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 OF DIFC COURTS

BEFORE SCT JUDGE NASSIR AL NASSER

BETWEEN

JIMENA DC DMCC

Claimant

and

THE ZAHIR RESTAURANT DIFC

Defendant

Hearing:**20 February 2019**

Further Submission:**26 February 2019**

Judgment:**3 March 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON a hearing having been listed for me on 20 February 2019, with the Claimant in attendance, and the Defendant absent, although served notice of the hearing date,

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

IT IS HEREBY ORDERED THAT the Defendant shall pay the Claimant the sum of AED 81,184.93.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 3 March 2019

At: 9am

THE REASONS

The Parties

1. The Claimant is Jimena DC DMCC (herein "the Claimant"), a company registered in DMCC located at, Dubai, UAE.
2. The Defendant is The Jahir Restaurant (herein "the Defendant"), a company registered in DIFC located at, DIFC, Dubai.

Background and Procedural History

1. The underlying dispute arises over the payment of outstanding invoices in the sum of AED 129,205.48. However, at the hearing the Claimant lowered the claim amount to the sum of AED 81,184.93.
2. On 17 January 2019, the Defendant filed his defence in reply to this Claim via email.
3. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 21 January 2019 but were unable to reach a settlement.
4. On 20 February 2019, a hearing was listed before me, at which the Claimant attended the hearing and the Defendant was absent although

he was served notice of the hearing date.

5. Following the hearing, on 24 February 2019, the Defendant sent an email to the SCT Registry, explaining that he was unable to attend the hearing on 20 February 2019 as he was ﷺ at the hospital during that time. The Defendant also provided proof that he had an appointment at the hospital.

6. ﷺ Upon reviewing the evidence submitted from the hospital, I am not satisfied that the Defendant's condition was severe to prevent him from ﷺ informing the Courts that he would be unable to attend the Hearing or to have scheduled a hospital appointment prior or post the hearing date. In spite of this, I afforded ﷺ the Defendant ﷺ until 4pm on Tuesday, 26 February 2019 to file his written submissions.

The Claim

7. The Claimant alleges that they engaged with the Defendant with regard to the provision of r social media and online services during August 2016.. The Claimant sent to the Defendant invoices for the services provided on a monthly basis, which the Defendant failed to pay, and the Claimant sought to follow up with the Claimant by sending numerous emails.

8. The Claimant alleges that the balance of the invoices amounts to AED 129,205.48 which remains unpaid.

9. The Claimant also alleges that, on 8 October 2018, an email was sent to the owner of the Defendant, Mr. Zev, who replied as follows: "I am working on a payment plan and will get back to you at the earliest". Thus, the Claimant alleges that the Defendant acknowledged the Claimant's email.

The Defence

10. The Defendant alleges that all of the Claimant's allegations are false and should be rejected.

11. The Defendant alleges that his relationship with the Claimant was always based on good faith. It is alleged that the Defendant requested a signed contract between the parties, to formalise the relationship and have a better understanding on the deliverables and fees set towards the scope of work, but, unfortunately, nothing was ever signed.

12. The Defendant also alleges that in May 2017, the Defendant stopped the restaurant's operations for more than 6 months for renovation purposes and, therefore, at that point in time, did not require any services from the Claimant. Nevertheless, the Claimant kept asking for monthly charges for services that were not required.

13. The Defendant alleges that the outstanding balance until 30 May 2017 is AED 60,384.65 of which he alleges that he paid the total balance of AED 30,000 and the remaining sum stands in the amount of AED 30,384.65.

14. The Defendant also alleges that post opening they had no agreement with the Claimant and that the retainer should not be applicable given that the amount charged was not justified. Therefore, the outstanding sums owed to the Claimant post opening and excluding the retainer fees is in the sum of AED 27,295.13. The Defendant added that the sum of AED 17,947 was subsequently paid out of the outstanding balance post opening, therefore, the remaining balance is the sum of AED 9,348.

15. In sum,, the Defendant alleges that the total remaining balance owed to the Claimant pre and post opening is AED 30,384.65 + AED 9,348= AED 39,732.78.

Discussion

16. The Parties did not sign a written agreement during their relation, however, on 28 July 2016, an email was sent by the Claimant to the Defendant attaching a quotation related to Social Media Services. The email stated that the Claimant will be sending the Defendant monthly invoices as per the monthly cost stated in the quotation which was in the sum of AED 6,500 per month.

17. I find that the parties entered into an agreement by way of an offer made by the Claimant and an acceptance made by the Defendant by way of this email (the "Agreement"). It is also noticeable from the Statement of Accounts submitted by both parties, that the Defendant had made several payments towards the monthly amount as per the Agreement.

18. In relation to the outstanding payments, the Claimant argues that the Defendant failed to complete full payment as per the Agreement. On the contrary, the Defendant argues that the Claimant is charging for a period that the restaurant was closed, being June 2017 to December 2017. The Defendant also argues that the parties did not renew the Agreement after the re-opening of the restaurant in January 2018, but that the Claimant continued charging the monthly fee of AED 6,500.

19. At the hearing, the Claimant, deducted the period from June 2017 to October 2017 from the Statement of Account and applied a 10% discount, following which the total revised amount being sought by the Claimant s is AED 81,184.93.

20. It is argued by the Defendant that the restaurant stopped operation up until the end of December 2017, at which point the DIFC Authority were also notified. The Defendant also presented proof of communication with the Claimant informing them of the closure of the restaurant by way of an email dated 17 May 2017, which states that the restaurant will be closed from 27 May 2017 with a re-opening planned on August or September 2017. Thereafter, the Claimant's representative responded, stating "the below is well received, we will work on the design and share it with you accordingly". However, the Defendant failed to provide any comment on the Claimant's response.

21. The Defendant also failed to inform the Claimant of the updated re-opening date and also failed to provide evidence of the re-opening date. Furthermore, the Defendant failed to provide any evidence of the termination of the Agreement with the Claimant at any period of the relationship.

22. Therefore, I find that the Defendant's allegations are not supported by sufficient evidence. I am also satisfied with the Claimant's calculation that they are entitled to the sum of AED 81,184.93.

Conclusion

23. In light of the aforementioned, I find the Defendant is liable to pay the Claimant in respect of the outstanding invoices in the sum of AED 81,184.93.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 3 March 2019

At: 9am