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 H.E. JUSTICE OMAR AL MUHAIRI

BETWEEN

FREEK

Claimant

and

FULVIA

Defendant

Hearing:**09 June 2015**

Submissions:**15 June 2015**

Judgment: **22 June 2015**

JUDGMENT OF H.E. JUSTICE OMAR AL MUHAIRI

Background

1.On 25 May 2015, the Defendant filed a Part 23 Application Notice ("Application") to stay the Judgment of H.E. Justice Omar Al Muhairi dated 24 May 2015 and requested a re-hearing. The Application was granted by an Order issued on 1 June 2015. Subsequently the Registry listed a re-hearing on 9 June 2015 before H.E. Justice Omar Al Muhairi.

2. On 9 June 2015, both the Claimant and the Defendant attended the hearing before me, during which I requested the parties to provide clarification of certain points.

3. On 9 June 2015, the Claimant filed an explanation and time line of the introduction to the Defendant, alleging that on 2 April 2014, the Claimant received a call from the Defendant to quote the supply of flowers to the Defendant's restaurant in Dubai Mall. The Claimant had a meeting with the Defendant in which they agreed on the type of flowers to be supplied and that the flowers should always be fresh and that they should be changed every four days. After which, the Claimant and the Defendant had other meetings to discuss the vases, design and scope of supply.

4. The Claimant submits that on 8 April 2014, the Claimant sent the Defendant an email defining the scope of supply based on what was decided by the Defendant. The scope of supply was agreed verbally and the Defendant approved the proposal provided by the Claimant and agreed that the date of supply would commence on 10 April 2014.

5. The Claimant also alleges that at the end of April/ early May they were called to a meeting by the Defendant in which they requested to be supplied with two additional large flower arrangements at the cost of AED 350.00 each, to be changed every four days. This increase in the scope of supply accounts for the increase in the monthly cost, over and above the original proposal.

6. On 1 July 2014, the Defendant in order to reduce costs cancelled one of these arrangements and another arrangement. On 2 July 2014, the Claimant received an email from the Defendant cancelling the supply to the Claimant. To date the Defendant failed to pay the Claimant for any of the invoices and AED 76,350.00 remains outstanding.

7. The Defendant in his submissions alleges that there was no formal agreement or cost agreement between the parties and the only document which indicated a price was the quotation. The price quoted AED 19,490 per month in the quotation on 9 April 2014. However, the cost per month increased by AED 10,400 up to AED 29,890 per month and without agreement by or request in writing by the Defendant.

8. The Defendant also alleges that the Claimant advised that he received the agreement from one of the Defendant's representatives XXXX to increase the scope of supply & costs per month but did not provide any evidence supporting his claim. However, the Defendant attached an email by XXXX to the Claimant requesting a contract on 17 April 2014 which the Claimant failed to provide.

9. The Defendant also provided evidence on April and May 2014 delivery dockets, in which during the hearing the Claimant alleged that the store staff had acknowledged and signed for deliveries that contained both units and monetary values of items delivered but in fact the monetary value was not included on these dockets.

10. In my recent judgment in this case I held that the quotation is a binding contract that the DIFC Courts have Jurisdiction to hear and determine this case. I refer to paragraphs 9 to 15 of that judgment which state the following:

"The Quotation to Supply proposal:

9. The first issue deals with the Quotation to supply proposal dated 9 April 2014 and whether it was a valid, binding contract for the supply of flowers to the Defendant. I am of the opinion that the quotation proposal constituted a valid, binding contract pursuant to DIFC Contract Law, Law No. 6 of 2006, Part 3, Sections 14 & 15 which state:

"PART 3: FORMATION

14. **Manner of formation**

A contract is concluded by the acceptance of an offer.

15. **Definition of offer**

A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance."

10. It is clear that the quotation proposal constituted an offer as it sufficiently indicated the intention of the Claimant to be bound in case of acceptance by the Defendant and further, the offer was accepted by the Defendant through his conduct in demanding flowers from the period of April 2014 to July 2014.

Jurisdiction

11.The Claimant Freek is a company registered in Dubai and located in Dubai Flower Centre, Al Ittihad Road, Dubai, UAE, incorporated under the laws of the UAE. The Defendant Fulvia is a company incorporated under the laws of the UAE and is registered in the UAE.

12. These proceedings arise out of a written contract between the Claimant and the Defendant dated 9 April 2014. The Defendant accepted the contract by agreeing to the supplies from the period of April 2014 to July 2014 in respect of which the invoices provided are proof of acceptance. The provision relating to jurisdiction set out in the contract reads as follows:

> "Jurisdiction.
>
> Any dispute arising out of or in connection with this proposal, including any question regarding its existence, validity or termination, shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre."

13. Article 5(2) of Law No. 16 of 2011 amending Law No. 12 of 2004 provides as follows:

> "The Court of First Instance may hear and determine any civil or commercial claims or actions where the parties agree in writing to file such claim or action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

14. With regards to the Small Claims Tribunal in particular, Rule 53.2 of the Rules of the DIFC Courts (RDC) provides:

"The SCT will hear and determine claims within the jurisdiction of the DIFC Courts:

> (1) where the amount of the claim or the value of the subject-matter of the claim does not exceed AED 100,000; or
>
> (2) where the claim relates to the employment or former employment of a party; and
>
> (a) the amount of the claim or the value of the subject-matter of the claim does not exceed AED 200,000; or
>
> (b) all parties elect in writing that it be heard by the SCT (there is no value limit for the SCT's elective jurisdiction in the context of employment claims);
>
> (3) which do not fall within the provisions of sub-paragraphs (1) or (2) above, but in respect of which:
>
> (a) the amount of the claim or the value of the subject-matter of the claim does not exceed AED 500,000; and
>
> (b) all parties to the claim elect in writing that it be heard by the SCT;
>
> ."

15. In fact, in the proposal dated 9 April 2014, the parties agreed to confer jurisdiction to hear the present dispute to this Court and the conduct of the Defendant is considered as acceptance of the proposal. Therefore I am satisfied that this Court has exclusive jurisdiction to hear and determine this Claim."

Defendant's Liability

16. The Claimant attached 12 invoices to support his claim from the period of April 2014 to July 2014 for the supply of flowers in the total amount of AED 76,350.00, below are the details of the invoices:

540. INV # 14521 dated 17 April 2014 in the amount of AED 540.00

541. INV # 14582 dated 30 April 2014 in the amount of AED 13,150.00

542. INV # 14651 dated 31 May 2014 in the amount of AED 29,890.00

543. INV # 14678 dated 2 June 2014 in the amount of AED 4,270.00

544. INV # 14679 dated 7 June 2014 in the amount of AED 4,270.00

545. INV # 14684 dated 11 June 2014 in the amount of AED 4,270.00

546. INV # 14695 dated 14 June 2014 in the amount of AED 270.00

547. INV # 14696 dated 15 June 2014 in the amount of AED 4,270.00

548. INV # 14705 dated 19 June 2014 in the amount of AED 4,270.00

549. INV # 14713 dated 23 June 2014 in the amount of AED 4,270.00

550. INV # 14725 dated 28 June 2014 in the amount of AED 4,270.00

551. INV # 19000 dated 2 July 2014 in the amount of AED 2,610.00

17. As I said above there is a binding contract between the Claimant and the Defendant which commenced on 9 April 2014. It is clear that the Claimant started the delivery of the flowers on 17 April 2014 as shown in INV # 14521 dated 17 April 2014, in the amount of AED 540.00. Also the email dated 19 June 2014 between the Defendant's employees XXXX and SAM﷽confirmed that the Claimant is a Flower Supplier of the Defendant.

18. Furthermore, SAM﷽sent an email to the Claimant's MD HIJ dated 2 July 2014 which stated that the top management of the Defendant decided to stop getting flowers from the Claimant. It is clear that the Defendant knew that there was a binding contract with the Claimant and terminated it by this email.

19. Article 86 of the DIFC Contract law No.(6) 2004 provides the following as regards a party's right to terminate a contract:

> "(1) A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.
>
> (2) In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether:
>
> (a)﷽ the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract;
>
> (b) strict compliance with the obligation which has not been performed is of essence under the contract;
>
> (c)﷽ the non-performance is intentional or reckless;
>
> (d) the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance.
>
> (3) In the case of delay the aggrieved party may also terminate the contract if the other party fails to perform before the time allowed under Article 81 has expired."

20. Article 90 of the DIFC Contract Law No.(6) 2004 states that:

> "(1) On termination of contract pursuant to Articles 86 or 88 either party may claim restitution of whatever it has supplied, provided that such party concurrently makes restitution of whatever it has received. If restitution in kind is not possible or appropriate allowance should be made in money whenever reasonable.
>
> (2) However, if performance of the contract has extended over a period of time and the contract is divisible, such restitution can only be claimed for the period after termination has taken effect."

21. When reading this provision with due consideration to the evidence brought by the Claimant before the Court, specifically the quotation to supply fresh floral arrangements to the Defendant dated 9 April 2014 and the 12 invoices from the period of 17 April 2014 to 2 July 2014 for the supply of flowers in the total amount of AED 76,350.00, I find that the Claimant has fulfilled his obligations by delivering the flowers to the Defendant, who has no objection as to the quantity or quality of the flowers.

22. However, the Defendant failed to provide any evidence before me that the flowers have not been delivered or that the invoices have been paid.

23. In my judgment I am satisfied that there is a binding contract and the Defendant has terminated it, so the Defendant must pay the outstanding amount as per the above Invoices.

24. For the reasons stated above, it is hereby decided that the DIFC Courts in general and the Small Claims Tribunal in particular have jurisdiction to hear and determine the dispute in question and the Defendant's application to contest jurisdiction is dismissed and the Defendant shall pay the sum of AED 76,350 to the Claimant.

FOR THE ABOVE MENTIONED REASONS IT IS ORDERED THAT:

25. The Defendant's application to contest jurisdiction is denied.

26. The Court has jurisdiction to hear and determine this claim.

27. The Defendant shall pay the Claimant the sum of **AED 76,350.00**.

28. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

Judicial Officer

Date of issue: 23 June 2015

At: 2pm