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 NASSIR AL NASSER

BETWEEN

MAINA

Claimant

and

MAJ INVEST LIMITED

Defendant

Hearing : **23 May 2022**
Judgment : **1 June 2022**

JUDGMENT OF H.E. JUSTICE NASSIR AL NASSER

UPON a Hearing having been listed before H.E Justice Nassir Al Nasser on 23 May 2022, 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 shall pay the Claimant the sum of USD 55,566 plus interest accruing at the rate of 9% per annum from the date of this Judgment until the date of full payment.

2. The Defendant shall pay the Claimant the Court fees in the sum of USD 2,777.80.

Issued by:
Ayesha Bin Kalban
SCT Judge and Registrar
Date of Issue: 1 June 2022
At: 2pm

THE REASONS

Parties

1. The Claimant is Maina (the "Claimant"), a company registered in the Dubai International Financial Centre, Dubai, UAE.

2. The Defendant is Maj (the "Defendant"), a company registered in the Dubai International Financial Centre, Dubai, UAE.

Background and Procedural History

3. The underlying dispute arises over a Consultancy Agreement dated 25 August 2020 (the "Agreement").

4. On 18 April 2022, the Claimant filed a claim against the Defendant seeking payment in the amount of AED 55,566 pursuant to the Defendant's alleged breach of a contract entered into by the parties.

5. On 25 April 2022, the Defendant filed an Acknowledgment of Service setting out its intention to defend the entirety of the Claim.

6. The parties met for a Consultation with SCT Judge Ayman Saey on 9 May 2022 but were unable to reach a settlement.

7. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 23 May 2022, at which the Claimant's and the Defendant's representatives were in attendance.

Claim

8. The Claimant submits that clause 3 of the agreement (the "Agreement") entitled the Claimant to a monthly retainer of USD 3,060 and USD 1,350 for the provision of a finance officer (clause 1.1.3) and bookkeeper (clause 1.1.4). However, following an email dated 11 October 2021, the Claimant alleges that the Defendant illegally terminated the Agreement with immediate effect. The Claimant submits that the termination is invalid and amounts to a breach of contract.

9. The Claimant also submits that clause 4.1.2 and 4.1.3 which expressly provides that, for the service referred to in clause 1.1.2, 1.1.3 and 1.1.4, if the Defendant terminates the Agreement, whether for cause or not, prior to the completion of the initial 12 months period (ending 14 September 2022), the fees applicable to the remainder of the period shall become immediately due and payable. Since the Defendant's final DFSA license was received on XX September 2021 this would be deemed as the relevant commencement date for the 12 months period.

10. The Claimant submits that since the Defendant notified the Claimant of its intention to terminate the Agreement on 11 October 2021, this fell within the 12 months period referred to above. Therefore, in accordance with clause 4.1.3, the Claimant seeks payment of the fees, totaling to USD 55,566 (the "Unpaid Amount" including VAT) applicable to the remainder of the period.

11. Therefore, the Claimant filed a claim seeking the following:

(a) Immediate payment of the Unpaid Amount;

(b) Interest at the rate of 12% per annum on the delayed payment from the default date;

(c) Costs of filing this claim including the fee for seeking legal advice; and

(d) Such further or other relief the Court finds fit.

Defence

12. The Defendant submits that clause 8.7.1 of the Agreement confer obligations and rights to a third party (the Defendant) which was never a contracting party to the Agreement. The Claimant and Maj Invest Inc., the contracting parties, have accepted the terms of the terms and conditions and responsibilities stipulated in the Agreement. The Defendant therefore submits that there is no direct contractual relationship between the Claimant and the Defendant.

13. The Defendant adds that for the Claimant's claim that the source for the payments received is irrelevant and should be disregarded as the Claimant received payments from Maj Invest Inc. and to rely on clause 8.7.1 would confer an obligation of payment on the Defendant whilst the obligation of payment of the fees lies with MajInvest Inc.

Discussion

14. The Agreement provides that the contractual parties are the Claimant and Maj Invest, a company incorporated under the Laws of USA. The scope of the Agreement defined in Clause 1.1 provides *"The Client (Maj Invest Inc) has engaged the Claimant to provide services in connection with the Client's requirements for incorporating an entity in the Dubai International Financial Centre ("DIFC"), seeking a license from the Dubai International Financial Services Authority ("DFSA") and provision of ongoing outsourced functions which are hereinafter referred to as ("Services")"*.

15. Clause 8.7 of the Agreement provides the following:

"Successors and Assigns

8.7.1 upon the incorporation of the entity for which you are seeking the regulatory license from the DFSA, this agreement will be assigned to that entity from the date of its incorporation.

8.7.2 Except for the assignment referred to in clause 8.7.1, this Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that the Agreement shall be assignable by the Client without company's consent in the event the Client is acquired by or merged into another corporation or business entity. The benefits and obligations of this Agreement shall be binding upon the inure to the parties hereto, their successors and assigns."

16. At the Hearing, it was confirmed that the DIFC Entity was incorporated on XX December 2020 and the DFSA License was received on XX September 2021.

17. Therefore, pursuant to Clause 8.7.1, this Agreement was automatically assigned to the Defendant on XX December 2020 upon the incorporation of the DIFC entity. As such, I find that the Defendant in this claim is the right party.

18. Clause 4 of the Agreement provides the following:

"4. Term and Termination

4.1 Term

This Agreement shall be effective as of the date the second party signs the Agreement and shall continue in full force and effect for a period of 12 months.

4.1.1 services referred to in clauses 1.1.1 and 1.1.5 will commence from the date on which the Second Party signs the Agreement

4.1.2 services referred to in clause 1.1.2, 1.1.3 and 1.1.4 will commence from the date on which you receive your final license from the DFSA

4.1.3 for services referred to in clause 1.1.2, 1.1.3 and 1.1.4, in the Client terminates the Agreement whether for cause or not, prior to the completion of the initial 12 months period, the fees applicable to the remainder of the period from the date of termination will become immediately due and payable."

19. The Agreement was signed on 25 August 2020, which was the date of commencement and as per Clause 4.1 of the Agreement, it shall run for a period of 12 months. Therefore, the Agreement automatically expired on 25 August 2021.

20. However, in relation to the services referred to in clause 1.1.2, 1.1.3 and 1.1.4, the commencement date is set out to be the date the Defendant receives the DFSA license, pursuant to Clause 4.1.2 of the Agreement.

21. The DFSA License was issued on XX September 2021, and the services pursuant to clause 1.1.2, 1.1.3 and 1.1.4 commenced pursuant to clause 4.1.2.

22. On 11 October 2021, the Defendant provided the Claimant with an email terminating the services in clause 1.1.2, 1.1.3 and 1.1.4. The Defendant referred to clause 4.2.1 of the Agreement which provides as follows:

> "Subject to clause 4.1 you may terminate this Agreement after giving us a 60 days prior written notice. You may terminate this Agreement immediately for "Cause". Cause means: "notwithstanding clauses 1.2, 1.3, 1.5 and 1.6, we have failed to provide the services referred to in 1."

23. The Defendant submits that the services defined in 1.1.2, 1.1.3 and 1.1.4 of the Agreement were not provided by the Claimant, therefore, it terminated the Agreement for cause.

24. However, Clause 4.1.3 of the Agreement, provides that whether the Defendant terminated the Agreement for cause or not, prior to the completion of the initial 12 months period, the fees applicable to the remainder of the period from the date of termination become immediately due and payable.

25. The Claimant only claimed the payments in relation to monthly retainer of USD 3,060 and USD 1,350 for providing a finance officer (clause 1.1.3) and bookkeeper (clause 1.1.4) in the total sum of USD 55,566 (including 5% VAT).

26. I find that the DFSA License was issued on XX September 2021, therefore, the Defendant is liable to pay the Claimant the monthly retainer until 14 September 2022 in the sum of USD 55,566.

Conclusion

27. In light of the aforementioned, the Defendant shall pay the Claimant the sum of USD 55,566 plus interest accruing at the rate of 9% per annum from the date of this Judgment until the date of full payment.

28. The Defendant shall pay the Claimant the Court fees in the sum of USD 2,777.80