THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE SMALL CLAIMS TRIBUNAL

BETWEEN

LAVEN

Claimant

and

LAVALI

Defendant

ORDER WITH REASONS OF SCT JUDGE DELVIN SUMO

UPON reviewing the Claim Form submitted by the Claimant dated 25 July 2021 (the "Claim")

AND UPON this Claim having been called for a Consultation before SCT Judge Delvin Sumo on 17 August 2021

AND UPON the Claimant's and the Defendant's representatives attending the Consultation

AND UPON reviewing the case file and submissions contained therein

IT IS HEREBY ORDERED THAT:

1. The Claim shall be dismissed.

2. The DIFC Courts do not have jurisdiction over this Claim.

3. Each party shall bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of Issue: 18 August 2021
At: 9am

SCHEDULE OF REASONS

The Parties

1. The Claimant is Laven, a company registered in Sharjah, UAE (the "Claimant").

2. The Defendant is Lavali, a company registered in Dubai, the UAE (the "Defendant").

Discussion

3. Article 5(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended, (the "JAL") sets out the DIFC Courts' jurisdiction over:

> i. "(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;
>
> ii. (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;
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> iii. (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; . . .
>
> iv. (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."

4. Pursuant to Article 5(A)(2) of the JAL, the DIFC Courts can exercise its jurisdiction over a matter that is unrelated to the DIFC, where the parties have agreed in writing that any dispute arising between them would be referred to the DIFC Courts for adjudication. Such a provision would allow the parties to `opt-in' to the DIFC Courts' jurisdiction, provided that it clearly demonstrates the parties' intention to do so.

5. The Claimant filed its Claim with the DIFC Courts Small Claims Tribunal (the "SCT") seeking the payment of sums allegedly owed to the Claimant by the Defendant in relation to a purchase order dated 11 June 2020 (the "Agreement"). Upon reviewing the Agreement and the additional documents submitted by the Claimant, it appears that the Agreement and the additional documents do not contain an express clause by virtue of which the DIFC Courts would be able to exercise jurisdiction over the Claim in accordance with Article 5(A)(2) of the JAL. Instead, it appears that the additional documents contain a clause which sets out the parties' intention to refer any disputes relating to the Agreement to the Courts of Bologna, in Italy. The relevant wording of the clause is set out below:

> "The Terms and Conditions of Sales and the Agreement, for any dispute deriving from the supply relationship, are governed by Italian Law, courts of Bologna - Italy that is exclusively competent".

6. In light of the aforementioned, I am of the view that, in absence of a clear written opt-in clause to the DIFC Courts' jurisdiction between the parties, the DIFC Courts cannot adjudicate this Claim. Moreover, the DIFC Courts do not have default jurisdiction over this claim as the parties are both based outside of the DIFC and the other gateways of the JAL do not apply.

7. Therefore, I dismiss the Claimant's Claim for AED 43,998.19 on the grounds that the DIFC Courts lacks jurisdiction over this Claim.

Conclusion

8. The Claimant's Claim is dismissed due to the Courts' lack of jurisdiction.

9. Each party shall bear their own costs.