Claim No. SCT 241/2020 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 COURTSBEFORE SCT JUDGE NASSIR AL NASSER BETWEEN LIBBY Claimant and (1) LENNOX(2) LEXI GROUP LIMITED Defendants Hearing : 12 November 2020 Judgment :

Claim No. SCT 241/2020

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

LIBBY

Claimant

and

(1) LENNOX
(2) LEXI GROUP LIMITED

Defendants

Hearing : **12 November 2020**
Judgment : **17 November 2020**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON this claim being filed on 19 July 2020

AND UPON a Hearing being held before SCT Judge Nassir Al Nasser on 12 November 2020, with the Claimant's and the Defendants' representatives in attendance

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

IT IS HEREBY ORDERED THAT:

1. The First and Second Defendants are jointly and severally liable to pay the Claimant the sum of AED 927,918.62.

2. The First and Second Defendants are jointly and severally liable to pay the Claimant the Court fees in the sum of AED 46,395.93.

Issued by:
Nassir Al Nasser
SCT Judge
Date of issue: 17 November 2020
At: 2pm

THE REASONS

The Parties

1. The Claimant is Libby (the "Claimant"), the Landlord of a number of properties including Units within the DIFC, Dubai, UAE.

2. The First Defendant is Lennox (the "First Defendant"), a public stock company incorporated in the Emirates of Sharjah, UAE.

3. The Second Defendant is Lexi Group Limited (the "Second Defendant"), a DIFC Registered Company.

Background and the Preceding History

4. The Claimant as a landlord, the Second Defendant, as the Tenant, and First Defendant, as the parent company guarantor, entered into a lease relating to the offices dated 10 July 2017 (the "Lease").

5. On 28 August 2019, the Claimant and the First and Second Defendant entered into a Settlement Agreement (the "Settlement Agreement").

6. As per the Settlement Agreement, the Second Defendant had an obligation to settle the lease amount in relation to the Units 123 and 234. The First Defendant was the parent company guarantor under the Settlement Agreement.

7. The Second Defendant failed to pay the agreed sum set out in the Settlement Agreement in the amount of AED 927,918.62 which consisted of the following:

(a) The Invoice from July 2019 to January 2020 in the sum of AED 468,383.18;

(b) Reimbursement of expenses for the above-mentioned period in the sum of AED 64,908.47;

(c) The Invoice from January 2020 to 9 July 2020 in the sum of AED 302,048.61; and

(d) Reimbursement of expenses for the above-mentioned period in the sum of AED 92,677.36.

8. On 19 July 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming non-payment of the lease and other amounts plus post judgment interest at the rate of 12% per annum in the sum of AED 927,918.62.

9. The Defendants filed an Acknowledgment of Service setting out their intention to defend all of the claim.

10. The parties met for a Consultation with SCT Judge Delvin Sumo on 27 September 2020 but were unable to reach a settlement.

11. A Hearing before me was scheduled on 12 November 2020. The Claimant's and the Defendants' representatives attended the hearing

Discussion

12. The Settlement Agreement provides that: the Claimant (i) agree to the mutual termination of the Lease effective from 10 July 2019 (ii) withdraw its payment demand against LENNOX; and (iii) release, waive and discharge LEXI and LENNOX from their respective obligations arising under the lease, including any right by Libby to claim damages for LENNOX and LEXI's breaches with the exception to a participation to Libby lawyer fees of USD 15,000 on certain conditions.

13. On 28 August 2019, the parties entered into a Settlement Agreement which sets out the parties' liabilities under the Agreement

14. Clause 2.1 of the Settlement Agreement sets out the Second Defendant's liability towards the Claimant, which, the Claimant submits, has been breached by the Second Defendant.

15. Clause 2.1(a) of the Settlement Agreement provides that: "Notwithstanding the mutual termination of the Lease in accordance with clause 1 of the Settlement Agreement, the Second Defendant remains liable to the Claimant for the difference between the Annual Rent under the Lease.

16. Clause 2.2 of the Settlement Agreement reads as follows:

"subject to the provisions under clause 2.1 and where applicable, the Claimant shall invoice the Second Defendant for the Rent Shortfall as follows:

(a) The First Invoice shall be issued on 10 January 2020 for the 6 months period of 10 July 2019 to 9 January 2020; and

(b) The Second Invoice shall be issued on 10 July 2020 for the 6 months period of 10 January 2020 to 9 July 2020.

(c) The Second Defendant shall be liable only for the period that the said Units are not leased during the term up to 9 July 2020."

17. The Claimant filed its claim arguing that the Second Defendant failed to pay its liabilities in relation to the Units 123 and 234 as set out above and seeks payment in light of this.

18. Clause 3 of the Settlement Agreement provides that the First Defendant shall act as a Guarantor to the Second Defendant.

19. Clause 3.1 and 3.2 of the Settlement Agreement read as follows:

"3.1

in consideration for Claimants' compromises and other good and valuable consideration (the receipt and sufficiency whereof are hereby acknowledged by the First Defendant), the First Defendant unconditionally, absolutely and irrevocably hereby guarantees and covenants with the Claimant that Second Defendant will well and truly perform and observe all of the provisions of this Agreement, provided that if, for any reason whatsoever and in anyway the Second Defendant shall fail to perform the same, the First Defendant shall as a separate and continuing obligation forthwith upon demand:

a. Cause to be performed and observe such provisions as aforesaid so far as and to the extent that the Second Defendant is liable to perform and observe them, and

b. Be responsible to the Claimant for the payment of all monies, losses, damages, costs, charges and expenses that may or would have become payable to the Claimant by the Second Defendant pursuant to such provisions aforesaid by reason or in consequence of the default or delay of the Second Defendant in the performance of observance of such provisions.

3.2

the First Defendant Agrees to indemnify the Claimant upon demand against all losses, claims, costs charges and expenses, including, without limitation, attorney's fees and expenses to which the Claimant may be or become subject as a result of any default or delay by the Second Defendant in performing its obligations under this Agreement or as a result of the enforcement of this clause 3 of the Agreement."

Findings

20. At the hearing held on 12 November 2020, the Defendants' representative admitted the claim against the First and Second Defendants. However, the representative sought to agree on a settlement with the Claimant in light of the Defendants' financial circumstances. This request was rejected by the Claimant.

21. Therefore, I find that the First and Second Defendants are jointly and severally liable to pay the Claimant the sum of AED 927,918.62 which consists of the following:

(a) The Invoice from July 2019 to January 2020 in the sum of AED 468,383.18;

(b) Reimbursement of expenses for the above-mentioned period in the sum of AED 64,908.47;

(c) The Invoice from January 2020 to 9 July 2020 in the sum of AED 302,048.61;

(d) Reimbursement of expenses for the above-mentioned period in the sum of AED 92,677.36; and

22. The Claimant is also entitled to post-Judgment interest at the rate of 9% per annum from the date of the Judgment until the date of full payment.

23. The First and Second Defendants are jointly and severally liable to pay the Claimant the Court fees in the sum of AED 46,395.93.

Issued by:
Nassir Al Nasser
SCT Judge
Date of issue: 17 November 2020
At: 2pm