Claim No: SCT 279/2019

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

JUGNU CONSULTANCY (JIMNA)

Claimant

and

JUNUS INDUSTRIES (JUINE)

Defendant

Hearing: **15 July 2019**

Judgment: **17 July 2019**

JUDGMENT OF SCT JUDGE MAHA AL MUHAIRI

UPON the Claim Form being filed on 30 May 2019;

UPON a defence being lodged by the Respondent on 9 June 2019;

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 75,800.**
2. The Defendant is required to pay the Claimant's Court fees in the amount of **AED 3,789.99**.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 17 July 2019

At: 4pm

THE REASONS

Parties

1. The Claimant is `Jugnu HR Consultancy (Jimna)', (the "Claimant"), a recruitment services company located in, Dubai.
2. The Defendant is a `Junus Industries (Juine)' (the "Defendant"), a marketing company located in, Kuwait.

Preceding History

3. On 17 June 2019 the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for the sum of AED 75,800.
4. The matter was listed for a Consultation before SCT Judge Hayley Norton on 13 and 23 June 2019, however, the parties failed to reach a settlement.
5. The matter was called before me on 15 July 2019, with both parties acting as litigants in person; Jimna acting for the Claimant, Jugnu HR Consultancy, and Juine for the Defendant Junus Industries.
6. Upon reviewing all documentation on the Court file to date, I hereby give my judgment.

The Claim

7. The Claimant was instructed by the Defendant to conduct a search for the position of `General Manager' in Kuwait. The parties signed an `Assignment Proposal' (the "Contract"), on 13 June 2018 which details the scope of the services which were to be carried out.

8. The Claimant's claim pertains to an unpaid invoice for part of that recruitment drive. Previous invoices between the parties had been settled; this claim pertains specifically to the sum for the `vetting' part of the recruitment process, a sum of AED 75,800, which was agreed by the parties in advance as per the Contract and invoiced as such.

9. On the Claimant's account, they fulfilled their part of the contract; and certainly, enough to warrant payment for their services. Such is evidenced by the `CV/Interview Checklist' which details the volume and names of considered candidates. They also made a shortlist of candidates; Jine, Juing and Jande, all of whom were provided with travel documents, evidencing the interviews which were arranged.

10. The Claimant provides evidence for the Court file, including the invoice for AED 75,800, the Assignment Proposal (the "Contract") which details the requisite payment, the `CV list' and shortlist, and various travel documents for the considered candidates.

11. The Claimant's argument is simply that they have fulfilled their part of the contract and therefore require payment for pre-agreed services.

The Defence

12. The Defendant contends it should not be required to pay the invoice as the Claimant has not fulfilled their obligations under the Contract and only provided 2 shortlisted candidates, not 3 as promised.

13. The Defendant provides evidence of email correspondence for the Court file which shows that on 25 November 2018 they expressed their displeasure that "candidates who were not even interested to join us despite our willingness to offer them the position like juing [.] should not be counted as a shortlisted candidate". They were unhappy that it was taking so much time to fill the position and did not feel they had a `solid batch of candidates' and felt that many of them were too junior.

14. As evidenced by email correspondence on 25 November 2018, the Defendant asked that the Claimant push the recruitment services team to present a better list of candidates. In the same email they also asked the opinion of the Claimant as to whether they felt it was a particularly difficult position to fill. The Claimant responded the same day and said it was not an easy role to fill in Kuwait, but stating that " [a] truly global search has been conducted on the role already" and that the team had "put a lot of effort into securing the best possible candidates".

15. The Defendant's correspondence dated 5 December 2018 states that the candidates are not acceptable enough to proceed with the 2nd payment (i.e. AED 75,800).

16. The Defendant thus dismisses the Claimant's claims in their entirety and relies on the argument that the services have not been carried out in full as per the Contract, which stipulates 3-4 shortlisted candidates would be provided.

Discussion

17. The dispute is governed by DIFC contract law and the relevant case law and principles concerning a breach of contract. Neither party has disputed the jurisdiction of the DIFC and thus the Court assumes jurisdiction of this dispute.

18. The Contract in question (that is the `Assignment Proposal') is signed and initialed by both parties on 13 June 2018. Its terms are not disputed.

19. This is therefore a relatively straightforward matter; the only issue of contention is the aforementioned sum of AED 75,800 for the `vetting' stage of a recruitment drive and whether or not the Claimant fulfilled their contractual duties.

20. The `Appendix 1: Service Level Agreement' attached to the Contract in question clearly stipulates under a subheading entitled `Stage 5: Vetting', that after an initial telephone screening process, Jeng HR Consultancy would invite the best candidates for a face-to-face interviews or Skype interviews and then from this round, they would produce a `manageable shortlist for you [i.e. the Defendant] to meet' which would `probably' be 3-4 candidates (page 7 of the Contract).

21. As the documentation on the Court file clearly shows, the 3 shortlisted candidates were Jine, Juingand Jande, all of whom travelled to Kuwait to meet with the Defendant.

22. As correspondence shows, the circumstances of one candidate changed. The Claimant states:

> "All three [candidates] were willing and happy to take on the role when we forwarded them for the face to face interviews, unfortunately in Juing's case his wife decided to have a change of heart regarding the opportunity since she felt Kuwait was not a place she would move to. This was obviously to all of our detriment but it was not the wrong decision for us to take him forward I believe. I so hope you agree that Jeng have been extremely flexible in the chasing of this debt since the definition that we have of an accepted shortlist is based on any type of interview (including remote interviews) requested not final interviews as you suggest. We have had 9 different candidates have phone / skype calls so far, three times the amount that was defined in our original contract. Were more than happy to put in more time to conduct a further search on the role, however I do need to see the terms of our contract adhered to, and thus must request that this interim payment is made at this time."

23. Ultimately, the shortlist of candidates was accepted by the Defendant in the first instance, and the vetting process as stipulated in the Contract and the appendix (i.e. the detailed terms) was fulfilled by the Claimant. It was only afterwards that the Defendants expressed displeasure that candidates were too junior, and then with loss of one candidate (due to the `change of heart' of a spouse) the Defendant decided not to make payment on the inferred ground of the services not being of the standard expected or agreed.

24. Firstly, it must be stressed that the Claimant cannot be expected to be held accountable for the `change of heart' of one candidate's wife. Neither can the Claimant be expected to ensure that all - or indeed any - of the 3 candidates will still wish to take the position after the interview, such assurances are not in the Contract, and for good reason.

25. A company carrying out a service for another cannot be expected to be responsible for all eventualities of human emotion, particularly the unpredictability that comes with the potential migration of a family.

26. Secondly, the Defendant did not express any displeasure with the shortlist until afterwards and had in fact accepted the candidates put forth by the Claimant.

27. As the evidence before this Court clearly shows, the invoice in question is generated upon acceptance of the shortlisted candidates. As is clear from the drafting on the fee schedule, an `invitation to interview three or more prescreened candidates is considered acceptance'.

28. As per clause 4 of the Contract terms and conditions clearly stipulates, it is the client's (i.e. Defendant's) responsibility to satisfy themselves of the suitability of the candidates (4.1), and therefore if they were unhappy with the calibre of the shortlist, they should not have accepted the list in the first instance.

29. Indeed, page 8 of the Contract clearly outlines the commination requirements of both parties, and that it was crucial for the client (i.e. Defendant) to keep channels open and inform the Claimant if they have concerns. The Defendant did not do so and cannot afterwards rely on this alleged displeasure as an explanation not to make payment of the invoice.

30. As per Appendix 2 Terms & Conditions of the Contract, the Defendant has a contractual obligation to pay monies owed.

31. In accordance with 5.1 of Appendix 2, the fee payable is outlined in the contract, and as per 5.3, the client (i.e. the Defendant) `shall make all payments due under the Agreement without any dedications by way of set-off, counterclaim, discount, abatement or otherwise'.

32. I find the Claimant has fulfilled its contractual duties by supplying the candidates in accordance with the terms of the contract, and that now the Defendant must fulfill their contractual obligations by making the payment in accordance with the fee schedule on page 5 of the Contract; that is, the shortlist invoice which is 1.25 times the candidate's prospective monthly salary (KWD 6,250), surmounting to the sum of AED 75,800, as sought by the Claimant.

Conclusion

33. The Defendant shall pay the Claimant a total sum of **AED 75,800**.

34. The Defendant is required to pay the Claimant's Court fees in the amount of **AED 3,789.99.**

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 17 July 2019

At: 4pm