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

ISHTAR ADVOCATES & LEGAL CONSULTANTS

Claimant/Respondent

and

INIKO

Defendant/Applicant

Hearing: **7 June 2018**

Further submissions: **22 June 2018**

Judgment: **8 July 2018**

ORDER OF SCT JUDGE MAHA AL MEHAIRI

UPON hearing the Claimant/Respondent and the Applicant/Defendant at the Jurisdiction Hearing on 7 June 2018;

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

IT IS HEREBY ORDERED THAT:

1. The Defendant's Application to contest jurisdiction is granted.

2. The DIFC Courts do not have jurisdiction to hear this dispute. The case is therefore dismissed.

3. Each party shall bear their own costs as to the Application.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 8 July 2018

At: 10am

THE REASONS

Parties

1. The Claimant/Respondent is Ishtar (formerly Ishtar Advocates & Legal Consultants) (hereafter the "Claimant"), a law firm operating and registered in on-shore Dubai. The Claimant has filed a claim against the Defendant for the recovery of legal fees allegedly owed by the Defendant.

2. The Applicant/Defendant is Iniko (hereafter the "Defendant"), an individual who engaged the services of the Claimant law firm regarding her divorce in on-shore Dubai.

Background and the Preceding History

3. The underlying dispute arises over alleged engagement of the Claimant law firm by the Defendant for assistance in her divorce proceedings and her eventual failure to pay legal fees related to those proceedings. The relationship between the parties began in September 2016 and work on the matter proceeded from 6 December 2016 through 11 January 2017.

4. On 8 May 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of certain legal fees against the Defendant, claiming a total of USD 51,685.00.

5. The Defendant responded to the claim on 15 May 2018 by contesting the jurisdiction of the DIFC Courts and the SCT over the dispute.

6. Seeing as the Claimant is a law firm and was therefore able to have a qualified lawyer make submissions on its behalf, the Defendant was also allowed to have a legal representative in the SCT proceedings, pursuant to Rule 53.52 and Rule 53.53 of the Rules of the DIFC Courts (hereafter the "RDC").

7. On 6 June 2018, I heard submissions of the Claimant and the Defendant. I allowed the parties to provide further submissions as to the issue of jurisdiction after the Hearing, and upon receipt of those submissions from both parties, the case was reserved for determination as to jurisdiction.

Particulars and Defence

8. The Claimant's initial Claim Form and Particulars of Claims stated that "At all material times the Defendant lived and worked in the DIFC," presumably relying on this allegation to establish jurisdiction of the DIFC Courts over the Claim. The Claimant also highlighted a meeting that occurred on 6 December 2016 in the Defendant's office located in the DIFC. The Claimant's initial submissions also included copy of an email sent by Ishtar purporting to attach the Claimant's "standard terms of business for our formal engagement," however the actual Terms of Business were not included amongst the other documents submitted in support of the Claim.

9. The Defendant's Application to Contest Jurisdiction was supported by the First Witness Statement of the Defendant, Iniko. In that witness statement, the Defendant argued that the DIFC Courts and therefore the SCT do not have jurisdiction over the Claim. Furthermore, the Defendant requested that should there be jurisdiction, it should not be exercised in this particular case.

10. The Defendant argued that she is not a resident in the DIFC nor does she work any longer within the DIFC. She contends that she did work in the DIFC until May 2017 and therefore worked there during times relevant to this claim. Furthermore, she admits to having held an "introductory meeting" at her office in the DIFC between herself and Mr Ishtar of the Claimant law firm. She argues that she did not at this time agree to engage the Claimant's services but instead made it clear that she would need to discuss the services with her then-husband, Izusa, before continuing with the Claimant. The Defendant argues that she never signed the Claimant's Terms of Business or otherwise signed a contract with the Claimant. Instead, the agreement between the parties was concluded orally.

11. At the Hearing, the Defendant reiterated these arguments, highlighting that the 6 December 2016 meeting was a general introduction and not a meeting to conclude any business. The Defendant highlighted that she has never lived in the DIFC and no longer works there. She contended that all follow-up with the Claimant and all actual business services were conducted in Business Bay or over the phone/e-mail and other than this introductory meeting, nothing was done in the DIFC. Thus, the Defendant argues there is no nexus to the DIFC in this case. While the Defendant acknowledged that she must have received the Terms of Business via email from the Claimant, she did not recall reading those terms and reiterated that she did not sign them. She argued that continuing correspondence with the Claimant was not equivalent to agreeing to the Terms of Business. Finally, the Defendant pointed out that the Claimant has not used these Terms of Business as the basis for jurisdiction in the Claim Form or in the Particulars of Claim and cannot now use this document as a basis for jurisdiction.

12. The Claimant responded that the initial meeting to begin the business relationship occurred in the DIFC, followed by an email containing the Claimant's Terms of Business which allegedly includes the DIFC Courts as the applicable court of jurisdiction. Even if these Terms of Business were not signed by the Defendant, she continued to do business with the Claimant and therefore accepted those terms.

13. Furthermore, the Claimant argued that without the Terms of Business, the Claim still falls within the jurisdiction of the DIFC Courts due to the initial meeting having occurred in the DIFC, the Defendant's residence in the DIFC and the Defendant's continued work in the DIFC. The Defendant continued to correspond with the Claimant from her work email, her work being located in the DIFC.

14. It was noted at the Hearing that neither party had submitted the Terms of Business for review of the SCT Judge. The parties were given the opportunity to submit a timeline and the Terms of Business after the Hearing.

15. The Claimant submitted a timeline of events and additional legal submissions after the Hearing, now seeking in the alternative to rely on the Terms of Business as another avenue to DIFC Courts' jurisdiction. In this submission, the Claimant contended that the DIFC Courts retain jurisdiction over the dispute because the dispute has arisen from "a contract partially performed in the DIFC" and "the parties have consented to the DIFC courts's [sic] jurisdiction through the Claimant's Terms of Business." However, the Claimant submitted a version of the Terms of Business that it acknowledged may not be the same version sent to the Defendant, citing issues with email archiving for its inability to ensure that the version submitted matched the version sent on 6 December 2016. The Claimant stated that it believed the version sent should match the version submitted to the SCT. This version of the Terms of Business states "The courts of Dubai (including the DIFC Courts) and Abu Dhabi, as applicable, shall have exclusive jurisdiction over any dispute arising out of or in connection with our services or these terms."

16. The Defendant responded with her own timeline of events and also submitted a different version of the Terms of Business, which she claims is the version that was sent to her. In this version, the same paragraph states "The courts of Dubai and Abu Dhabi, as applicable, shall have exclusive jurisdiction over any dispute arising out of or in connection with our services or these terms." There is no mention of the DIFC Courts.

17. The Claimant responded stating that the omission of reference to the DIFC Courts in the version of the Terms of Business submitted by the Defendant makes no difference as the DIFC Courts are a court of Dubai and are therefore still included in that clause.

Findings

18. The jurisdiction of the DIFC Courts is determined by Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended, (the "JAL") which provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, namely:

"(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;

(b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract;

(c) Civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within DIFC and is related to DIFC activities; . . .

(e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations. . . .

(2) civil or commercial claims or actions where the parties agree in writing to file such claim or action with [the DIFC Courts] whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

19. Based on the submissions and the arguments at the Jurisdiction Hearing, I find that this dispute does not fall within the jurisdiction of the DIFC Courts. The Claimant holds the burden of proof to show that the DIFC Courts and the SCT have jurisdiction over the Claim. The Claimant has made several arguments regarding which gateway this case falls within, and I will address each of those arguments in turn.

20. First, the Claimant has argued that the Defendant was a resident of the DIFC. The Claimant seems to be mistaken that the Innca building is located within the DIFC, however it is not. The Defendant contends that she has never lived within the DIFC and the Claimant has provided no alternative evidence that she has lived in the DIFC. Therefore, I find that this argument fails.

21. Second, the Claimant argued that the Defendant worked in the DIFC at all times material to the case. While this seems to be true, of the Defendant's own admission, the mere fact that the Defendant worked in the DIFC is not sufficient to place the Claim within the jurisdiction of the DIFC Courts, especially as the Claim relates to personal matters of the Defendant, not matters related to her work in the DIFC.

22. Thirdly, the Claimant argues that the "dispute arose from a contract partially performed in the DIFC." This is based on the 6 December 2016 meeting that occurred at the Defendant's office in the DIFC and the continuing communication from the Defendant via her work email as well as her reliance upon the Claimant's advice while she was in the DIFC. The Claimant is relying upon Article 5(A)(1)(b) of the JAL.

23. However, I find that the circumstances of this case, as they have been presented in evidence, do not place this case under Article 5(A)(1)(b) of the JAL. While this is a civil/commercial claim, it does not relate to a "contract or promised contract, whether partly or wholly concluded, that was finalized or performed within the DIFC or will be performed or is supposed to be performed within the DIFC pursuant to express or implied terms stipulated in the contract."

24. The parties are in agreement that no written contract was entered into between the parties. Thus, they are relying on some type of oral contract created between the parties, of which there is little evidence of the precise terms and conditions either expressed or implied therein. While oral contracts are valid in the DIFC, they are certainly frowned upon considering just this problem, it is highly difficult for a Judge to determine the content or timing of any such oral agreement without extensive witness testimony.

25. The Claimant has not submitted any sworn testimony as to the content or timing of any such oral contract, instead just claiming that the terms of the service were agreed at the 6 December 2016 meeting in the DIFC. The Defendant adamantly disagrees, stating that no terms were finalised or agreed during that meeting as she expressed her need to discuss everything with her then-husband before proceeding. While the Defendant has at least alleged this in a sworn statement, I am left with conflicting versions of events and am forced to rely on only that evidence which can be confirmed.

26. The email from Ishtar to the Defendant on 6 December 2016, sent after the initial meeting and purporting to attach the Terms of Business, states "Now we shall wait for you to discuss this with your husband prior to proceeding with the next steps of preparing the divorce settlement agreement and filing it at court." The next email in the chain comes from the Defendant on 25 December 2016 asking "Are you free to meet tomorrow with Izusa?" The Defendant was then seeking a meeting with the Claimant and her then-husband, presumably to either continue with the services already agreed orally between the parties or else to negotiate final terms of service.

27. The 25 December 2016 email exchange includes exchange of information implying that the next step was to complete the settlement agreement, rather than agree to terms of service, however there are references in the email chain to further telephone calls between the parties, the content of which has not been detailed and could have included discussion of the terms of service. The billing description of the Claimant for the 6 December 2016 meeting states "initial advisory meeting with Iniko to discuss divorce and proceedings." It is not clear from this description that any terms of service or oral contract was concluded. Thus, it is possible that the terms of an oral contract were partly or wholly concluded at the 6 December 2016 meeting, however it is also possible that they were not.

28. Given the unclear nature of the evidence submitted regarding the 6 December 2016 meeting, I cannot find that this meeting alone shall place this case within the ambit of Article 5(A)(1)(b) of the Judicial Authority Law. Furthermore, the Defendant's use of her work email in a personal matter, even if that work is located in the DIFC, cannot serve to place this claim within Article 5(A)(1)(b). The Claimant has not submitted evidence to show that any contract or promised contract was partly or wholly concluded within the DIFC. It is clear from the circumstances that any such oral contract was not supposed to be performed within the DIFC, considering the matter was regarding an on-shore divorce case. The Claimant has not submitted anything to show that any part of an alleged oral contract was performed in the DIFC. Thus, I find that this case does not fall under Article 5(A)(1)(b) of the JAL.

29. The Claimant's fourth argument is that the parties agreed in writing to the jurisdiction of the DIFC Courts via the Terms of Business sent to the Defendant on 6 December 2016. It is agreed between the parties that these terms were not signed; however, the Claimant argues that the Defendant agreed to the terms having received them and then having continued to do business with the Claimant. The Defendant disagrees, stating that continued correspondence cannot amount to the signing of the Terms of Business.

30. It is important to note the wording of Article 5(A)(2) of the JAL, under which this argument would fall. It states that the DIFC Courts have jurisdiction over "civil or commercial claims or actions where the parties agree in writing to file such claim or action with [the DIFC Courts] whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions." This clause is specifically written to ensure that parties are made aware that they are opting-in to the jurisdiction of the DIFC Courts, especially in circumstances where they would not otherwise have reason to know that they were doing so.

31. In this case, there is the issue that the Terms of Business were not signed by the Defendant and the Defendant does not recall reading them. There is the further issue that there are two different versions of the Terms of Business submitted for review by the SCT. I will tackle this second issue first.

32. I find it more likely than not that the version of the Terms of Business submitted by the Defendant is the same as the one sent to her via email on 6 December 2016. It seems unlikely that she would have access to any other version and furthermore, the Claimant has not objected to this version. This version does not give specific mention of the DIFC Courts in the jurisdiction clause, however the Claimant contends that this does not matter as the DIFC Courts are included as a Dubai Court and thus the clause still opts-in to the jurisdiction of the DIFC Courts.

33. The Claimant is mistaken as to the interpretation of this jurisdiction clause. It is the case that claims that otherwise fall within the jurisdiction of the DIFC Courts will not validly opt-out of that jurisdiction by mere mention of the Courts of Dubai or the UAE, the DIFC Courts being a Dubai Court and a Court of the UAE. However, in the case where a claim does not otherwise fall within the jurisdiction of the DIFC Courts and the parties are tasked with opting-in to that jurisdiction, specific mention must be made. Mention of the Courts of the UAE or Dubai Courts is not sufficient to establish a "specific, clear and express" opting in. Thus, setting aside the issue that the Defendant has not signed the Terms of Business, the Terms do not successfully opt-in to the jurisdiction of the DIFC Courts, even if they were signed. Therefore, I find that the parties did not opt-in to the jurisdiction of the DIFC Courts pursuant to Article 5(A)(2) of the JAL.

34. This exhausts the Claimant's various arguments for the DIFC Courts' jurisdiction. For the above detailed reasons, I find that the Defendant's application to contest the DIFC Courts jurisdiction must be granted as the DIFC Courts do not have jurisdiction over the matter. The Claim is therefore dismissed.

35. Each party shall bear their own costs as to claim.



Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 8 July 2018

At: 10am