**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 SCT JUDGE MAHA AL MEHAIRI**

BETWEEN

**IDAN**

Claimant

and

**ILARIA**

Defendant

Hearing: **3 July 2018**

Judgment: **9 July 2018**

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**JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI**

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**UPON** the Claim Form being filed on 30 May 2018;

**UPON** the Defendant application to contest jurisdiction;

**UPON** a hearing having been held before SCT Judge Maha Al Mehairi on 3 July 2018, with the Claimant, and the Defendant absent although served notice of the hearing date;

**AND** pursuant to Rule 53.61 of the Rules of the DIFC Courts, it is stated that: *"If a defendant does not attend the hearing and the Claimant does attend the hearing, the SCT may decide the claim on the basis of the evidence of the Claimant only."*;

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

**IT IS HEREBY ORDERED THAT:**

1. The Defendant's Application to contest jurisdiction is granted.

2. The DIFC Courts do not have jurisdiction to hear this dispute. The case is therefore dismissed.

3. Each party shall bear their own costs as to the Application.

Issued by:

**Maha Al Mehairi**

SCT Judge

Date of issue: 9 July 2018

At: 1pm





**THE REASONS**

**Parties**

1. The Claimant is Idan, managing director of Isandro Hospitality Solutions (the "Claimant").

2. The Defendant is Mr. Ilaria, a Saudi national and a customer of the Claimant (the "Defendant").

**Background**

3. The parties entered into an agreement on 7 August 2017, for the development of the Standard Operating Procedure manuals for Indigo's Pizza. The agreement was signed by both parties. The Claimant put together a structured timeline to produce a comprehensive OSE manual, a training manual, commercial material, legal franchise documentation, interior design and brand identity manuals and recipe book documentation for the Defendant.

4. The Claimant w to conduct an initial 5 day field trip and fact-finding study to familiarize himself with the concept and collect information about the Defendant's business. Additionally, a 6 day field trip was completed by the Claimant's team, 3 days from the Director and 3 days from the Managing Director, where they monitored the day to day operations, reviewed the existing documentation and procedures, and met with key personnel as well as the floor team.

5. The Claimant produced a quotation in the amount of AED 240,000 for the whole work scope that was to be executed for the Defendant. The Defendant should pay a first instalment payment of 40% of the amount on signing the agreement, a second instalment payment of 30% on delivery of the first draft of the work, and a third and final instalment payment of 30% on delivery of the final copy with the workable to the Defendant.

6. In August 2017 the parties signed the agreement under the title "Proposal for Consultancy Services" (the "Agreement"), and the Defendant paid the first instalment as agreed, and the Claimant managed to organize the initial field trip to Saudi Arabia. The Claimant delivered the first draft of work in the first week of November with all the agreed deliverables.

7. Since November 2017, the Claimant have been chasing the Defendant for the second instalment of the payment scheme of 30% with no answer. On 22 February 2018, the Claimant received an email from the Defendant stating:

*"Dear Mr. Idan,*

*Please, our boss is out of the kingdom (sic) and he will be available here 2nd week of march (sic), 2018 only. Therefore we will update this payment as soon.*

*Thank you for your understanding and cooperation*

*Regards,*

*Ilkay"*

8. During that same period, the Claimant's team were revising the deliverables based on the comments of Indigo's Pizza's operations manager. It appears that the Claimant's team managed to comply with all the requests and updates on the final version of the deliverables as requested by the Defendant.

9. The final version of the deliverables was then shared with, and downloaded by the Defendant. However, on 2 May 2018, the Claimant received an email from the Defendant explaining clearly that they would not pay as agreed. The reason given was: "*[s]ince you didn't deliver the services which agreed on as per contract, so no any (sic) outstanding invoice or payment*"

10. On 30 May 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of the outstanding invoices against the Defendant, claiming a total of AED 155,330.

11. In support of its Claim, the Claimant submitted the Agreement signed in August 2018 and all the email correspondence between the parties as proof.

12. The Defendant responded to the claim on 5 June 2018 by contesting the jurisdiction of the DIFC Courts and the SCT over the dispute. The Defendant submitted a letter stating that he is a Saudi citizen residing in the Kingdom of Saudi Arabia and that his company is established in Riyadh. The Defendant added that he attained the services of the Claimant to prepare a business study for his company. At the signing of the Agreement the Defendant paid the Claimant the amount of AED 96,000 as first instalment.

13. The Defendant also added that the Claimant failed to deliver what was agreed in the Agreement signed between the parties and as such is not entitled for the further instalment amounts under the Agreement, amount being the amount of AED 155,330.

14. The Defendant argued that if the Claimant wished to sue him it should be done in the jurisdiction of the Defendant, being Saudi Arabia. Moreover, there was no jurisdiction clause in the Agreement signed between the parties that would bring the case within DIFC jurisdiction, and as

such this claim should be rejected for lack of jurisdiction.

15. On 4 July 2018, I heard final oral submissions from the Claimant, and the Defendant was absent. Pursuant to Rule 53.61 of the Rules of the DIFC Courts, it is stated that: *"If a defendant does not attend the hearing and the Claimant does attend the hearing, the SCT may decide the claim on the basis of the evidence of the Claimant only."*

**Discussion**

16. Having considered the written submissions and the arguments put forward at the jurisdiction hearing, and the Defendant's submissions, I find that this dispute falls outside the jurisdiction of the DIFC Courts.

17. The Claimant holds the burden of proof to show that the DIFC Courts and the SCT have jurisdiction over the claim. The Claimant presented an argument regarding which gateway this case falls within pursuant to Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended; particularly, he stated that the meeting between the parties was held in DIFC and the Agreement was signed in the DIFC, he also added that the case was filed with the DIFC Courts and accepted.

18. Rule 53.2 of the Rules of the DIFC Courts ("RDC") require that the SCT hear only cases that fall "*within the jurisdiction of the DIFC Courts.*". The jurisdiction of the DIFC Courts is determined by Article 5(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended, which provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, which are, as relevant:

*"(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;*

*(b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract;*

*(c) Civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within DIFC and is related to DIFC activities; . . .*

*(e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations. . .*

*(2) ...civil or commercial claims or actions where the parties agree in writing to file such claim or action with [the DIFC Courts] whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."*

19. There is no evidence of any of these gateways having the potential to apply in this case. Neither of the parties are DIFC Bodies or Establishments. The relevant contracts were not partly or wholly concluded or performed within the DIFC. In fact, there is no alleged connection to the DIFC. There is no other relevant DIFC Law or Regulation granting jurisdiction in this matter. Finally, the parties have not agreed in writing to file such claim or action within the DIFC Courts. The Claimant has not presented any written contract or agreement including such a jurisdictional clause.

20. Pursuant to Article 5(A)(2) of the Judicial Authority Law, it is possible for the parties to agree in writing to the jurisdiction of the DIFC Courts after this dispute arose, however, the parties have failed to do this. The Defendant has contested jurisdiction of the DIFC Courts and as such this is considered a rejection to an opt-in of the DIFC Courts' jurisdiction.

21. Given the nature of the evidence submitted regarding the Agreement, I find that the meeting conducted and the signing of the Agreement in the DIFC alone does not place this case within the ambit of Article 5(A)(1)(b) of the Judicial Authority Law. It is clear from the circumstances that the matter was regarding a Saudi company that is outside the jurisdiction of the DIFC. The Claimant has not submitted anything to show that any part of Agreement was performed in the DIFC. Thus, I find that this case does not fall under Article 5(A)(1)(b) of the JAL.

22. In addition, the DIFC Courts do not screen any claim that is filed through their online system, the Claimant before lodging a claim should have done their research and have sought legal advice before proceeding with any legal action. Accepting the claim does not mean that the DIFC Courts accept jurisdiction of the claim lodged.

23. Therefore, as none of the relevant jurisdictional gateways of the Judicial Authority Law apply to this case, I must conclude that this case falls outside of the jurisdiction of the DIFC Courts.

**Findings**

24. This is a very straightforward matter, the DIFC Courts and the Small Claims Tribunal do not have jurisdiction to hear this claim and therefore the claim must be dismissed in full for lack of jurisdiction.

25. Each party shall bear their own costs.



Issued by:

**Maha Al Mehairi**

SCT Judge

Date of issue: 9 July 2018

At: 1pm