sent notices to the Defendant on 17 June 2020, 6 and 19 July 2020 requesting the payment of the pending sum of AED 730,649.30 plus VAT owed under the Completion Agreement. The Claimant submits that the Defendant failed to respond to these notices and there has been no effort to achieve an amicable settlement.

20. In responding to the Claimant's claim, the Defendant argues that the basis of the Claimant's calculations is based on work completed at the date of termination in accordance with the BOQ, but includes preliminaries claimed at 100% when the works are less than complete.

21. Therefore, on 10 September 2020, the Claimant filed a claim in the SCT claiming amounts owed for the completed works that were executed until the termination date according to the agreed amount set out within the Completion Agreement in the value of AED 492,764.09. The Court will only deal with the amount set out by the Claimant on the Claim Form and not the amount of AED 730,649.30 plus VAT, being the amount set out in the Completion Agreement.

22. The Defendant rejected the claims which were made by the Claimant for the value of the balance work. The Defendant filed a Counterclaim seeking the following:

(a) AED 860,000 towards the amount that has been paid to the Claimant for remedial works to the Residences

(b) AED 691,702 towards costs for rental accommodation for the Defendant and her family throughout the period the Residence was under construction

(c) AED 148,500 for legal fees incurred

(d) Damages for breach of contract to be assessed

(e) Courts fees

(f) Interest pursuant to the DIFC Contract Law

(g) Any other relief the Court sees fit

23. The Defendant claimed that the Claimant's scope of work was not completed, also, it was stated by the Defendant that she incurred further losses in deploying a third party to assess the Claimant's work which, the Defendant submits, was not up to standard.

24. The Defendant argues that the list of items in the BOQ were performed to an unsatisfactory standard and were rejected by the Defendant, and the work was defective and required a third party to complete.

25. On the Claimant's account, it submits that it fulfilled its part of the Completion Agreement and certainly, enough to warrant payment for its services that were done to the project. Such is evidenced by the work presented on file and to the Defendant.

26. The Claimant's argument is simply that it has fulfilled its part of the Completion Agreement and therefore requires payment for pre-agreed services. Upon reviewing all of the documentation on the Court file to date, I hereby give my judgment.

Discussion

27. The Completion Agreement in question is signed by both parties on 5 February 2020. Its terms 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. Neither party has disputed the jurisdiction of the DIFC Courts, as stated in the Completion Agreement under Clause 16:

> "in the event any dispute is not resolved within the stipulated period, such dispute shall be resolved through the DIFC Courts and, as may be determined by the Claimant, the Small Claims Tribunal. The resolution of the DIFC Courts shall be binding on all parties and not subject to any appeal under any jurisdiction under any circumstance"

28. In the absence of the Defendant, the Court was deprived from having an expert assess and evaluate the Claimant's work as the Defendant stated in her submissions that the Claimant's work is not up to the standard that was agreed in the BOQ. The Court cannot depend on the report provided by the Defendant to evaluate the work as the Court requires an independent third-party assessment to be carried out by an assessor that is nominated by the parties and approved by the Court. The expert would have considered the Completion Agreement, the documents provided by the parties and would have conducted an independent site visit to evaluate the work performed by the Claimant, under the Court's supervision and direction. This mechanism would have assisted the Court in evaluating the Claimant's performance against the invoices that were issued by the Claimant and may have brought the Claim value to a lower amount.

29. The Court is left with the Claimant's submissions to assess the level of work that was conducted in connection to the Completion Agreement, BOQ and invoices. Having reviewed these documents, the Court is satisfied that the Claimant provided enough evidence to reflect the work done.

30. In Clause 16 of the Completion Agreement, the parties agreed that:

> "Any dispute arising out of the Minor Works Agreement shall be settled amicably through negotiation between the Parties within Fixty-six (sic) days of any notice being served by either party to the other"

31. The Defendant terminated the Completion Agreement without providing prior notice and without trying to reach to an amicable solution with the Claimant to rectify the snags that the Defendant sees unfit in the Residences. Although the Defendant did state in her submissions that she tried various times to reach an amicable solution, this was not put in a written form for the Court to assess and evaluate the issues.

32. The Court shall dismiss the Defendant's counterclaim as the Defendant failed to attend the hearing and failed to provide enough evidence to support her claim.

Conclusion

33. Accordingly, I find that the Defendant shall pay the Claimant a total sum of **AED 492,764.09.**

34. The Defendant's Counterclaim is dismissed.

35. The Defendant shall pay the Claimant the DIFC Courts' filing fee in the amount of **AED 24,654.99.**

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