Claim No. SCT 266/2019

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

BEFORE SCT JUDGE NASSIR AL NASSER

BETWEEN

JIUENA COMMERCIAL BANK (PJSC)

Claimant

and

JIDDU

Defendant

Hearing: **15 July 2019**

Stay of the proceedings: **The parties requested to postpone Judgment of this Claim due to pending settlement negotiations**

Judgment: **31 July 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant at the Hearing on 15 July 2019;

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 Loan amount in the sum of AED 61,654.17 plus interest at the rate of 9% per annum.
2. The Claimant's claim in relation to the outstanding sums in respect of the Credit Card shall be dismissed for lack of jurisdiction.
3. The Defendant shall pay the Claimant the Court Fee in the sum of AED 3,082.70.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 31 July 2019

At: 10am

THE REASONS

Parties

1. The Claimant is Jiuena Commercial Bank (PJSC), a bank providing financial services including credit cards and personal loans to customers (the "Claimant").
2. The Defendant is Jiddu, an individual and Canadian National (the "Defendant").

Background

3. The parties entered into a written agreement on 11 March 2014, entitled `Jiuena Salam Personal Finance (the "Original Agreement") and Credit Card Application Form. The Defendant received a loan of AED 600,000 payable in 36 instalments.
4. On 29 June 2015, the Defendant received a top-up of the AED 600,000 loan which, in total, amounted to the borrowed sum of AED

660,000, repayable in 48 monthly installments of AED 15,316.08 (the "Loan"). The top-up of the Loan was granted by the Defendant through the Jiuena Retail IB (Jiuena system). The top-up sum was in the amount of AED 254,750.36 which was added to the existing outstanding loan with the Defendant in the sum of AED 391,614.40.

5. Thus, it is the Claimant's case that the Defendant received a Loan in the sum of AED 660,000 as of 29 June 2015.

6. The Defendant made regular repayments of the Loan and paid up to 5 February 2019, after which time he fell into arrears. According to the Claimant, the remaining amount currently outstanding on the Loan is AED 61,654.17.

7. The Claimant also alleges that on 3 April 2014 the Defendant was granted a Credit Card (Visa Infinite) in the sum of AED 250,000 and it has been in arrears since 5 May 2019. Therefore, the current outstanding amount owed by the Defendant to the Claimant in relation to the Credit Card is AED 239,355.55.

8. Following the Defendant's failure to keep up with his repayments, the Claimant filed a claim with the DIFC Courts' Small Claims Tribunal (the "SCT") to recover the amounts on 21 May 2019 (the "Claim").

9. The Defendant responded to the Claim on 22 May 2019 intending to defend part of the claim. However, the Defendant failed to file a defence.

Parties' Submissions and Procedural History

10. The Claimant's Claim Form detailed the provisions of the Original Agreement, the Credit Card Application form and the top-up to the Loan made by the Defendant through the Jiuenasystem on 29 June 2015 which, as alleged by the Claimant, shows that the Defendant owed the Claimant the total sum of AED 301,009.72. This sum consists of the repayment for the Loan in the sum of AED 61,654.17 and the Credit Card in the sum of AED 239,355.55.

11. The Claimant contends that the DIFC Courts and the SCT has jurisdiction over this claim. The Claimant has drawn the Courts' attention to the terms and conditions that were accepted by the Defendant upon requesting the top up of the Loan, which states at Clause 23

> "the Civil Court of the Individual Emirates. The Federal Civil Courts of the United Arab Emirates, and the Courts of the Dubai International Financial Centre (including without limitation the Small Claims Tribunal of the DIFC). Shall have non-exclusive jurisdiction over all matters arising under the products' terms and conditions save that bank shall have the right to file actions in any court with jurisdiction over you or your assets. In the event that a party opts to commence a claim in the Small Claims Tribunal of the Dubai International Financial Centre, the parties expressly agree that such claim may be made for any amount up to AED 500,000 or for such greater amount as may be within the jurisdiction of that tribunal from time to time."

12. The Defendant submitted an Acknowledgement of Service on 22 May 2019 but failed to submit a defence within the deadline given by the SCT Registry. the Defendant also failed to attend the Hearing.

13. The Claimant also claimed post Judgment interest along with recovery of the Court fees.

14. Pursuant to Rule 53.61 of the Rules of the DIFC Courts it states 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 alone*".

Discussion

15. This Claim includes two main elements. First, it must be established that the DIFC Courts have jurisdiction over all of the parts of the Claim, including the Loan Claim and the Credit Card Claim. Second, the two Claims must be assessed based on the documentary evidence provided to adjudicate whether the Defendant is in arrears and how much remains owing to the Claimant.

16. Due to the important fact that the SCT cannot give judgment on claims falling outside of its jurisdiction, I will address the SCT's jurisdiction over each claim below.

The Loan Claim

17. The Claimant argues that the Original Agreement remains valid between the parties and was signed by the Defendant on 11 March 2014 (a copy of the Agreement was attached to the case file). The Defendant then applied for a top-up of the Loan, following which, on 29 June 2015, the top-up was completed, and the Defendant received the total sum of AED 660,000 payable in 48 monthly instalments.

18. The Claimant contends that the DIFC Courts and the SCT has jurisdiction over the claim as the Defendant agreed to the terms and conditions set forth in the top-up request, as presented on the Jiuena system, which states at Clause 23

> "the Civil Court of the Individual Emirates. The Federal Civil Courts of the United Arab Emirates, and the Courts of the Dubai International Financial Centre (including without limitation the Small Claims Tribunal of the DIFC). Shall have non-exclusive jurisdiction over all matters arising under the products' terms and conditions save that bank shall have the right to file actions in any court with jurisdiction over you or your assets. In the event that a party opts to commence a claim in the Small Claims Tribunal of the Dubai International Financial Centre, the parties expressly agree that such claim may be made for any amount up to AED 500,000 or for such greater amount as may be within the jurisdiction of that tribunal from time to time."

19. The Claimant has asserted to the Court that the Defendant would not receive the top-up of the Loan if he failed to agree on the Terms and Conditions as presented with the top-up request.

20. I find that the parties have opted-in to the Jurisdiction of the DIFC Courts pursuant to Clause 23 of the Terms and Conditions.

21. In relation to Loan claim and based on the documentary evidence, I am satisfied that the Defendant has been in arrears since 5 February 2019 and the remaining balance of the Loan is the sum of AED 61,654.17.

22. The Defendant failed to file a defence and the deadline has passed, the Defendant also failed to attend the Hearing.

23. Therefore, pursuant to Rule 53.61 of the Rules of the DIFC Courts, the Claimant is entitled to the Loan amount in the sum of AED 61,654.17, plus interest at the rate of 9% per annum as per the DIFC Courts Practice Direction No. 4 of 2017 - Interest on Judgments.

The Credit Card Claim

24. The initial Claim Form included a claim for AED 239,355.55 in respect of the Credit Card Claim. The Claimant included the Credit Card Application form signed by the Defendant.

25. The Credit Card Application Form provided by the Claimant was not clear and at the hearing I requested that the Claimant provide a clearer version of the Application Form. By way of email, the SCT Registry also reminded the Claimant to file its submissions in respect of the DIFC Courts Jurisdiction over this claim. However, I received submissions in respect of the Loan only as mentioned above.

26. In relation to the Jurisdiction, I note that neither of the parties are a DIFC entity and thus the SCT's jurisdiction over the Claim relies upon the parties having validly opted-in to the SCT's jurisdiction. While this is a valid argument for the Loan Claim, as per Clause 23 of the Terms and Conditions, this argument does not apply for the Credit Card Claim.

27. Therefore, I shall dismiss the Claimant's claim for the sum of AED 239,355.55 in respect of the Credit Card.

28. The Defendant shall pay the Claimant the Court fee in the sum of AED 3,082.70.

Finding

29. The Defendant shall pay the Claimant the Loan amount in the sum of AED 61,654.17 plus interest at the rate of 9% per annum.

30. The Claimant's claim in relation to the Credit Card shall be dismissed for lack of jurisdiction.

31. The Defendant shall pay the Claimant the Court Fee in the sum of AED 3,082.70.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 31 July 2019

At: 10am