Claim No. SCT 298/2020 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 OF DIFC COURTS BEFORE SCT JUDGE NASSIR AL NASSER BETWEEN LIV LIMITED Claimant and (1) LANDRY(2) LARISSA Defendants Hearing : 17 November 2020 Judgment :

Claim No. SCT 298/2020

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 OF DIFC COURTS
BEFORE SCT JUDGE NASSIR AL NASSER

BETWEEN

LIV LIMITED

Claimant

and

(1) LANDRY
(2) LARISSA

Defendants

Hearing : **17 November 2020**
Judgment : **22 November 2020**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON a hearing having been listed for me on 17 November 2020, with the Claimant's representative and the Defendants' representative in attendance

AND UPON reading the submissions and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendants are jointly or severally liable to pay the Claimant the sum of EUR 50,000 plus interest at the rate of 9% per annum from the date of this Judgment.

2. The Claimant's other claims shall be dismissed.

3. The Defendants shall jointly or severally pay the Claimant the Court fees in the sum of AED 10,909.75.

Issued by:
Nassir Al Nasser
SCT Judge
Date of Issue: 22 November 2020
At: 2pm

THE REASONS

The Parties

1. The Claimant is Liv Limited (the "Claimant"), a company incorporated in England and Wales.

2. The First Defendant is Landry (the "First Defendant"), the founder and managing director of the Second Defendant.

3. The Second Defendant is Larissa Group FZ-LLC (the "Second Defendant"), a company registered in Ras Al Khaimah, UAE.

Background and Procedural History

4. The underlying dispute arises in regards to an alleged breach of the Shareholder's Agreement dated 4 April 2019 (the "Agreement").

5. On 2 September 2020, the First Defendant filed his Acknowledgment of Service setting out his intention to defend all of the claim.

6. I shall consider the Acknowledgment of Service filed by the First Defendant as an Acknowledgment of Service on behalf of the Second Defendant also, seeing as he is the founder and the managing director of the Second Defendant.

7. The parties met for a Consultation with SCT Judge Delvin Sumo on 15 October 2020 but were unable to reach a settlement.

8. On 17 November 2020, a hearing was listed before me, at which the Claimant's and the Defendants' representatives were in attendance.

The Claim

9. The Claimant submits that it had entered into the Agreement with the Defendants following representations made by the First Defendant on behalf of the Second Defendant.

10. Under the Agreement:

(a) The Claimant was to invest EUR 50,000 (the "Subscription Monies"), which sum was to be paid into the bank account of the Second Defendant on execution of the Agreement pursuant to clause 2.1.2.

(b) The Second Defendant was to be converted from a free zone establishment in Ras Al Khaimah to a free zone limited company.

(c) The Claimant was to subscribe for 20% of the issued share capital.

11. Completion of the Agreement was conditional upon the satisfaction (or waiver at the Claimant's sole discretion) of various conditions (the "Conditions") as set out in clause 3, which provided as follows:

"3 CONDITIONAL COMPLETION

3.1 Completion is conditional upon the following conditions (the "Conditions") being satisfied or waived at ListaLista's sole discretion:-

3.1.1 the proper execution and provision of the attested and legalised Power of Attorney to Lista in accordance with clause 2.1.1;

3.1.2 the issue by the RAK Free Zone Authority of a new Company trade license;

3.1.3 completion of the formalities required to convert the legal form of the Company from a free zone establishment to a free zone limited liability;

3.1.4 the increase of the Company's share capital from AED 1,000 to AED 10,000; and

3.1.5 receipt of all necessary approvals and consents from the RAK Free Zone Authority and any other relevant authorities in the United Arab Emirates to enable Lista to become a Shareholder;

3.1.6 the issue of two (2) Shares to Lista; and

3.1.7 the issue of seven (7) Shares to LANDRY.

3.2 The Shareholders shall use their respective reasonable endeavours to procure that the Conditions are satisfied by no later than close of business on 31 May 2019 or such later date as may be agreed by Lista in its sole discretion (the "Long-Stop Date").

3.3 If the Conditions have not been satisfied by the Long-Stop Date then, subject to Clause 3.4, unless the Shareholders agree in writing to extend the Long-Stop Date:

3.3.1 Lista may give notice to the Company and LANDRYLinda requesting a full reimbursement of the Subscription Monies and any other liabilities, costs or expenses incurred in conjunction with this Agreement and the matters referred to herein (including, without limitation, any legal fees and any fees relating to the renewal of the trade licence of the Company together with any required penalties incurred by Lista on behalf of the Company whether directly or indirectly) and upon receipt of such notice the Company shall promptly reimburse Lista for such amount in full by way of direct transfer to a bank account nominated by Lista; and

3.3.2 this Agreement shall terminate and cease to be of effect.

3.4 If this Agreement terminates pursuant to Clause 3.3, this Clause 3.4 and Clauses 1, 11, 13, 15, 16 18, 22, 23 and 27 shall remain in full force and effect and termination shall not affect any party's accrued rights and obligations at the date of termination (including for breach of this Agreement)."

12. Clause 4 of the Agreement contained an indemnity in favour of the Claimant as follows:

"4 INDEMNITY

4.1 The Company and LANDRY shall each jointly and severally indemnify Lista against, pay on demand and make good all liabilities incurred, all damages and loss suffered, all claims demands actions and proceedings made or brought and all costs disbursements and expenses incurred by Lista, arising directly or indirectly as a result of (a) a breach of this Agreement by the Company or LANDRY and (b) the failure to satisfy any of the Conditions in clauses 3.1.1 to 3.1.4 (inclusive) or clause 3.1.6 (unless failure to satisfy such Condition was beyond the control of LANDRY and/or the Company)."

13. On 8 April 2019, the Claimant transferred the Subscription Monies to the bank account in accordance with clause 2.1.2 of the Agreement.

14. As at the Long-Stop Date (defined in paragraph 3.2 above), the following conditions set out in clause 3 of the Agreement had not been satisfied:

(a) Condition 3.1.1: the proper execution of the power of attorney by the First Defendant - this was only completed on 4 July 2019.

(b) Condition 3.1.3: completion of the formalities required to convert the legal form of the Second Defendant from a free zone establishment to a free zone limited liability company - this has still not been completed as a Memorandum of Association, an integral constitutional document, still has not been produced.

(c) Condition 3.1.4: the increase of the Second Defendant's share capital from AED 1,000 to AED 10,000 was not done before the Long-Stop Date - this was only completed on 12 September 2019.

(d) Condition 3.1.6: the issue of 2 shares in the Second Defendant to the Claimant - this was only completed on 12 September 2019.

15. The Claimant brings the following claims against the Defendants:

(a) A claim against the Defendants in deceit under article 31 of the DIFC Law of Obligations (the "Deceit Claim");

(b) A claim against the Defendants under clause 3.3.1 of the Agreement for the reimbursement of the Subscription Monies and other expenses, and/or a claim for indemnity from the First Defendant under clause 4 of the Agreement in respect of that reimbursement claim (the "Termination Claims")

(c) A claim against the Defendants for breach of the Agreement in relation to the administration of the Second Defendant, breaches of the duty of good faith and breach of warranty (together the "Breach Claims").

(d) The Claimant quantified the abovementioned claims to the sum of AED 360,800.77.

The Defence

16. The Defendants failed to file a defence, however, it was confirmed that the Claimant made an investment of EUR 50,000 to the Defendants.

17. The First Defendant alleges that the payment of EUR 50,000 was to be allocated, in the amount of EUR 40,000 to settle a dispute and EUR 10,000 was to be allocated to RAKEZ for the renewal of the Second Defendant's license.

18. At the hearing, the First Defendant submitted that the Second Defendant has been faced with financial difficulty and the First Defendant has suffered significant losses as a result of this. No supporting documents were filed by the Defendants to demonstrate this, nor am I of the view that this constitutes a defence to the claims brought by the Claimant.

Discussion

19. The Claimant claims as per the claim form:

(a) Damages for deceit.

(b) Reimbursement under clause 3 and/or indemnity under clause 4 of the Agreement.

(c) Damages for breach of clauses 5.1.2, 5.4, 6.1,7.1-7.4 and 20.2 of the Agreement.

(d) Damages for failure to comply with UAE Law.

(e) Interest.

(f) Costs

(g) Such further or other relief as the Claimant may request or as the court may consider appropriate in all circumstances.

20. The Claimant failed to quantify the damages or present any evidence that it had suffered pursuant to the Defendant's alleged breaches to the Agreement

21. The Claimant quantified the Claim to the sum of AED 360,800.77 which consists of the following:

(a) The Subscription Monies - EUR 50,000 or AED 218,145.84.

(b) Legal fees/legalization fees incurred in relation to the production of the Agreement AED 64,044.50.

(c) Other expenses related to the issue of shares in the company in the sum of AED 46,585.14.

(d) Pre-judgment and post Judgment interest at the rate of 9% per annum from 1 June 2019.

22. The quantified claim made by the Claimant is in relation to the reimbursement amount, pursuant to clause 3 and 4 of the Agreement.

23. Therefore, I shall only discuss whether the Claimant is entitled to a reimbursement pursuant to the above-mentioned clauses.

24. As mentioned above, the Defendants had an obligation to complete the conditions before the Long-Stop Date, defined above.

25. If the Conditions have not been satisfied by the Long-Stop Date then, subject to Clause 3.3, unless the Shareholders agree in writing to extend the Long-Stop Date:

"3.3.1 the Claimant may give notice to the Company and LANDRY requesting a full reimbursement of the Subscription Monies and any other liabilities, costs or expenses incurred in conjunction with this Agreement and the matters referred to herein (including, without limitation, any legal fees and any fees relating to the renewal of the trade licence of the Company together with any required penalties incurred by the Claimant on behalf of the Company whether directly or indirectly) and upon receipt of such notice the Company shall promptly reimburse the Claimant for such amount in full by way of direct transfer to a bank account nominated by the Claimant; and

3.3.2 this Agreement shall terminate and cease to be of effect."

26. Clause 4 of the Agreement provides that:

"The Company and LANDRY shall each jointly and severally indemnify the Claimant against, pay on demand and make good all liabilities incurred, all damages and loss suffered, all claims demands actions and proceedings made or brought and all costs disbursements and expenses incurred by the Claimant, arising directly or indirectly as a result of (a) a breach of this Agreement by the Company or LANDRY and (b) the failure to satisfy any of the Conditions in clauses 3.1.1 to 3.1.4 (inclusive) or clause 3.1.6 (unless failure to satisfy such Condition was beyond the control of LANDRY and/or the Company)."

27. The Defendants failed to present any evidence that the conditions were completed prior to the Long-Stop Date or whether the parties agreed in writing to extend it.

28. Therefore, I find that the Claimant is entitled to a reimbursement of the subscription monies paid to the Defendants in the sum of EUR 50,000.

29. In relation to the Claimant' claim for expenses, in accordance with clause 3.3 and clause 4 of the Agreement, the Claimant is entitled to a reimbursement of expenses incurred. However, the Claimant failed to provide evidence supporting this claim for expenses in the sum of AED 110,629.64, and therefore I find that this claim must be dismissed.

30. The Claimant claimed pre and post judgment interest at the rate of 9% per annum pursuant to Article 39 of the DIFC Court Law No. 10 of 2004 and Practice direction No. 4 of 2017 and Rule 36.31 of the Rules of the DIFC Courts.

31. Article 39 of the DIFC Court Law provides that "A proceeding in relation to damages under a judgment of the DIFC Court carries interest from the date the judgment is entered."

32. Practice Direction No. 4 of 2017 provides that "Any judgment of the DIFC Courts issued after the date of this Practice Direction shall carry simple interest, from the date the judgment is entered, at the rate of 9% or such other rate as the judge may prescribe."

33. RDC 36.31 provides that "Where interest is payable on a judgment pursuant to Article 39 of the Court Law 2004, the interest shall begin to run from the date that judgment is given".

34. The Agreement between the parties does not include clauses in relation to pre-Judgment interest.

35. Therefore, I find that the Claimant is entitled to post Judgment interest at the rate of 9% per annum pursuant to Practice Direction 4 of 2017.

Conclusion

36. In light of the aforementioned, I find the Defendants are jointly and severally liable to pay the Claimant the sum of EUR 50,000 plus interest at the rate of 9% per annum from the date of this Judgment.

37. The Claimant's other claims shall be dismissed

38. The Defendants shall jointly or severally pay the Claimant the Court fees in the sum of AED 10,909.75.

Issued by:
Nassir Al Nasser
SCT Judge
Date of Issue: 22 November 2020
At: 2pm