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 H.E. JUSTICE MAHA AL MHEIRI**

BETWEEN

MARTIN

Claimant

and

MASON CAR RENTAL L.L.C

Defendant

Hearing : **15 August 2022**
Judgment : **24 August 2022**

JUDGMENT OF H.E. JUSTICE MAHA AL MHEIRI

UPON this Claim being filed on 10 June 2022

AND UPON a Second Hearing having been listed before H.E. Justice Maha Al Mheiri on 15 August 2022 at which the Claimant and Defendant's representative were in attendance

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

IT IS HEREBY ORDERED THAT:

1. The Claimant's claim is dismissed.

2. Each party shall bear their own costs.





Issued by:
Hayley Norton
SCT Judge
Date of Issue: 24 August 2022
At: 3pm

THE REASONS

The Parties

1. The Claimant is Martin (the "Claimant"), an individual filing a claim seeking reimbursement of an alleged unlawful deduction of funds carried out by the Defendant.

2. The Defendant is Mason Car Rental L.L.C, a car rental services company registered in Dubai, UAE (the "Defendant").

Background and the Preceding History

3. The Claimant's claim is that the Defendant has unlawfully deducted funds from the Claimant in relation to an insurance claim paid by the Defendant pursuant to an agreement between the parties for the Claimant to lease a vehicle from the Defendant.

4. On 10 June 2022, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for the reimbursement of AED 2,000 for the aforementioned deduction and AED 5,000 as compensation, in addition to the recovery of the court fee paid by the Claimant for the filing of this Claim.

5. On 23 June 2022, a consultation was listed before SCT Judge Ayman Mahmoud Saey, at which the parties failed to reach an agreement.

6. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Second Hearing held on 15 August 2022.

The Claim

7. The Claimant leased a vehicle from the Defendant (the "Vehicle") using the Defendant's "Subscription Service". A leasing contract was issued for a period of 1 month, starting from 29 March 2022 to 28 April 2022 (the "Subscription Agreement").

8. On 25 April 2022, the Vehicle was involved in an anonymous traffic accident, and the Claimant filed a police report using the Dubai Police Application. A police report was issued under No. 123456 from the Dubai police recording the case, and therein it is stated that the Claimant is the affected party, not the liable party to the accident. The Claimant was issued with a white-coloured report to indicate that he is the affected party (the "Police Report"), since he reported the accident through the Dubai Police application.

9. On 18 May 2022, the Claimant received a notification that the Defendant had deducted AED 2,000 as an insurance excess fee from the Claimant's credit card without prior notice to the Claimant.

10. Clauses 21 and 22 of the terms and conditions of the Subscription Agreement read as follows:

> "Collisions And Your Responsibilities
>
> > 21. For any collision or accident where You are at fault, an Insurance Excess Fee shall apply, as determined in accordance with the Fee Schedule depending on the level of collision damage waiver purchased. You are required to pay such excess fee to Us on demand. If You are not at fault no insurance excess fee shall apply.
> >
> > 22. Any official police determination as to fault shall be taken as final and conclusive. In the absence of any police determination, Mason shall be entitled to determine fault in its discretion and You shall be responsible for paying any costs incurred by Mason and / or the Car Rental Company in investigating the accident."

11. The Claimant submits that the Police Report sets out that the Claimant is the affected party in the accident and should not bear the costs of the insurance excess fee.

12. The Claimant also emailed the Defendant on 18 May 2022 to inquire about the applicable expenses in case of an accident where the Claimant is found to be affected party by the Dubai Police. The Defendant responded as follows:

> "Please note that in the event of an accident and that the customer is the affected party in the accident according to the police report, the customer does not bear any cost at all."

13. The Claimant therefore submits that he should not be liable to the charges imposed by insurance and seeks an order from the Court that the Defendant refund all amounts deducted in regards to the excess charges.

The Defence

14. In response, the Defendant submits that as part of the Claimant's Subscription Agreement he was given the option of obtaining collision damage, collision damage waiver and other insurance products. The Claimant did not avail any of these options, and this was recorded on the Agreement. Therefore, the Defendant takes the position that the Claimant should be liable for the insurance excess charges in the amount of AED 3,000. As a good will gesture the Defendant agreed to reduce his payment to AED 2,000, which was paid by the Claimant.

15. The Defendant also submits that the circumstances whereby Clause 21 and 22 of the Subscription Agreement would apply require that a green-coloured police report be issued by the Dubai Police. The Defendant submits that in this matter, a white-coloured police report was issued, and this Report was not accepted by the insurance company and therefore the Claimant cannot be concluded to be the affected party in the accident.

Discussion

16. First and foremost, the relevant Agreement falls under the DIFC Courts' jurisdiction as the Agreement states under Article 17 of the Subscription Agreement:

> "These Member Terms shall be governed by and construed in accordance with the laws of the Dubai International Financial Centre. Any dispute arising out of or in connection with these Member Terms shall be settled by the Courts of the Dubai International Financial Centre"

17. Upon review of the court file and the submissions contained therein, I agree with the Defendant's submissions that, although the Claimant was issued with a police report that states that he is the affected party, the Claimant was not issued with a green police report which the insurance company considers to be key criteria for it to repair the Vehicle without any liability from the insurer.

18. Moreover, while the Subscription Agreement does not make provision for the report to be a specific colour to allow waiver of excess charges, it is understood from the wording that if the affected party obtains a report that qualifies to the insurance company to classify the party to the accident as the affected party then that person shall not be liable to pay the insurance excess fee. The amount of AED 3,000 was duly paid by the Defendant, which in turn was deducted from the Claimant in the amount of AED 2,000, pursuant to an offer of reduction.

19. As such, I find that the Claimant's claim must be dismissed henceforth in light of the fact that the criteria set out in Clauses 21 and 22 of the Subscription Agreement to allow the waiver of excess charges has not been met.

Conclusion

20. In light of the aforementioned, I find that the Claimant's claim shall be dismissed in its entirety.

21. Each party shall bear their own costs.