Claim No. SCT 145/2018

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

IBLEAM ADVOCATES AND LEGAL CONSULTANTS

Claimant

and

IBOLYA REAL ESTATE

Defendant

Hearing:**5 June 2018**

Judgment:**11 June 2018**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant and the Defendant

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

IT IS HEREBY ORDERED THAT:

1.The Defendant shall pay the Claimant the sum of AED 377,000 in respect of the Agreement.

2. All other claims are dismissed.

3. The Defendant shall pay the Claimant the DIFC Courts filing fee in the sum of AED 19,796.31.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 11 June 2018

At: 3pm

THE REASONS

The Parties

1.The Claimant is Ibleam Advocates & Legal Consultants (herein "the Claimant"), a Law Firm registered in Dubai, UAE.

2. The Defendant is Ibolya Real Estate (herein "the Defendant"), a company registered in Dubai, UAE.

Background and the Preceding History

1.The underlying dispute arises over a Retainer Agreement dated 18 October 2017 (the "Agreement").

2. On 18 October 2017, the parties entered into an agreement for the period of one year. Pursuant to the Agreement, the Claimant was to provide the Defendant with legal services at a discounted hourly rate, paid monthly.

3. On 26 February 2018, the Defendant emailed the Claimant terminating the Agreement as of 1 March 2018.

4. On 1 April 2018, the Claimant filed a claim in the DIFC Courts, claiming the remaining monies pursuant to clause 3.6 of the agreement.

5. On 18 April 2018, the Defendant acknowledged service of the claim and contested the jurisdiction of the DIFC Courts.

6. A Jurisdiction Hearing was listed before SCT Judge Ayesha Bin Kalban on 6 May 2018, the Claimant's representatives attended but the Defendant failed to attend. At the Hearing, the Judge dismissed the Defendant's application in light of its submissions dated 3 May 2018 seeking to withdraw its application to contest the Courts' Jurisdiction.

7. On 5 June 2018, the Registry listed a hearing before me, the Claimant's representatives attended the Hearing, but the Defendant failed to attend.

8. Pursuant to Rule 53.61 of the Rules of the DIFC Courts, it is stated that: *"If a defendant does not attend the hearing and the Claimant does attend the hearing, the SCT may decide the claim on the basis of the evidence of the Claimant only."*

The Claim

9. The Claimant alleges that on 18 October 2017, the Claimant and the Defendant entered into an Agreement, pursuant to the Agreement the Claimant was to provide the Defendant with legal services at a heavily discounted hourly rate. In addition, the Claimant adds that the term of the Agreement was for a period of one year, and the Defendant was to pay the Claimant the retainer fee on a monthly basis.

10. Furthermore, the Claimant alleges that on 26 February 2018, the Defendant, by way of an email, informed the Claimant of its intention to terminate the Agreement as of 1 March 2018. The Claimant also alleges that he wrote to the Defendant several times prior to 1 March 2018, enquiring as to how the Defendant wanted its ongoing cases to be handled beyond 28 February 2018 given the urgency and sensitivity of tasks that needed immediate attention. However, the Claimant alleges that the Defendant failed to respond.

11. Therefore, the Claimant contends that pursuant to its professional responsibility and ethics obligations, the Claimant was forced to continue to work on the Defendant's matters and informed the Defendant that it would do so as per its standard hourly rate.

12. The Defendant later accepted the handover of the case files, and the Claimant issued an invoice for work it had performed after the end of February 2018, for which the invoice remains outstanding.

13. The Claimant alleges that pursuant to sub clause 3.6 of the Agreement which states the following: *"In the event you terminate this agreement, or do not pay the Retainer fee for a period of two months, we would be entitled to a sum of liquidated damages equal to the retainer fee multiplied by the months of the retainer period where you have not paid us and for the balance of the retainer period. (by way of an example, if you terminate this Agreement, or fail to settle invoices for the retainer fee at month 5, as in you only paid 4 months of the retainer period, you accept to be liable to pay us AED 400,000);"*

14. The Claimant alleges that it is entitled to full payment of the Retainer Fee multiplied by each month from 18 October 2017 until the end of the Agreement, being 17 October 2018. The balance months until the end of the Retainer Period stand at 7 months and 17 days. Therefore, the Claimant claims that it entitled to the Retainer Fee per month pursuant to the Agreement is AED 50,000, which, when multiplied by 7 months and 17 days, provides for a total sum of AED 377,000. The Claimant is also seeking payment of the outstanding invoice for work done and not paid for in the sum of AED 18,926, and all the costs and charges incurred in respect of pursuing these claims.

15. In summary, the Claimant claims full payment of the retainer fee in the sum of AED 377,000; the payment of an outstanding invoice in the sum of AED 18,926 and all costs and charges incurred in respect of pursuing these claims.

The Defence

16. The Defendant intended to contest the jurisdiction of the DIFC Courts, but then later withdrew its application to contest the jurisdiction.

17. The Defendant failed to attend the hearing before me and, therefore, pursuant to Rule 53.61, the I may decide the claim on the evidence provided by the Claimant only. However, in the best interests of justice, I will consider the Defendant's written submissions filed ahead of the Hearing and available in the case file.

18. The Defendant denies any purported amounts as to liquidated damages, considering that the Defendant rightfully changed the billing method with the Claimant from a monthly set retainer amount to a case by case calculation method.

19. The Defendant alleges that it entered into the Agreement with the Claimant during October 2017 and continued to utilize the Claimant's services until the Claimant ceased to represent the Defendant and continued to claim that the Agreement was terminated, claiming the purported damages resulting from such alleged termination.

20. The Defendant alleges that the Claimant's performance was poor during the period of October 2017 to February 2018, failing to show positive results, losing the simplest of cases, and not defending the Defendant's position adequately.

21. The Defendant alleges that the Claimant failed to comply with the normal standards of professionalism currently adopted by legal attorneys,

from sharing the submissions before their deadline, or discussing the strategy in a way that protects the Defendant's interests and missing some important deadlines for filing appeals or objections in critical issues.

22. In addition, it is alleged that the Claimant used to delay updating the Defendant on the outcome of hearings, and the progress of enforcement proceedings either against the Defendant of filed by the Defendant.

23. It is alleged that the enforcement proceedings against the Defendant, from blocking the accounts or trade license, could have been lifted and avoided if the Claimant had filed proper requests to the court on time.

24. Furthermore, the Defendant alleges that even the simplest issues, like day to day reviewing of agreements or contracts, faced long delays and shallow reviews; which required the Defendant to re-review the documents at the last moment, not relying upon the Claimant works, which was still charged per the retainer agreement regardless of the quality of the provided works.

25. The Defendant also alleges that considering the Agreement is governed by the UAE Law, The UAE Federal Law no. 5 of 1985 ("Civil Transaction Code" or "CTC"), and excludes the DIFC Laws, that the Dubai Courts of Cassation precedents should apply to the present Agreement.

26. Article 44 and 272-1 of the CTC states that:

> "Article 44: the averting of evil is better than the doing of good"
>
> Article 272-1: in contracts binding on both parties, if one of the parties does not do what he is obliged to do under the contract, the other party may, after giving notice to the obligor, require that the contract be performed or cancelled."

27. The Defendant also refers to the Dubai Court of Cassation's ruling which states that:

> "The delay in enforcing a contract and its range and reasons that elevates to the level of negligence that gives the right for a contracting party to request to terminate the contract or not, falls within the jurisdiction of the court of subject matter, is it built its judgment upon reasons accepted to it relying upon the supporting documents"- Dubai Court of Cassation Judgment no 178/2013 - hearing of 29/9/2013.

28. Accordingly, the Defendant alleges that, noting the negligence of the Claimant in fulfilling his obligations as per the retainer agreement and while not meeting the adequate level of professionalism or efficiency, the Defendant had no other resort but to change the billing system in works assigned to them, and avoid dealing with such negligence from the Claimant.

29. In summary, the Defendant seeks the dismissal of the proceedings in its entirety and for the Claimant to pay the Defendant's costs attributed to its reply and any further submissions, which shall be assessed if not agreed.

Discussion

30. The Claimant and the Defendant are both non DIFC companies but have opted into the jurisdiction of the DIFC Courts. However, the Agreement states that the terms shall be governed by and construed and interpreted in accordance with the (non DIFC) UAE Law and shall be subject to the exclusive jurisdiction of Small Claims Tribunal of the DIFC Courts.

31. Therefore, since the parties have opted into the DIFC, with the UAE Law as the governing law, and the exclusive jurisdiction of the Small Claims Tribunal of the DIFC Courts, I shall hear and determine this claim pursuant to the UAE Law in conjunction with the relevant Agreement between the parties.

32. The Claimant claimed full payment of the Retainer fee multiplied by each month remaining until the end of the Agreement, pursuant to sub-clause 3.6 of the Agreement.

33. In addition, the Claimant provided an email from the Defendant's representative dated 26 February 2018 which states that: *"as explained during our last meeting we would like to cancel the retainer as of end of February 2018 and deal with the Claimant for the cases that we will agree for the Claimant to represent us."*

34. The email extract above indicates that the Defendant terminated the Agreement with the Claimant, and only wanted to deal with the Claimant on a case to case basis.

35. The Defendant denies any purported amounts as to liquidated damages, considering that the Defendant rightfully changed the billing method with the Claimant from a monthly set retainer amount to a case by case calculation method.

36. The Defendant also argues that the Claimant's performance was poor during the period of October 2017 to February 2018. However, the Defendant failed to provide any evidence to support its arguments.

37. Pursuant to sub-clause 3.6 of the Agreement, if the Defendant terminates the Agreement during the first couple of months (which is clear from the email dated 26 February 2018), the Defendant shall be entitled to pay the Claimant the sum of the remaining months until the end of the Contract.

38. Therefore, the Defendant is liable to pay the Claimant the sum of AED 377,000 pursuant to sub-clause 3.6 of the Agreement.

39. The Claimant also claims the payment of an outstanding invoice for work done and not paid for in the sum of AED 18,926, for which the Defendant failed to comment on. However, I ought to mention that, regardless of the Defendant's response to the outstanding payment of the invoice, the Claimant failed to provide a copy of the detailed invoice or any evidence in support of its allegation. Therefore, I am of the view that the Claimant is not entitled to the sum of AED 18,926 due to the lack of evidence submitted to the court. I ought to mention that, if the Claimant

had provided sufficient evidence of the outstanding invoice, I would have been minded to rule in its favour.

4o. The Claimant also claimed all costs and charges incurred in respect of pursuing these claims.

41. In practice, the Small Claims Tribunal does not award legal costs, however, Tribunal may award the DIFC Courts Filing fee by its discretion.

42. Therefore, I find that the Defendant shall pay the DIFC Courts filing fees to the Claimant in the sum of AED 19,796.31.

Conclusion

43. In light of the aforementioned, the Defendant is liable to pay the Claimant in respect of the Agreement in the sum of AED 377,000.

44. All other claims are hereby dismissed.

45. The Defendant shall pay the Claimant the Court fees in the sum of AED 19,796.31.



Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 11 June 2018

At: 3pm