Claim No. SCT 353/2017

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 NATASHA BAKIRCI

BETWEEN

IMOGEN LLC

Claimant

and

INGOLF TRANSPORTING & MAINTENANCE EST

Defendant

Hearing:**30 January 2018**

Judgment: **7 February 2018**

JUDGMENT OF SCT JUDGE NATASHA BAKIRCI

UPON the Claim Form being filed on 20 December 2017;

AND UPON a Consultation having been held before SCT Judge Ayesha Bin Kalban on 4 January 2018 and the parties being unable to reach a settlement;

AND UPON a Hearing being held before me, SCT Judge Natasha Bakirci on 30 January 2018, with the Claimant attending and the Defendant failing to attend without good reason;

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1.The Defendant shall pay the Claimant the sum of AED 11,267 in respect of unpaid invoices.

2. The Defendant shall pay the Claimant's court fee in the sum of AED 563.34.

Issued by:

Natasha Bakirci

SCT Judge

Date of issue: 7 February 2018

At: 9am

THE REASONS

The Parties

1.The Claimant is ImogenLLC, a company specialising in the sales and rental of Mobile Elevated Work Platforms (MEWPs) based in Abu Dhabi (herein "the Claimant").

2. The Defendant is an Abu Dhabi licensed establishment involved in buildings maintenance in oil and gas fields, inter alia.

The Claim

3. The Claimant alleged that the Defendant had rented a machine from them for a project in Inger and had failed to pay the July 2017 and August 2017 invoices, despite constant follow-up from the Claimant. The outstanding amount was said to be AED 11,267.00. The Claimant also requested its court fees.

4. In support of its claim, the Claimant submitted an "Outstanding Statement" addressed to the Defendant dated 19 December 2017, in the sum of AED 11,267, which is broken down into AED 6500 in respect of July 2017 and AED 4767 for August 2017. An invoice dated 31 July for machine BD266 from 1 July 2017 until 31 July 2017 amounts to AED 6500. An invoice dated 31 August 2017 for machine BD266, cites the dates 1 August 2017 until 23 August 2017, in the sum of AED 4983, with a deduction of AED 216 for one day's breakdown - with a total of AED 4767.

The Defence

5. On 28 December 2017, the Defendant submitted its defence to the claim, stating that the invoices were rejected as they were "only received by foreman for checking" and that there was no time sheet to support the invoices raised.

6. On 25 January 2018, the Defendant sent a further submission to the SCT Registry, arguing that they only owed the Claimant AED 4983 for machine BD266, which was the machine at the heart of the Claimant's claim as: (i) it had broken down on 23 July 2017, so the July 2017 invoice in the sum of AED 6500 should be reduced to AED 4983, taking into account the 8 day break down from 23 July 2017 until 31 July 2017; and (ii) the August 2017 Invoice 9137 for BD266 "must be treated as void due to non-hire during this month.Because machine broke down and not functioning again and not repaired and removed from site."

Discussion

The Defendant's Failure to Attend the Hearing on 30 January 2018

7. I heard oral submissions from the Claimant's representatives, Mr Inghard and Ms Ines at the hearing on 30 January 2018. The Defendant failed to attend the hearing, despite having been notified of the hearing date and time by the SCT Registry in advance and the SCT's efforts to contact them by telephone on the day.

8. At the hearing on 30 January, having noted that the Defendant had failed to attend without any good reason, I made reference to Rule 53. 61 of the Rules of the DIFC Courts (RDC) which provides as follows: "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 alone."

9. On 31 January 2018 the Defendant attempted to submit a further reply to the claim made against it. Upon receipt of this the SCT Registry gave the Defendant an opportunity to give a good reason for its failure to attend the hearing. On 1 February 2018 the Defendant sent an email to the SCT Registry requesting a re-hearing, on the grounds that they had "missed the E-mail to note the date for the hearing."

10. The Claimant was given the chance to comment on the request for a re-hearing, they replied that they considered the "failure to note the hearing date . quite irresponsible on the defendant's part." I note that the Defendant has previously responded to correspondence from the SCT Registry and had attended the consultation in this case on 4 January 2018. The Defendant has had ample opportunity to submit and particularise its defence in writing and I do not find its assertion that it missed the relevant email cogent enough to warrant rescheduling a hearing, given the attendant demands on the Court's and also the Claimant's time.

11. I shall therefore proceed to consider the case on the basis of the documents submitted prior to the hearing of 30 January 2018 and the oral submissions of the Claimant at the hearing, as I am entitled to do pursuant to RDC Rule 53.61 cited above.

DIFC Courts Jurisdiction

12. The jurisdiction of the DIFC Courts to hear this dispute was not challenged, but for the sake of clarity, Rule 53.2 of the Rules of the DIFC Courts ("RDC") requires that the Small Claims Tribunal ("SCT") hears only cases that fall "within the jurisdiction of the DIFC Courts." 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 ("Judicial Authority Law"), which provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, which are, as relevant:

> "(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."

13. The Claimant has provided to the SCT a copy of a Hire Agreement dated 20 November 2016 which appears to be signed by both parties and which clearly states the following: "All disputes or differences arising between parties under or in relation to this agreement shall be referred to DIFC COURTS SCT in Dubai, UAE and the language shall be in English."

14. Based on the above and given the value of the claim at AED 11,267, I am comfortable that the SCT has jurisdiction to hear this claim.

The Claimant's claim for alleged unpaid invoices

15. I shall now turn to the merits of the Claimant's claim for AED 11,267 in respect of two unpaid invoices for the rental of machine BD266.

16. At the hearing of 30 January, the Claimant's representatives helpfully clarified the situation before me. The machine which had broken down on 23 July 2017, as the Defendant argued, was in fact a different machine with the serial number BD305, which had already been paid for by the Defendant and did not form part of the Claimant's claim. This is supported by invoice number 9113 and Machine Breakdown Report reference: 9387, which the Claimant has submitted to the SCT Registry in response to the Defendant's defence.

17. Moreover, the Claimant has submitted breakdown reports as evidence that they attended to machine BD266 which forms the basis of their claim on 19 August 2017, which appears to be signed from an employee of the Defendant, together with an email from the Defendant requesting that the Claimant send a mechanic as soon as possible on 19 August 2017. That breakdown on 19 August 2017 has been deducted from the August 2017 invoice which runs until 23 August 2017. This in turn is supported by an email from the Claimant to the Defendant dated 30 August 2017, requesting that the Defendant sign the "attached collection note for the machine returned on 24th August."

Conclusion

18. I find that the Claimant has submitted a convincing case that the Defendant owes it the total sum of AED 11,267 for the rental of machine number BD266 from 1 July 2017 until 23 August 2017, which has been substantiated by the invoices and other documentation in the court file. It follows that the Defendant should pay the outstanding sum of AED 11,267 to the Claimant.



Issued by:

Natasha Bakirci

SCT Judge

Date of Issue: 7 February 2018

At: 9 am