Claim No. SCT 312/2020 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 COURTSBEFORE SCT JUDGE MAHA AL MEHAIRI BETWEEN LUKTINA L.L.C Claimant and LINKA INTERNATIONAL L.L.C Defendant Hearing : 25 October 2020 Judgment : 8

Claim No. SCT 312/2020

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 MAHA AL MEHAIRI

BETWEEN

LUKTINA L.L.C

Claimant

and

LINKA INTERNATIONAL L.L.C

Defendant

Hearing : **25 October 2020**
Judgment : **8 November 2020**

JUDGMENT OF SCT JUDGE MAHA ALMEHAIRI

UPON this Claim being filed on 8 September 2020

AND UPON the Claim being Amended on 1 October 2020

AND UPON the Defendant filing an Acknowledgment of Service indicating its intention to contest the jurisdiction of the DIFC Courts dated 12 October 2020

AND UPON a Jurisdiction Hearing having been held before SCT Judge Maha Al Mehairi on 25 October 2020, with the Claimant's and the Defendant's representatives in attendance

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

IT IS HEREBY ORDERED THAT:

1. The Defendant's challenge to the DIFC Courts' jurisdiction is granted.

2. The DIFC Courts do not have jurisdiction to hear this dispute, and the case is dismissed henceforth.

3. Each party shall bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 8 November 2020
At: 1pm

THE REASONS

The Parties

1. The Claimant is Luktina L.L.C (the "Claimant"), a company that offers warehousing activities registered in Dubai, UAE.

2. The Defendant is Linka L.L.C ("the Defendant"), an entity providing services related to hotel and hospital supply solutions, located in Dubai, UAE.

Background and the Preceding History

3. The underlying dispute arises over an agreement with regard to warehousing activities and freight forwarding services entered into by the parties. The Claimant provides warehousing services for Dubai pursuant to an agreed and signed warehousing Agreement (the "Agreement"), and the Defendant has allegedly failed to pay the Claimant sums due to the Claimant pursuant to the Agreement.

4. On 1 October 2020, the Claimant filed an Amended Claim with the DIFC Courts' Small Claims Tribunal (the "SCT") seeking payment for the unpaid invoices in the amount of AED 202,399.84, in addition to court fees.

5. The Defendant responded to the Amended Claim Form on 12 October 2020 by way of an Acknowledgment of Service indicating its intent to contest the jurisdiction of the DIFC Courts.

6. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 25 October 2020 with the Claimant's and the Defendant's representatives in attendance.

The Jurisdiction Challenge

7. In its submissions, the Defendant submits that the Claimant has fabricated facts with the intent to mislead the Court and the Claim currently before the Court does not fall under the Courts' jurisdiction. The Defendant states that, contrary to the claims made by the Claimant in its statement of claim (the "SOC"), the dispute pertains to a number of leased warehouses in the Emirate of Dubai and the loss of goods.

8. The Defendant argues that the dispute arises in respect of the warehouses duly leased by the Defendant in the Emirate of Dubai and the alleged non-compliance of the Defendant with its rental payment obligations. The Defendant submits that the jurisdiction to adjudicate upon such disputes lies with the Dubai Courts, and submits that the SCT lacks jurisdiction to adjudicate the dispute.

9. The Defendant submits that, pursuant to Article 31 (5) of the UAE Federal Law No. 11 of 1992 Concerning Issuance of Civil Procedures Code ("Civil Procedure"), the Dubai Courts have the jurisdiction to adjudicate upon the instant dispute as the warehouses and both the Parties are domiciled within the territorial jurisdiction of the Emirate of Dubai. Additionally, pursuant to Article 25 of the Civil Procedure, the Dubai Court of First Instance has the jurisdiction to hear all civil and commercial lawsuits. The foregoing provisions are set out below:

> "Article (31)
> 5. In other than the cases stipulated in the Article (32) and the Articles from (34) to (39), it is possible to agree on the jurisdiction of a certain court to examine the litigation, and in such case the jurisdiction will be given to such court or the court in which circuit the prosecuted residence, domicile or workplace exists."
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> "Article (25)
> The courts of first instance shall have jurisdiction to hear all civil, commercial, administrative, labour and personal status lawsuits with the exception of those to which the Federation is a party, since such lawsuits shall fall within the jurisdiction of Federal Courts."

10. The Defendant also submits that the Claimant cannot file a claim in the SCT solely based on the claim amount without having due consideration for the appropriate body authorised to hear specific claims. The Defendant further contends that throughout its submissions, the Claimant has concealed the fact that the dispute pertains to the leased warehouses and the loss of goods with the intent to mislead the Court and to assume false jurisdiction.

11. Therefore, the Defendant contests the jurisdiction of this SCT and submits that the Dubai Courts have the appropriate jurisdiction to adjudicate the dispute arising from the Claimant's breach of its contractual obligations as the owner of the leased warehouses.

12. In reply, the Claimant submits that the trade activities agreed upon pursuant to the Agreement are that the Defendant would carry out warehousing activities and storage of goods at the Claimant's warehouse, and also freight forwarding activities on a case to case basis in return for a monetary payment, as this was set out in an Agreement which both parties agreed upon and signed. The Agreement signed is governed by the DIFC Contract Law and the DIFC jurisdiction, in Clause 19 and 20 of the Agreement, as cited below:

> "19. DISPUTE RESOLUTION
>
> 19.1 Any dispute, controversy or claim in connection with, arising out of, or relating to formation, performance interpretation, this Agreement (including any provision of any Annexure or Exhibit thereto) or the breach, termination or validity thereof shall, in the first instance, be settled amicably by consultation among the parties. If for any reason no satisfactory settlement has been reached within thirty (30) calendar days of receipt by a party of a notice of dispute then such dispute shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre (DIFC)
>
> 20. GOVERNING LAW
>
> 20.1 The validity, interpretation and construction of this Agreement shall be governed by and constructed in accordance with the governing law of DIFC Courts."

13. In addition to the above, the Claimant submits that the amount claimed is within the limit for the SCT to hear and determine. The Claimant submits that with the signing of the Agreement a business-client relationship was established that is legally and contractually binding to both parties, and as such the DIFC Courts have jurisdiction over the Claim.

Discussion

14. Based on the written submissions of the parties and the arguments put forward at the Jurisdiction Hearing, and based on the consideration of the law applicable to the dispute, I find that this dispute falls outside of the jurisdiction of the DIFC Courts.

15. Rule 53.2 of the Rules of the DIFC Courts (the "RDC") requires that the SCT hear only cases that fall "within the jurisdiction of the DIFC Courts."

16. 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, 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."

17. There is no evidence of any of these gateways except Article 5(A)(2) having the potential to apply in the circumstances. I am satisfied that Clause 19 and 20 of the Agreement would ordinarily have the effect of the parties `opting in' to DIFC Court Jurisdiction as its provisions are specific, clear and express, as required by Article 5(A)(2) above. However, the implications of the subject matter of the Agreement being a rental amount for real property and the location of that property must be considered.

18. Article 8 of DIFC Real Property Law provides:

"(1) From the date on which this Law comes into force, all real property from time to time within the jurisdiction of the DIFC is governed by this Law.

(2) Real property within the jurisdiction of the DIFC includes:

(a) the real property referred to in Article 4(1); and

(b) any real property later brought within the jurisdiction of the DIFC, by any method."

Thus, it is clear and both parties accept that property located in Dubai would not be considered to be within the physical jurisdiction of DIFC.

19. Generally, the parties to a dispute may agree on the jurisdiction of a specific court pursuant to Article 31(5) of Federal Law No.11 of 1992 Concerning Civil Procedures (the "CPC"), which states:

"Save in the cases provided for in article 32 and articles 34-39 it shall be permissible to agree on the jurisdiction of a specified court to determine a dispute and in the event jurisdiction shall be vested in such court or in the court in whose area the defendant has his domicile or place of residence or place of business."

20. Article 32 of the same law provides for the following exception to the above:

"(1) In actions in rem in respect of real property and actions for possession jurisdiction shall be vested in the court whose area the real property, or a part thereof if it located in the areas or more than one court is located.

(2) In actions in personam in respect of real property, jurisdiction shall be vested in the court whose area the real property is located or the defendant has his domicile."

21. The Claimant's claim concerns real property located within Dubai but outside of the DIFC. As the dispute relates to the Defendant's alleged breach of the Agreement, I determine this claim to be an `action in personam' in respect of real property and Article 32(2) would apply in the circumstances. Accordingly, `jurisdiction is vested in the court in whose area the real property is located or the defendant has his domicile' would effectively exclude the DIFC Courts from having jurisdiction as neither the property or the Defendant are located within the DIFC.

22. Furthermore, Part 5 of DIFC Law No. 10 of 2005 provides that the law governing rights in property, shall be that of the jurisdiction where the property is physically located. Thus, the DIFC Courts must apply UAE Federal and Dubai laws when determining issues relating to the rights of property within Dubai. Therefore, DIFC Law No. 10 of 2005 in conjunction with Article 32 of the CPC, mandate that the DIFC Courts cannot have jurisdiction over a claim relating to rights in property or transfer of property which is located outside of the DIFC. This position must be adhered to even where the parties have previously agreed for the DIFC Courts to have jurisdiction, as any attempt to `opt-in' to the jurisdiction of the DIFC Courts would contradict DIFC and UAE law.

23. In addition, cases before the SCT have supported this position, in case Hackett v Hania [2017] DIFC SCT 034, wherein the SCT declined jurisdiction on the basis that the real estate in question was located outside the DIFC and this was even where the parties had purported to opt in to the DIFC jurisdiction.

24. Accordingly, the Claimant's claim must be dismissed as the DIFC Courts lack jurisdiction over the matter. The Defendant's challenge to the Courts' jurisdiction is therefore granted.

Finding

25. The DIFC Courts and the Small Claims Tribunal do not have jurisdiction to hear this claim and therefore the claim must be dismissed in full for lack of jurisdiction.

26. Each party shall bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 8 November 2020
At: 1pm