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 OF DIFC COURTS

BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

JIMMA FZ-LLC

Claimant

v

JINGA REAL ESTATE LLC

Defendant

Hearing:**9 January 2019**

Judgment:**25 February 2019**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 25 September 2018;

UPON the parties being called on 27 November 2018 for a Consultation before SCT Judge Nassir Al Nasser;

UPON the parties not having reached settlement;

UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 9 January 2019, with the Claimant's and Defendant's representatives attending in person;

AND UPON reviewing all documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant a total sum of AED 58,303.95 to include:

   (a) AED 39,552 as remaining payment on the Basic Contract;

   (b) AED 14,000 as payment of the bounced cheque fee; and

   (c) AED 4,751.95 as reimbursement of the SCT Court fees.

2. The Claimant's additional claims are dismissed.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 25 February 2019

At: 3pm

THE REASONS

Parties

1.Jimma FZ-LLC (hereafter the "Claimant") is a company providing real estate subscription services in Dubai.

2. Jinga Real Estate LLC (hereafter the "Defendant") is a company providing real estate services in Dubai.

Preceding History

3. On 25 September 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for certain sums allegedly entitled to it pursuant to the contract entered into between the Claimant and Defendant. The total claim value of AED 91,364 included sums for payment of subscription services, applicable VAT, and 9% interest from the starting date of the contract. The Claim also sought the same interest to accrue until full settlement of the claimed sums as well as all the costs and charges incurred as part of the Claim.

4. The Defendant failed initially to respond to the Claim and the Claimant applied on 28 October 2018 for permission to serve the Claim in an alternative method. The Claimant provided further support for the application on 11 November 2018. The Claimant filed a Certificate of Service on 14 November 2018.

5. The Defendant emailed the SCT Registry on 17 November 2018, at which time a Consultation was scheduled for 27 November 2018. On 24 November 2018 the Claimant filed an application for default judgment, which was rejected pursuant to the Order of SCT Judge Nassir Al Nasser dated 26 November 2018. The Defendant filed an Acknowledgement of Service on 26 November 2018. The parties then attended the 27 November 2018 Consultation, but were unable to reach a settlement.

6. The parties were then informed of the Hearing and submission schedule, with a Hearing scheduled for 31 December 2018. The Claimant requested the Hearing to be postponed, and that request was granted with the Hearing rescheduled for 9 January 2019. The Defendant filed a Defence on 29 November 2018 and supplemented with additional documents on 17 December 2018.

7. The Claimant's representative, Mr Jeen, and the Defendant's representative, Mr Jidd, both attended the 9 January 2019 Hearing in person. The parties reiterated their arguments at the Hearing, at which time the case was reserved for Judgment.

The Claim **�**

8. The Claimant contends that the Defendant accepted the Claimant's Terms and Conditions on 7 September 2017 (the "T&Cs") and then accepted a contract with the Claimant for subscription services on 25 September 2018 (the "Basic Contract"). After using the services included in the Basic Contract for three months, the Defendant then upgraded its services, adding a limited upgrade on both 1 February 2018 and 27 February 2018 (hereafter the "Upgrades" or the "First Upgrade" and "Second Upgrade" respectively).

9. As to payment, the Defendant provided 14 post-dated cheques totaling AED 89,208 as payment for the Basic Contract and the Upgrades. The Claimant contends quite simply that it has provided the services requested, however, the Defendant has failed to make timely payment due to multiple bounced cheques. The Claimant requested that the Defendant settle the overdue amounts, however, complete payment was not made.

10. In sum, the Claimant seeks judgment for a total amount of AED 91,364, to include the value of the bounced cheques, applicable VAT, and 9% interest from the starting date of the contract. The Claimant additionally seeks continuing interest at a rate of 9% as well as costs and fees incurred in this Claim.

11. At the Hearing, the Claimant's representative reiterated its claims. The Claimant emphasized that the terms of the Basic Contract require all payments to be made at the beginning of services. This was not a monthly subscription, but rather a yearly subscription, and the monthly cheques were only an accommodation for payment plan. The total contract amount was due and owing at the beginning of the Basic Contract, and there is no ability for the Defendant to terminate the Basic Contract at any time.

12. The Claimant stated at the Hearing that AED 39,552 remained still owing, plus AED 14,000 as contractual fees for the bounced cheques. The Claimant clarified that the services provided to the Defendant were suspended due to nonpayment, not due to its license expiring. It is possible that an automated email informing the Defendant that the license expiration would cause suspended services, however, the services were already suspended due to nonpayment.

13. The Claimant highlighted certain provisions of the T&Cs that stated that the Defendant read and understood the contract terms, including the terms that the contract cannot be terminated, that all costs are due as soon as the contract is accepted, that failure to pay may cause service suspension, and that service suspension does not alleviate the Defendant's duty to pay for the entirety of the contract. The Claimant confirmed that this is its standard form contract that it does not amend or modify for any of its clients. The Defendant was free to seek legal advice regarding the contract but this service is not provided from the Claimant's side.

14. Upon a request from the SCT Registry to specifically clarify the amounts that remained owing by the Defendant and the amounts that remain claimed by the Claimant, the Claimant stated that the total remaining claimed amount was AED 59,406.46, which included AED 39,552 outstanding on the Basic Contract, AED 14,000 as fees for the bounced cheques, and AED 5,854.46 as filing fees for the case. The Claimant acknowledged that the Defendant had paid AED 28,000 with regard to the first police case filed and thus, this amount had been removed from the claim.

The Defence

15. The Defendant filed an Acknowledgment of Service on 26 November 2018 expressing its intention to defend against all of the claim. The Defendant then filed a Defence on 29 November 2018 stating that the Claimant only provided service until 30 April 2018, at which time the Defendant's license expired and the Claimant suspended the contract. The Defendant stated that it was willing to pay the claimed amounts up until that time, a total of AED 28,772.

16. As the Claimant suspended the services due to the license expiration, the Claimant cannot claim the total amount of the Basic Contract and Upgrades but can charge only for the time that services were actually provided. The Defendant also mentioned that the Claimant had filed a police case against the Defendant's manager for the bounced cheques.

17. On 17 December 2018, the Defendant supplemented its Defence with an additional submission. The Defendant stated that it was willing to pay the AED 28,774 that was due before the services were suspended, as noted in the Al Barsha Police case filed against the Defendant's manager. The Defendant claims that, due to the Claimant's unwillingness to settle on this amount, the Defendant paid this sum at the Al Barsha Police Station. The Defendant also detailed in the submission the trouble that its manager has faced due to the bounced cheque police cases filed against him. The Defendant also made reference to the fact that the Claimant provides its T&Cs online, with only one click to accept.

18. At the Hearing, the Defendant argued that no one explained the Basic Contract or the T&Cs. The Defendant contends that the suspension of services in April was due to its license expiration, not for failure to pay, as confirmed by an email from the Claimant. However, the Defendant argued that it did not have the necessary funds and therefore chose not to renew its license at the time of expiration.

19. The Defendant confirmed that two separate police matters have been opened against the Defendant's manager for bounced cheques, at least one of which has been paid in full. The Defendant argues that the Claimant should not be paid for services that it did not provide. Furthermore, the Defendant argues that contracts must be cancellable within the UAE.

20. In response to the SCT Registry's request for clarification of the claimed amount, the Defendant's manager acknowledged that he had already paid an amount of AED 28,700 to settle the first police case. As regards the second police case in the amount of AED 24,000, the Defendant acknowledged that this amount had not yet been paid and instead, the Defendant's manager had sought to transfer the second police case to Dubai Courts. The Defendant reiterated that it should only pay for services actually provided through the end of April 2018. The Defendant also argued that the AED 24,000 relevant to the second police case should also be removed from this claim.

Discussion

21. At the outset, I find that the Defendant did accept and acknowledge the Claimant's Basic Contract and T&Cs such that they govern the relationship between the parties. While the Defendant raised some basic objections to the manner in which the Basic Contract and T&Cs were presented with an online acceptance and no further explanation of the terms, these issues do not amount to a valid legal argument to invalidate these contractual documents. The Defendant was free to take its business elsewhere or to seek legal advice on the Basic Contract and T&Cs. However, the Defendant decided to validly accept the Basic Contract and T&Cs without seeking outside advice.

22. This issue must be determined at the outset because the DIFC Courts' and SCT's jurisdiction is based upon the Claimant's T&Cs. The T&Cs at Clause 8.7 through Clause 8.9 state:

> "8.7 This Contract is subject to and governed by the laws of the Dubai International Financial Centre ("the DIFC").
>
> 8.8 Any dispute, difference, controversy or claim arising out of or in connection with this contract with a claimed amount of AED 1,000,000 or less, including (but not limited to) any question regarding its existence, validity, interpretation, performance, discharge and applicable remedies, shall be subject to the jurisdiction of the Small Claims Tribunal of the Dubai International Financial Centre ("the DIFC SCT").
>
> 8.9 Any further dispute, difference, controversy or claim arising out of or in connection with this Agreement, including (but not limited to) any question regarding its existence, validity, interpretation, performance, discharge and applicable remedies, shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre ("the DIFC Courts")."

23. I find that the contractual language included at Clauses 8.7 - 8.9 of the Claimant's T&Cs operates as a valid opt-in clause to the jurisdiction of the DIFC Courts and the SCT. Based on these clauses and the claim value of this Claim, the SCT has jurisdiction over this Claim.

24. In sum, there is just one main issue to resolve in this dispute, are the amounts claimed owed to the Claimant based upon the provisions of the Basic Contract and T&Cs? Does the Defendant present any valid defence against its liability for the claimed amounts?

25. As to the first question, the relevant contract language states:

> "2.1 The Contract shall be between us and you. You acknowledge and agree that you have read, understood and agree to all the terms of the Contract when submitting the Subscription Order as follows:
>
> (a) by pressing the "Confirm Order" button when submitting an online Subscription Order; or
>
> (b) by signing a hard copy Subscription Order.
>
> 2.2 If you are entering into the Contract on behalf of a company or any other legal person you warrant and represent you are authorised to enter into the Contract.
>
> 3.1 You warrant and represent that you will:
>
> . . .
>
> (c) be the holder of a current license as a real estate broker, hotel apartment or real estate developer in the United Arab Emirates or country

or any further region, emirate, providence, state, or the otherwise to which your use of the Services relates and to the laws, rules, and regulations you are subject to; . . .

3.3 You acknowledge and agree that:

a. you have read and agree to be bound by the terms of all legal notices posted on the Website in relation to the Contract; . . .

4.1 Except as permitted by law, you may not terminate this Contract before the end of the contract term under any circumstances.

. . .

4.5 Without limiting our other rights, we may immediately sanction you, or suspend or limit the Service and/or temporarily remove details of any property, agent, or otherwise, uploaded by you to our Website and/or terminate this Contract if:

a. you fail to pay any fees, charges, or taxes due to us by the due date, or provide any security cheques as stipulated in the Contract; . . .

5.1 The Service will not be activated until full payment has been provided whether in cash, credit card payments, or postdated cheques or other forms of payment as stipulated by Subscription Order. You are liable for the costs incurred in this Contract from the "start date" which is specified in the Subscription Order or if not such date is specified from the date of acceptance, (which will be the date we receive your confirmation of the Subscription Order) if nothing is stated in your Subscription Order.

. . .

5.7 Please note that any cheque issued by you that "bounces" due to insufficient funds or is rejected by the relevant financial institution for any other reason will incur a AED 1000 administration fee payable to us within seven (7) days and we reserve the right to charge you our reasonable administration costs in dealing with any failed payments and/or costs in relation to pursuing outstanding amounts (including legal fees and expenses).

. . .

5.10 If your Membership has been suspended for any reason during the term of your Subscription Order you will still be liable to pay any Fee due to us regardless of you receiving the Services."

26. The Basic Contract and the T&Cs make quite clear that the subscription services are purchased as a full-year package, not month-by-month. While monthly cheques are permitted, the entirety of the contract price is due at signing, with the contract being irrevocable by the customer. Thus, the wording of the Basic Contract and T&Cs require that the Defendant pay the full contract amount, regardless of the reason for the suspension of his services. Suspension of services for expired license or failure to pay do not excuse the Defendant from payment. Furthermore, the contract requires a bounced cheque fee of AED 1,000 per bounced cheque.

27. The Defendant has not presented a valid defence against his responsibilities to pay these amounts. While he has claimed essentially that a one-click, irrevocable contract is not fair, this type of contract is commonplace and I do not find this specific contract unconscionable. As to the argument that the Defendant should only pay for the services provided, this is precisely against the wording of the contract. Instead, the Basic Contract and T&Cs are written such that payment for the whole contract period is due from the customer regardless of whether the services are suspended for non-payment or failure to renew the applicable license. This is the contract language that the Defendant agreed to and the Defendant has presented no valid legal argument to justify deviating from the contract.

28. The Defendant also argued that such contracts that cannot be cancelled are not allowed in the UAE but pointed to no specific law or legal argument to support this claim. It has no merit. Repeatedly, the Defendant alleged that the Claimant is "blackmailing" numerous of its customers, however this type of allegation has no bearing on this specific case. I see no instance of inappropriate behaviour by the Claimant.

29. In the UAE, it is common for parties to file a civil case, like this SCT case, in addition to criminal cases with the Dubai Police, for bounced cheques. Thus, I see nothing inappropriate about the Claimant filing this case as well as multiple police matters against the Defendant's manager. Of course, the Claimant cannot collect on the same cheques twice, which is why the Claimant was asked to clarify the amount claimed in light of any sums collected due to police cases. As both parties acknowledged, the Defendant paid AED 28,700 to clear one police case. The second police case has not yet been paid and instead has been transferred to Dubai Courts.

30. Thus, the Defendant must pay the Claimant the AED 14,000 in bounced cheque fees and AED 39,552 as the remaining payment on the Basic Contract. This takes into account the AED 28,700 paid by the Defendant already in the first police case.

31. As to the Claimant's claim of 9% interest on the amounts owed and VAT, it is unclear from the Claimant's filings whether these amounts are already included in the amount claimed or whether they are meant to be added. The Claimant has not specifically articulated these claims and therefore, I cannot grant any additional amounts for VAT or interest.

32. The Claimant contends that the amount remaining on the contract is AED 39,552 after taking into account the police case settlement. The Claimant additionally claimed the AED 14,000 bounced cheque fees and AED 5,854.46 in filing fees towards this case. I find it appropriate to grant the Claimant AED 39,552 as fulfillment of the contract payment, AED 14,000 as bounced cheque fees, and AED 4,751.95 as reimbursement of the initial SCT Court Fees and the fee for the Alternative Service Application. The Claimant's additional court fees, incurred due to their unsuccessful application for default judgment, cannot be claimed from the Defendant. The Claimant's additional claims, if any, are dismissed.

Conclusion

33. The Defendant shall pay the Claimant a total sum of AED 58,303.95 to include:

(a) AED 39,552 as remaining payment on the Basic Contract;

(b) AED 14,000 as payment of the bounced cheque fee; and

(c) AED 4,751.95 as reimbursement of the SCT Court fee.

34. The Claimant's additional claims are dismissed.



Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 25 February 2019

At: 3pm

