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

MINNI

Claimant

and

MITHAL

Defendant

Hearing : **6 June 2022**
Further Submission: **8 June 2022**
Judgment : **15 June 2022**

JUDGMENT OF H.E. JUSTICE NASSIR AL NASSER

UPON a Hearing having been listed before H.E Justice Nassir Al Nasser on 6 June 2022, with the Claimant and the Defendant's representative 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 45,771.41 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's counterclaim shall be dismissed.

3. The Defendant shall pay the Claimant the Court fees in the sum of USD 2,288.57.

Issued by:
Ayesha Bin Kalban
SCT Judge and Registrar
Date of Issue: 15 June 2022
At: 11am

THE REASONS

Parties

1. The Claimant is Minni(the "Claimant"), a company registered in Dubai, UAE.

2. The Defendant is Mithal (the "Defendant"), a company registered in Israel.

Background and Procedural History

3. The underlying dispute arises over unpaid invoices pursuant to three identical Agreements. As per the Agreements, the Defendant engaged the Claimant to provide a leisure group event and destination management services to a number of customers.

4. The only difference in the Agreements is the date of signature and the date of the events. The First Agreement ("Agreement 1") dated 22 November 2020 was carried out in relation to an event held between 28 November 2020 to 16 December 2020. The Second Agreement ("Agreement 2") was also dated 22 November 2020 but was carried out in relation to an event held between 16 December 2020 to 23 December 2020. The Third Agreement ("Misunn Agreement") was dated 13 December 2020 and was carried out in relation to an event held between 16 December 2020 to 22 December 2020.

5. On 15 December 2021, the Claimant filed a claim for unpaid invoices against the Defendant seeking payment in the amount of USD 85,806.02.

6. On 12 January 2022 and 4 March 2022, the Defendant filed its defence and counterclaim.

7. The parties met for a Consultation with SCT Judge Ayman Saey on 26 January 2022, 21 February 2022 and 23 February 2022 but were unable to reach a settlement.

8. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 29 March 2022, where I directed the parties to provide the Courts with an expert report. Following which, on 6 June 2022 a second hearing was listed, the Claimant's and the Defendant's representatives were in attendance.

Claim

9. The Claimant submits that as per the Agreements, the Defendant would provide passengers to the Claimant on flights from Israel to the United Arab Emirates and the Claimant would provide event and destination services to those passengers.

10. The Claimant submits that the Agreements do not foresee the payments based on variable and actual number of arrivals, but they are solely calculated based on the confirmed and agreed numbers as per the signed Agreements and the final rooming list provided by the Defendant.

11. The Claimant also submits that the Defendant failed to communicate to the Claimant any written cancellation notification as described in the Agreements. Pursuant to which the Claimant submitted the invoices as per the rooming list provided by the Defendant.

12. Clause 5 of all the Agreements reflect the cancellation terms for ground handling services

> "Cancellation Terms of Ground Handling Services
>
> If the contracted arrangements shall be cancelled, a written cancellation notification has to be submitted to the Claimant. the Cancellation fee applicable will be a percentage of the total estimated charges and will be calculated on a sliding scale. This total cancellation amount is subject to 5% VAT. Any deposits paid are included in the overall cancellation penalty: between 59 days and 30 days prior to First group arrival: 80% and between 29 days and first group arrival:100%...."

13. Furthermore, in relation to the Misunn Agreement, the Defendant requested various additional services that were handled by the Claimant. The additional services delivered during the program operation of Group Misunn have been invoiced accordingly for the amount of USD 24,010.02 as per invoice Misunn.

14. The Claimant submits that it had agreed on the last rooming list (number of passengers) provided by the Defendant, although it was less than 29 days without any charges. However, the Defendant's calculation is based on the actual number of people arrived. Therefore, the Claimant filed a claim in the SCT claiming the remainder payments of the invoices in the sum of USD 85,806.02.

Defence and Counterclaim

15. The Defendant confirms that both parties agreed to their contractual relationship.

16. The Defendant relies on clause 13 of the Agreements which stipulates that:

> "if the Contract becomes impossible to perform. due to government regulations. pandemic curtailment. or other emergencies making it illegal or impossible to provide the facilities . this contract maybe terminated".

17. Clause 5 of the Agreements stipulates in relation to the occurrence of Covid 19 Positive test results that:

> "the tour package for individual travellers can be cancelled free of charge with full refund.".

18. The Defendant submits that the services to be provided by the Claimant originally consisted of providing services to passengers of 5 flights. After the outbreak of the second wave of the Covid19 pandemic on 22 December 2020, the last two flights were cancelled, thus, leaving the Claimant to provide services to the passengers of the first 3 flights, dated 3 December 2020, 9 December 2020 and 16 December 2020.

19. On 14 December 2020, 2 days prior to the arrival of the group scheduled for 16 December 2020, the UAE Government introduced the requirement that all Israeli citizens will require a visa prior to travelling to the UAE. On 15 December 2020, the Defendant applied for visas for all passengers but around 45 passengers were not granted the visa before the date of the travel. A few other passengers were infected with Covid19 and were unable to travel and the Claimant was advised of this cancellation.

20. The Defendant submits that it has fulfilled its contractual liabilities and obligations towards the Claimant by making continuous payments to the Claimant in good faith in the amount of USD 450,000. However, it was noticed by the Defendant that the invoices were deliberately and artificially inflated, contrary to the agreement of the parties.

21. The Defendant submits that the Claimant breached the Agreements terms and conditions as various unlawful acts were committed, such as:

> (a) the Claimant failed to honour its contractual obligations as the quality of service provided was not in accordance with the Agreement's terms and conditions;
>
> (b) Despite the fact that the Claimant was notified of the unsatisfactory quality of services, the Claimant failed to rectify the defects found therein;
>
> (c) The Claimant was not committed to the standards and professionalism, as its team has argued with the Defendant's tour guides in front of the customers, and even refused to take the Defendant's calls to deal with such complaints;
>
> (d) The Claimant deliberately issued invoices with artificially inflated amounts, contrary to its legal and contractual obligations and liabilities.

22. The Defendant adds that due to the breaches, it has incurred damages as follows:

(a) The poor quality of service provided has negatively affected the Defendant's reputation;

(b) The Claimant's failure to provide the Defendant with accurate invoices against the provided services and then filing this case resulted to incurring an amount of AED 33,784.64 as consultation fees; and

(c) The Claimant's non commitment to the standards and professionalism, as they have contacted the Defendant's customers and advised them not to continue dealing with the Defendant and to retain services from the Claimant directly.

23. Therefore, the Defendant seeks the following relief:

(a) To dismiss the Claimant's claim in the amount more than USD 7,903;

(b) Set-off the loses the Defendant incurred for the damages and losses suffered as a result of the Claimant's conduct currently estimated to be in the amount of AED 70,000;

(c) Order that the Claimant to pay all Court costs, including the Defendant's legal representatives' costs and expenses; and

(d) Order any further and/or additional reliefs as the court may deem appropriate.

Discussion

24. Clause 4 of the Agreements provides that:

"All Cancellations must be made to Mufta in writing.

.No verbal cancellations or any form of changes will be accepted".

25. Clause 5 of the Agreements provides the following:

"Cancellation Terms of Ground Handling Services

If the contracted arrangements shall be cancelled, a written cancellation notification has to be submitted to the Claimant. the Cancellation fee applicable will be a percentage of the total estimated charges and will be calculated on a sliding scale. This total cancellation amount is subject to 5% VAT. Any deposits paid are included in the overall cancellation penalty: between 59 days and 30 days prior to First group arrival: 80% and between 29 days and first group arrival:100%....
Special cancellation conditions for Covid19 Positive tests results or Covid-19 Travel restrictions: The Tour package for individual travelers can be cancelled free of charge with full refund up to 72 hours prior to arrival in Dubai provided that the traveler produces an official laboratory test certificate confirming the travelers name, date of birth and Covid-19 positive test result. Mafin will be required to send the test results certification no later than 72 hours prior to arrival in Dubai. Exclusion from Free cancellation: Entry tickets to attractions such as Burj Khalifa At the Top, Dubai Frame will be charged in full.
If Dubai closes its Airport or if Israel closes its airport and there will be no flight connections between the countries due to Covid-19 travel restrictions, the full program can be cancelled free of charge and full refund will be granted. Exclusion from Free cancellation: Entry tickets to attractions such as Burj Khalifa At the Top, Dubai Frame will be charged in full."

26. Clause 13 of the Agreements provide the following:

"Force Majeure

If the contract becomes impossible to perform by either party due to act of God, war, government regulations, disaster, strikes, civil disorder, pandemic curtailment of transportation facilities (which prohibit 25% or more of the delegates from attending this program), or other emergencies making it illegal or impossible to provide the facilities or to hold the meeting, this Contract may be terminated for any one or more of such reasons by written notice form one party to the other provided that the reason for said termination is in effect in Dubai or the immediate surrounding area and is in effect within 30 days prior to the arrival of the first member of the group. In addition to the foregoing, should there be any acts of terrorism in the United Arab Emirates within 30 days prior to the arrival of the first member of the group which affect transportation facility and (which prohibit 25% of more of the delegates from attending this program), this contract may be terminated by written notice from one party to the other."

27. Due to the differences in the calculation between the Claimant and the Defendant, the determination of this claim would require the provision of a report made by an independent expert. Thus, the Courts issued an order for the provision of independent expert evidence.

28. The expert report provided the calculations pursuant to the last rooming list submitted by the Defendant. It also included the amounts calculated by the Claimant and difference between the Defendant's calculations and the amount as per the documents/mutual agreement.

29. The Expert found that the Claimant is entitled to the sum of USD 60,819.25. The Claimant accepted the calculations pursuant to the last rooming list but added an additional amount in relation to extra expenses incurred with the Misunn Group in the sum of USD 8,216.43.

30. The Defendant rejects the report and has a different view to the calculations. The Defendant makes its calculations based on the actual number of people arrived relying on Clause 13 of the Agreements. The Defendant also rejects the payments for tour guides and argues that this was included in the package. However, the Agreements do not make reference to the existence of guided tours. In response to this, the Defendant relies on an email dated 15 November 2020 prior to signing the Agreements which provided the itinerary for the 4 groups arriving and inclusions which referred to the Tour Leader "01 Tour Leader FOC on single sharing".

31. In relation to the guided tours, I find that the Claimant's email constitutes an offer which was accepted by the Defendant followed by Agreements signed by both parties, even though the Agreement does not refer to guided tours, but the intention was the acceptance with the inclusions as per the email. Therefore, I am satisfied with the Defendant's argument that the guided tours were included in the offer.

32. However, I do not agree with the Defendant's argument in relation to Force Majeure as per Clause 13 of the Agreement. This clause is clear in its interpretation, the Agreements were not impossible to perform, in fact, the Agreements were performed to all the groups. The Defendant had an obligation as per the Agreements to notify the Claimant prior to 29 days of the first group's arrival to avoid incurring a penalty.

33. The Claimant accepted the last rooming list provided by the Defendant which is after the 29 days period without any penalties to changes, however, any changes after the receipt of the last rooming list would be subject to penalty. Therefore, the Claimant provided its invoices as per the last rooming list provided by the Defendant. Thus, I am satisfied with the calculations made by the Expert in considering the Defendant's last rooming list, however, I shall only deduct the guided tour's expenses from the calculations.

34. The calculations as per the Expert Report provides that pursuant to the documents and Mutual Agreement the total amount is USD 510,388.72 of which the sum of USD 449,569.47 was paid by the Defendant, therefore, the remaining balance is USD 60,819.25 - 16,200 (being the guided tours deduction) = USD 44,619.25. In addition, the Claimant claims an extra sum of USD 8,216.43 which is the total amount for the tour guide room and dining and additionally confirmed service in relation to the Misunn Group. The Claimant submits that the Misunn Group balance should be USD 95,156.79 instead of USD 86,940, but again the calculations provided by the Claimant are not supported by receipts, the only receipt available is in the sum of AED 14,200 and by deducting the extras which are not in the package it amounts to AED 4,239.98/3.68 = USD 1,152.16.

35. Therefore, I shall take the Expert's Calculation into calculation as it reflects the figures as per the documentation available. In addition, I will add the sum of USD 1,152.16 as the receipt is available. Therefore, the total payment to be made by the Defendant to the Claimant is USD 45,771.41.

Counterclaim

36. In relation to the Counterclaim filed by the Defendant, the Defendant makes a number of arguments and seeks various forms of relief set out previously in this Judgment and need not be repeated hereto.

37. The Defendant has failed to provide evidence to clearly demonstrate the Claimant's breach of the Agreement or any evidence to its allegations made.

38. Therefore, I shall dismiss the Defendant's counterclaim for lack of evidence.

Conclusion

39. In light of the aforementioned, the Defendant shall pay the Claimant the sum of USD 45,771.41 plus interest accruing at the rate of 9% per annum from the date of this Judgment until the date of full payment.

40. The Defendant's counterclaim shall be dismissed.

41. The Defendant shall pay the Claimant the Court fees in the sum of USD 2,288.57.