Claim No. SCT 107/2020 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 TRIBUNALBEFORE SCT JUDGE MAHA AL MEHAIRI BETWEEN THE LIUDEN LLC Claimant and LENNA Defendant Hearing : 28 June 2020 Further Submissions : 5 August 2020 Judgment

Claim No. SCT 107/2020

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 MAHA AL MEHAIRI

BETWEEN

THE LIUDEN LLC

Claimant

and

LENNA

Defendant

Hearing	**: 28 June 2020**
Further Submissions	**: 5 August 2020**
Judgment	**: 19 August 2020**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 25 March 2020

AND UPON the Defendant filing a Counterclaim on 31 March 2020

AND UPON a Consultation being held before SCT Judge Delvin Sumo on 28 April 2020

AND UPON the parties failing to reach a settlement at the Consultation

AND UPON a second hearing having been listed before SCT Judge Maha Al Mehairi on 28 June 2020, 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 AED 40,016.75.

2. The Defendant shall pay the Claimant a portion of the Court fee in the sum of AED 2,002.21.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 20 August 2020
At: 10am

THE REASONS

The Parties

1. The Claimant is The Liuden LLC (the "Claimant"), a construction company established in Dubai, UAE.

2. The Defendant is Lenna (the "Defendant"), an individual that retained the Claimant's services to renovate her villa located in Dubai, UAE.

Background and the Preceding History

3. The underlying dispute arises over a conflict between the parties pursuant to an Agreement dated 24 June 2019 (the "Agreement"), in relation to the renovation of two rooms in the Defendant's property.

4. During the course of the renovation, the Defendant included additional works to the agreed scope of the Agreement. On 13 December 2019, without any prior notice, the Defendant terminated the Agreement. The Claimant attempted to resolve the matter amicably but was unable to do

so.

5. On 25 March 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming AED 40,016.75 being the amount owed to the Claimant for the work done in the property, in addition to the Court filing fee.

6. On 31 March 2020, the Defendant filed a defence and counterclaim, denying the Claimant's claim in its entirety. In the Counterclaim, the Defendant claims:

(a) Damages representing the cost of completing the works that the Claimant allegedly failed to complete;

(b) The costs of the Snag and Inspect report obtained by the Defendant in the sum of AED 2,625.00;

(c) General Damages;

(d) interest on all sums due; and

(e) Further or other relief to be ordered by the Court.

7. The parties met for a Consultation with SCT Judge Delvin Sumo on 28 April 2020 but were unable to reach a settlement. In line with the rules and procedures of the DIFC Courts' Small Claims Tribunal (the "SCT"), this matter was referred to me for determination, pursuant to a Hearing held on 28 June 2020.

The Claim

8. The Claimant's case is that he was appointed by the Defendant to work on the renovation of the bathroom in her villa. Upon the work commencing in the Defendant's villa, the Defendant included additional items to the scope of work that was previously agreed in the signed Agreement. On 13 December 2019, the Defendant terminated the Agreement without 7 days' prior notice, which is the agreed period of time for termination as set out in the Agreement.

9. The Defendant did not give any reasons for the termination at the time, and the outstanding amount owed to the Claimant was AED 40,016.75, the Defendant acknowledged that they are liable to pay the amount provided by the Claimant, and duly confirmed this by way of a message. However, they have not settled this payment to date.

10. The Claimant therefore seeks the payment of AED 40,016.75 and the Court fees associated with filing this Claim.

The Defence and Counterclaim

11. The Defendant confirms that she prevented the Claimant from returning to the premises as, she submits the level of works done were not up to standard. The Defendant submitted a snag list with photographic evidence in support of her submissions.

12. The Defendant is therefore seeking payment for the completion of work, damages representing the cost of completing the works that the Claimant allegedly failed to complete, the cost of the snag and inspect report that was conducted by a third party in the sum of AED 2,625.00, as well as general damages and interest on all sums claimed.

Discussion

13. This dispute is governed by DIFC Contract Law No. 6 of 2004 in conjunction with the relevant Agreement. Clause 33 of the Agreement sets out the parties' intention to opt in to the DIFC Courts' jurisdiction, and reads as follows:

"Governing Law and Disputes

33. Should any dispute arise between the parties relating to this Agreement that cannot be settled amicably the parties hereby agree that the dispute shall be subject to the exclusive jurisdiction of the DIFC Courts.

34. This Agreement shall be governed by and construed in accordance with the law of the Emirate of Dubai and the UAE."

14. I shall set out below each of the Claimant's claims, the Defendant's defence to each Claim, and accordingly, the Court's reasoning and finding. I have determined that retaining an expert to provide an opinion by way of a report would not be appropriate in these circumstances, seeing as works conducted on site were left for a period of time, and therefore the quality of the work may have deteriorated over this period. Therefore, the Court shall rely on the parties' submissions and the pictures provided by the Defendant.

15. Upon her decision to terminate the Claimant's Agreement, the Defendant refused the Claimant access to the site resulting in the Claimant being unable to finish the works. The Defendant denied the Claimant the option to rectify unsatisfactory works within 7 days before termination, in breach of Article 28 of the Agreement, which reads as follows:

"Consequences of Failure by Either Side

28. Should the Contractor fail to carry out the Works or fail to make reasonable progress with the Works, the Client may notify the Contractor in writing that, unless the Contractor corrects his failure within seven days following the notice, the Client shall to terminate the Agreement without further notice. The Client may then engage other contractors to complete the Works. The Contractor is entitled to be paid a fair price for the Works already carried out by it in accordance with the prices on the Quotation.

29. If the Client fails to allow the Contractor proper access to carry out the Works or disrupts the work by employing third party contractors or fails to make payment of monies due on time, or fails to supply any materials required for the works, the Contractor may notify the Client in

writing that, unless he corrects his failure within 7 days following the notice, the Contractor shall terminate the Agreement. The Contractor is entitled to be paid a fair price for the work carried out and for materials already purchased as per the prices on the Quotation and for manpower already allocated to the Project for the duration of the remaining project timeframe to the extent that it cannot be reallocated and provided always that the Contractor shall use reasonable endeavours to mitigate any such losses.

30. Should the client decide to cancel the project prior to it commencing, any deposit / advance payment paid shall be retained in full by the Contractor for its time and efforts made and for reserving a slot for the project."

16. During the hearing, the Claimant submitted that it was willing to go back to the site and carry out the works set out in the snag list presented by the Defendant with the option to be compensated for the work carried out before the Defendant denied it access to the premises. The Defendant refused to pay any amount to the unsatisfactory work and also denied entry to the Claimant, submitting that it does not wish for the Claimant to return to her home.

17. Upon examining the evidence presented by the Defendant, I find that all the issues highlighted appear to be simple repairs which would have been rectified by the Claimant should the Defendant had not denied it entry.

18. The Court finds that the Claimant is entitled to the amount claimed for the work it had carried out. The Defendant shall bear the cost for the snag list due to their failure to pay the amount for the works that have been done and for failing to allow access to the Claimant to rectify the snag list.

19. The Court finds the Defendant's counterclaim is without merit as it appears that the Defendant is claiming amounts for work that have not been undertaken nor commenced by the Claimant before it was denied entry.

20. The Claimant seeks to recover the fee that it has paid to the Court for the filing of this Claim. I am of the view that, as the Claimant has been successful on its claims, it should be entitled to recover the fee.

Conclusion

21. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 40,016.75.

22. The Defendant shall pay the Claimant the court fee in the amount of AED 2,002.21

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
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