THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL
BEFORE H.E. JUSTICE MAHA AL MHEIRI

BETWEEN

LAJITA

Claimant

and

(1) LAKSHAN
(2) LAKNI
(3) LAJJAK
(4) LALAM

Defendants

Hearing : **26 May 2021**
Further Submissions : **7 June 2021**
Judgment : **24 June 2021**

JUDGMENT OF H.E. JUSTICE MAHA AL MHEIRI

UPON this Claim being filed on 21 December 2020

AND UPON a hearing having been listed before H.E. Justice Maha Al Mheiri on 26 May 2021, with the Claimant and the First and Third Defendants attending, and the Second and Fourth Defendants failing to attend

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

AND PURSUANT TO Rule 53.61 of the Rules of the DIFC Courts the ("RDC")

IT IS HEREBY ORDERED THAT:

1. The First Defendant shall pay the Claimant the amount of AED 660,000 in relation to the Promissory Note (the "Judgment Sum").

2. The First Defendant shall pay the Claimant the Court fee in the amount of AED 33,000.

3. The First Defendant shall pay interest to the Claimant on the Judgment Sum from the date of this judgment, until the date of full payment, at the rate of 9% annually.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of Issue: 24 June 2021
At: 10am

THE REASONS

Parties

1. Lajita (the "Claimant") is an individual that provided the First Defendant with a financial loan (the "Defendant").

2. Lakshan (the "First Defendant") is an individual that availed of a loan from the Claimant.

3. Lakni (the "Second Defendant") is an investment company located in Switzerland.

4. Lajjak (the "Third Defendant") is an individual that owns the Second and Fourth Defendant.

5. Lalam (hereafter the "fourth Defendant") is a company in liquidation located in Switzerland.

Preceding History

6. The underlying dispute arises over a promissory note ("Promissory Note") dated 18 November 2018, between the Claimant and the First Defendant, where the First Defendant has received from the Claimant the amount of AED 660,000 (the "loan"). The Loan was agreed to be repaid

in full by 9 December 2018 by way of a postdated cheque, which the First Defendant failed to fulfill when the first postdated cheque was rejected.

7. The First Defendant did attempt to rectify the situation by providing a second postdated cheque to the Claimant, but due to the fact that the First Defendant was located outside the UAE, the delivery of the second Postdated cheque was done through the Third Defendant's company. The second Postdated cheque also returned due to insufficient funds.

8. As a result, on 21 December 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking the amount of AED 880,549.32 which comprises of:

(a) AED 660,000 being the Loan amount;

(b) AED 178,443.39 which is 12% Interest on the Loan from 10 December 2018 until filing of the claim; and

(c) AED 42,105.92 for the filing fee and the application to serve by email.

9. The matter was called for Consultation before H.E. Justice Nassir Al Nasser on 19 May 2021, with the Claimant and First and Third Defendants attending the Consultation, however the parties failed to reach an agreement.

10. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 26 May 2021 with the Claimant, First and Third Defendants in attendance and the rest were absent although served with notice.

11. RDC 53.61 of the Rules of the DIFC Courts stipulates that "if a defendant does not attend the hearing and the claimant does attend the hearing, the SCT may decide the claim on basis of the evidence of the Claimant only".

12. After the Hearing, I ordered the parties to submit additional information, which was submitted on 7 June 2021.

The Claim

13. The Claimant contends that he signed a Promissory Note loaning the First Defendant the amount of AED 660,000 as stated below:

"November 18th,2018



Promissory Note



I, Lakshan hereby attest to have received the sum of six hundred sixty thousand dirhams (660,000 AED) from Lajita. These said funds of 660,000 AED are to be repaid to Lajitain full by December 9th,2018. These funds will be repaid in one or more of the following means as mutually agreed between the parties:

a) AED in cash,

b) AED Manager's check

c) AED wire transfer

d) EUR/USD wire transfer from Laukik Group in Switzerland as a "Non Recourse Loan"

Moreover, the repayment of these said funds of six hundred sixty thousand dirhams (660,000 AED) are mutually exclusive to any past, current or future business activities and/or transaction(s), as such are not in any matter whatsoever linked to the success or failure of any past, current, or future business activities and/or transaction(s).

The terms and conditions constitute the entire Promissory Note and understanding between Lakshan and Lajita with respect to the payment of said funds and supersedes all prior discussions whether in verbal or written communication, related to this subject matter."

14. At the time of signing the Promissory Note, the First Defendant issued the first postdated cheque with the amount to be paid to the Claimant, which returned. Due to the fact that the First Defendant was not located in the UAE, the Third Defendant provided the address of the Fourth Defendant for the parties to exchange postdated cheques. The second posted cheque also returned, which resulted in the Claimant filing the Claim against the Defendants.

The Defence

15. The First Defendant's main argument is that he does not oppose the Promissory Note that was signed between him and the Claimant, but submits that he is facing financial difficulties preventing him from making the payment.

16. The Third Defendant contends that he is not a contracting party to the Promissory Note, therefore he contends that he bears no obligation towards the Claimant and the First Defendant. He also adds that he acted as a middleman between the parties due to the fact that the Claimant was located outside of the UAE. Finally, the Third Defendant states that he did not have access to the First Defendant's bank account to be able to foresee the return of the second postdated cheque and rejects the Claimant's claims in their entirety.

Discussion

17. The terms of the Promissory Note shared by the Claimant states that the dispute is governed by the DIFC Law and the Small Claims Tribunal. The relevant Terms of the Promissory Note are, as stated below:

> "This Promissory Note shall be governed by, and constructed in accordance with, the laws of the Courts of the Dubai International Financial Center (Small Claim Tribunal) United Arab Emirates (UAE). {if for whatever reason Lajita and Lakshan are unable to mutually resolve any dispute over the enforcement of this agreement before December 31st. 2018. Lajita reserves the right to appoint any jurisdiction to enforce this agreement and the legal costs associated with the enforcement of the agreement will be borne by Lakshan}"

18. When assessing the validity of the Claimant's claim, I shall discuss each of the key issues in this case in turn, taking into consideration the parties' connection to this dispute.

19. In essence, this is a simple case concerning an unpaid loan by the First Defendant, the First Defendant did not at any time reject the content of the Promissory Note or the Loan. The only statement made by the First Defendant is that he is going through financial difficulties due to his health and cannot meet this financial obligation. Seeing as there is no legal basis brought by the First Defendant that would excuse him from his liabilities towards the Claimant, the Court is satisfied that the First Defendant shall pay the Claimant the amount of AED 660,000.

20. At the onset, it should be noted that the existing relationship between the Claimant and the other Defendants are disputed. The Court will discuss each of the other Defendants relationship to the Claimant by turn.

Second Defendant

21. At the Hearing, the Claimant stated that the Second Defendant named in the Claim is different than the company referred to in the Promissory Note which is "Laukik", the Claimant states that this a misrepresentation or mistake on the part of the First Defendant. It is to be noted that Laukikdoes not exist and the Second Defendant is the concerned party in the Promissory Note, which is also owned by the Third Defendant.

22. In addition, the Claimant argued that Laukikwould act as a guarantor in accordance to the Promissory Note, which, by default, names the Second Defendant as a guarantor.

23. The Court is not satisfied with the Claimant's argument, as there is no mention of the Second Defendant anywhere in the Promissory Note. The Court cannot rely on oral submissions that have no weight in this Claim,and finds that the Second Defendant does not have any connection to this claim, as these related to two different company names. As such the Claim against the Second Defendant is dismissed.

Third Defendant

24. The Claimant submits that the First Defendant passed the third Defendant's details to exchange the first postdated cheque with the Second Postdated cheque to the Claimant, being a middleman between the parties.

25. The Claimant argues that the Third Defendant is an accomplice to this Claim alleging that the Third Defendant was aware that the second postdated cheque would fail to clear. The Claimant also adds that the Third Defendant is currently withholding the address of the First Defendant, which would affect the chances for the enforcement of any judgment passed by the Court.

26. The arguments presented by the Claimant do not lead me to concluded that there be any liability on behalf of the Third Defendant towards the Claimant. The Court is satisfied that the role of the Third Defendant was for him to merely be a middleman between the First Defendant and Claimant, and him offering the address of his company for the exchange does not make him an accomplice to the First Defendant's default in payment. As such, the Claimant's claims against the Third Defendant are hereby dismissed.

Fourth Defendant

27. The Claimant submits that the address of the Fourth Defendant was given by the Third Defendant in order to facilitate the exchange of the postdated cheques supplied by the First Defendant. The Claimant argues that the Third Defendant is the owner of the Fourth Defendant and has confirmed that it is in liquidation.

28. This argument also does not amount to any evidence of liability towards the Claimant by the Fourth Defendant. I find that the Claimant's arguments are weak and I am satisfied that the Fourth Defendant is considered a mailbox in this claim and cannot be held accountable for the Loan, as such the claim against the Fourth Defendant is dismissed.

Legal Fees and Costs

29. The general rule in the SCT regarding legal costs states at Rule 53.79 of the Rules of the DIFC Courts (the "RDC") that the

> "The General Rule is that each party shall bear its own costs. However, the SCT may order a party to a small claim to pay a sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, where:
>
> (1) such part of any Court or Tribunal fees paid by that other party as the SCT may consider appropriate;
>
> (2) such further costs as the SCT may assess by the summary procedure and order to be paid by a party who has behaved unreasonably."

30. In this case, neither party has claimed, nor can either party be said to have behaved "unreasonably" as per the standard required by RDC 53.79. Therefore, I am limited in my assessment of costs to the SCT fees paid by both parties. I find that it is reasonable in this case, as the Claimant has been successful on most claims, to require the First Defendant to reimburse the Claimant for his SCT Court fees in the amount of AED 33,000.

31. The Promissory Note does include enforcement fees, which the parties agreed that the Claimant shall bear the costs of. However, I find that it

is premature to claim costs associated with enforcement, as they have yet to be incurred.

32. The parties shall otherwise bear their own costs.

Interest

33. The Claimant has made further claim to interest on the principle amount of the loan, with reference to the Promissory Note. There is no mention of any interest calculations agreed between the parties, and the Court does not see fit to award any interest to the Claimant, especially in circumstances where the Claimant has failed to make any legal argument as to his entitlement to interest. The Claimant's claim for interest is therefore dismissed.

34. I find it appropriate to apply Article 118(2) of the DIFC Contract Law to this claim, which provides that the "rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment." Pursuant to Practice Direction 4 of 2017, Interest on Judgments, the Claimant is granted interest to accrue on the judgment amount at the rate of 9% from the date of this Judgment.

Conclusion

35. As such, it is hereby ordered that the First Defendant shall pay the Claimant the amount of AED 660,000 for the outstanding Loan. The First Defendant shall pay the Claimant the DIFC Court's filing fee in the amount of AED 33,000.

36. The Claimant's claims as to legal costs and interest are dismissed.