Claim No. SCT 027/2018

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 AYESHA BIN KALBAN

BETWEEN

IBIDUN / IBRAT

Claimant

and

IDHANT

Defendant

Hearing:**23 April 2018**

Judgment:**29 May 2018**

JUDGMENT OF SCT JUDGE AYESHA BIN KALBAN

UPON the Claim Form being filed on 14 January 2018;

UPON the Defendant acknowledging service of the Claim Form and indicating his intent to defend all of the Claim on 17 January 2018;

UPON the parties being called on 24 January 2018 for a Consultation with SCT Judge Natasha Bakirci and the parties not having reached settlement;

UPON a final Hearing having been held before SCT Judge Ayesha Bin Kalban 23 April 2018, with the Claimant's representative and the Defendant in attendance;

UPON the parties making final submissions in the case on 9 May 2018 for Claimant's submission and 16 May 2018 for Defendant's submission;

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT the claim is dismissed for lack of jurisdiction.

Issued by:

Ayesha Bin Kalban

SCT Judge

Date of issue: 29 May 2018

At: 10am

THE REASONS

Parties

1.The Claimant is Ibidun, a bank providing financial services including credit cards and personal loans to customers (the "Claimant").

2. The Defendant is Idhant, a Pakistani National and a customer of the Claimant (the "Defendant").

Background

3. The parties entered into an agreement on 27 March 2007, for a personal loan in the amount of AED 72,500 with an agreed interest rate of 9.75%. The Defendant provided payments on the loan until 13 October 2009. The Claimant alleges that AED 35,335.65 of this loan remains outstanding to the bank and thus the Defendant is liable for this amount. Following the Defendants' failure to keep up with his repayments, the Claimant filed a claim to recover the amounts on 14 January 2018 (the "Claim").

4. In support of its Claim, the Claimant submitted a Personal Loan Application and Statement of Account relevant to the Defendant's personal loan. These documents reflected a loan of AED 72,500 being agreed in 2007 and payments ceasing from the Defendant in October 2009. Neither of these documents, nor anything else submitted by the Claimant indicated that the parties had agreed to the jurisdiction of the DIFC Courts.

5. The Defendant indicated his intention to defend against all of the Claim. The Defendant objected to the claim in full, stating that the Claimant had not followed-up on this claim for numerous years and had otherwise indicated to him that the matter was closed. Furthermore, the Defendant objected that the Claimant had lost certain guarantee cheques provided to the Claimant without sufficient due diligence to follow-up on this loss. The Defendant submitted numerous documents in support of his objections to the Claimant's handling of his loan and cheques.

6. The parties met for a Consultation with SCT Judge Natasha Bakirci on 24 January 2018 but were unable to reach a settlement.

7. At and after the Consultation the parties engaged in significant back and forth regarding the lost cheques. The Defendant continued to object to the Claimant's handling of the matter. While the SCT Judges and Registry attempted to assist the parties resolve the issue of the lost cheques, the parties were unable to agree on the issue. As the issue of the lost cheques was not a legal issue in the Claim (the Defendant failed to file any counterclaims), the lost cheques will not be addressed in this Judgment.

8. On 23 April 2018, I heard final oral submissions from the Claimant's representative and the Defendant. Both parties were given the opportunity to make post-Hearing submissions.

Discussion

9. I find that this dispute falls outside of the jurisdiction of the DIFC Courts. Although the Defendant did not formally apply to contest jurisdiction, I must highlight that any judge of the DIFC Courts must take into account the jurisdiction of the court to adjudicate any claim before it, regardless of the parties' submissions on the issue.

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

11. 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."

12. There is no evidence of any of these gateways having the potential to apply in this case. Neither of the parties are DIFC Bodies or Establishments. The relevant contracts were not partly or wholly concluded or performed within the DIFC. In fact, there is no alleged connection to the DIFC. There is no other relevant DIFC Law or Regulation granting jurisdiction in this matter. Finally, the parties have not agreed in writing to file such claim or action within the DIFC Courts. The Claimant has not presented any written contract or agreement including such a jurisdictional clause.

13. Therefore, as none of the relevant jurisdictional gateways of the Judicial Authority Law apply to this case, I must conclude that this case falls outside of the jurisdiction of the DIFC Courts.

Finding

14. This is a very straightforward matter, 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.

15. Each party shall bear their own costs.

Ayesha Bin Kalban

SCT Judge

Date of issue: 29 May 2018

At: 10am

