Claim No. SCT 170/2020 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 MAHA AL MEHAIRI BETWEEN LILIY & LOGAN DMCC Claimant and MRS. LEO LUCAS Defendant Hearing : 25 August 2020 Further

Claim No. SCT 170/2020

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 MAHA AL MEHAIRI

BETWEEN

LILIY & LOGAN DMCC

Claimant

and

MRS. LEO LUCAS

Defendant

Hearing :	**25 August 2020**
Further Submissions :	**8 October 2020**
Judgment :	**15 October 2020**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 19 May 2020

AND UPON a jurisdiction hearing being held on 21 June 2020 before SCT Judge Nassir Al Nasser, pursuant to which he determined that the DIFC Courts have jurisdiction to hear and determine the Claim.

AND UPON a Consultation being held before SCT Judge Delvin Sumo on 16 July 2020

AND UPON the parties failing to reach a settlement at the Consultation

AND UPON the Defendant filing her Defence with Counterclaim on 20 July 2020

AND UPON the Claimant filing its Amended Claim on 6 August 2020

AND UPON a hearing having been listed before SCT Judge Maha AlMehairi on 25 August 2020, with the Claimant's representative and the Defendant's representative attending

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay to the Claimant, from the date of this Order, the judgment sum of AED 425,121.36 being the principal amount outstanding under the Agreement.

2. Pursuant to the DIFC Courts' Practice Direction 4 of 2017, the Defendant shall pay the Claimant interest on the judgment sum from the date of this judgment, until the date of full payment, at the rate of 9% annually.

3. The Claimant shall file its submissions in relation to its claim for interest that has accrued until the date of this Judgment by no later than **4pm on Thursday, 22 October 2020**.

4. The Defendant shall pay the Claimant the amount of **AED 477.75** for translation costs.

5. The Claimant's Claim for damages and the Defendant's counterclaim shall be dismissed.

6. The Defendant shall pay the Claimant the Court fee in the sum of **AED 21,279.95**.

Issued by:
Maha Al Mehairi
SCT Judge
Date of issue: 15 October 2020
At: 3pm

THE REASONS

The Parties

1. The Claimant is **LILIY & LOGAN DMCC** (hereafter "the Claimant"), a Law firm registered in Dubai located at DMCC, Dubai, UAE.

2. The First Defendant is Mrs. **LEO LUCAS** (hereafter "the Defendant"), an individual residing in Dubai.

Background and the Preceding History

3. The underlying dispute arises over an alleged unpaid invoice for legal services and the scope of work set out in the Engagement Agreement dated 14 January 2020 (the "Agreement") signed between the Claimant and the Defendant.

4. On 19 May 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming the sum of AED 399,853.36 to be paid to the Claimant by the Defendant for services rendered to her.

5. On 2 June 2020, the Defendant filed an acknowledgment of service with the intention to contest the jurisdiction of the DIFC Courts.

6. On 21 June 2020, a jurisdiction hearing was held by SCT Judge Nassir Al Nasser, pursuant to which he determined that the DIFC Courts have jurisdiction to hear and determine this Claim (the "Jurisdiction Order").

7. The parties met for a Consultation with SCT Judge Delvin Sumo on 16 July 2020 but were unable to reach a settlement.

8. Following the Consultation, on 20 July 2020, the Defendant filed her Defence with Counterclaim, seeking the sum of AED 389,140 in respect of monies already paid to the Firm for the work they have done.

9. On 6 August 2020, the Claimant filed its Amended Claim seeking the following:

(a) The sum of AED 425,121.36 as payment due pursuant to the Claimant's Agreement;

(b) Interest on the outstanding amount from the payment due date until full payment, as per the Agreement Clause 13;

(c) Interest on the outstanding amount as per DIFC Contract Law;

(d) Damages incurred pursuing this claim;

(e) Translation costs in the amount of AED 477.75; and

(f) Court fees and any other relief the Court might find appropriate.

10. On 25 August 2020, a hearing was listed before me, at which the Claimant's and Defendant's representatives were in attendance.

11. The Defendant filed an Application (the "Application") on the day of the hearing seeking the following:

(a) An Order determining that the case does not fall under the jurisdiction of the SCT, given that the amended claim exceeds AED 500,000 and that the amended amount in dispute (claim and counterclaim) exceeds AED 900,000;

(b) An Order determining that the case being unsuitable for the SCT should instead be remitted to the DIFC Court of First Instance, and only in the event that the SCT considers that it has jurisdiction and that the claim should not be transferred to the CFI then: (i) an Order for clarification by the SCT that the standard of proof in these proceedings is that the "burden of proof" is on the Claimant to establish that the Defendant was billed correctly and that the fees and costs charged to the client were reasonable and correctly billed;

(c) An Order to stay the proceedings, to run for 7 days from the date of the SCT's determination in paragraph (b) above, in order to allow the Defendant to file an Application for Production of Documents by the Claimant in accordance with Part 28 of the DIFC Rules;

(d) An Order to stay the proceedings until such time as the Defendant's Part 28 Request for Production of Documents is dealt with by the DIFC SCT (if a Part 28 Request for Production is made); and

(e) An Order providing that the timetable includes an opportunity for:

(i) For the Claimant to provide a Reply to the Defendant's Statement of Defence and Counterclaim;

(ii) For the Defendant to respond to the Reply; and

(iii) For the parties to file witness statements of fact reply witness statements; and expert witness statements and reply statements from suitably qualified costs lawyer's permission to appeal the Jurisdiction Order.

12. At the hearing, the Defendant further elaborated upon the Application stating that the Claimant's amended claims falls outside of the financial

threshold of the SCT, being limited at AED 500,000. In reply to the Defendant's Application, the Claimant stated that they reserve their right to cap the claimed sum to the value of AED 500,000, in accordance with the SCT's precedent on the same matter, by relying upon SCT Judge Nassir Al Nasser's finding in [2017] SCT 141 Heitor v Helah wherein he ruled that "a party is entitled to cap its claim at five hundred thousand Dirhams in order to proceed in the SCT"; and, as such they would like to exercise their right to this cap.

13. After hearing both of the parties' submissions in relation to the Application, I am of view that the Application is without merit and shall be dismissed it in its entirety.

The Claim

14. The Claimant asserts that the Defendant has breached her contractual obligation to pay for the Claimant's legal services as per the Agreement, in the sum of AED 425,121.36.

15. The Claimant adds that the services were provided over a span of two months, however, the Defendant failed to provide evidence of her refusal to pay for the Claimant's services.

16. Therefore, the Claimant seeks payment of the outstanding amount, interest, damages and the court fees for the filing of the Claim.

Defence and Counterclaim

17. The Defendant alleges that the Claimant has committed multiple serious breaches of its code of conduct as a law firm that has resulted in life changing negative consequences to the Defendant.

18. The Defendant alleges that the negligence advice came in circumstances where:

(a) The Firm was negligent in the legal advice it conducted;

(b) The Firm used non-lawyers who are unskilled, recent college graduates (with little experience or training) to conduct a large portion of the negligent work;

(c) The Firm sought to over-charge the Defendant;

(d) The Firm sought to charge the client for work it conducted on behalf of another client (the Defendants in SCT Case No: SCT-177-2020);

(e) The Firm refuses to provide the Defendant with a copy of the case file; and

(f) The Firm's negligent advice caused significant monetary loss and harm to the Defendant.

19. To that end, the Defendant filed a counterclaim of AED 389,140 in respect of monies already paid to the Claimant.

Discussion

20. The Claimant filed a claim in the SCT claiming the sum of AED 425,121.36 pursuant to the Agreement signed between the parties, as well as interest in accordance with the DIFC Laws and the Agreement. It also seeks payment of the court fee charged to the Claimant when filing this Claim.

21. The Defendant also filed a counterclaim of the sum of AED 389,140 in respect of monies already paid to the Claimant, seeking for it to be refunded to the Defendant.

The Claim

22. On 14 January 2020, the parties entered into an agreement for the provision of legal services (the "Agreement").

23. Clause 2 of the Agreement sets out that the firm's "standard and default structure is based on an hourly rate". Clause 2(a) of the Agreement provides that "the hourly rates correspond to the relevant billing practitioner". The Claimant's billing for practitioners and their corresponding hourly rate are listed in a table included within the Agreement.

24. In addition to the hourly rate billing, the Claimant also offered "the option of performing certain services on a fixed fee basis", as per clause 2(b) of the Agreement. As per clause 2(b), the "availability of the fixed fee project depends on, among other things, the value, scope and certainty of a project." The value of the "fixed fee is determined on a case by case basis, according to the scope of services to be provided." Clause 2(b)(i) highlights that "any services provided outside of the scope of the fixed fee project will be billed at an hourly rate".

25. Clause 5 of the Agreement describes the Claimant's invoice practices. The Claimant's invoices "refer to either monthly invoices, fixed fee invoices or any other applicable invoices."

26. With regards to the monthly invoices, the Claimant's billing cycle commences on the first calendar day and ends on the last days of each month as per clause 5 of the Agreement.

27. Furthermore, in accordance with clause 5 of the Agreement, the Claimant's invoices are due upon receipt. Pursuant to the same clause, any issues regarding entries in the invoices, be it in part or in whole, must be raised with the Claimant's accounting department within seven (7) calendar days of receipt of the relevant invoices. In the meantime, the remaining entries on the invoices (meaning, those not raised as issues) are deemed to be confirmed and payable upon receipt.

28. As per clause 5(a) of the Agreement, the legal fees for the services provided on an hourly rate are reflected in the Claimant's monthly invoices.

The monthly invoices outline the number of hours spent by the relevant billing practitioner and a brief description of the services performed. Monthly invoices are submitted electronically after the end of the billing cycle.

29. Clause 5(b) of the Agreement sets out the basis for the firm's invoicing for fixed fee projects. In particular, it reads that a fixed fee shall be paid in full, prior to commencement of the relevant services.

30. Clause 10 of the Agreement stipulates that as the law and practice of law are inherently uncertain, the Claimant does not, and cannot, guarantee results. For this reason, all legal fees and costs incurred by the Claimant's client are non-refundable. This applies to hourly rate fees and fixed fees.

31. Furthermore, clause 11 of the Agreement sets out that the Claimant's services are provided on an ongoing basis and not on the result or success of those services. Legal fees must be paid in full "irrespective of the outcome of the case."

32. The Claimant argues that at the beginning of the Agreement, the Claimant performed a few projects on a fixed fee basis and the Defendant paid the fixed fee in advance in accordance with clause 5(b) of the Agreement.

33. The Defendant agreed to the terms of the Agreement and paid her January 2020 Invoices in full. On 11 March 2020, the Claimant provided the Defendant with invoices reflecting the work done in the amount of AED 268,386.84. The Defendant confirmed the invoice and committed to pay it by way of a proposed payment plan, which was agreed by the Claimant.

34. Upon receipt of each invoice, the Claimant provided the Defendant with a summary of the hours billed. After receiving the summary of hours, the Defendant continued to request the Claimant's services.

35. On 7 April 2020, the Defendant received the March 2020 invoice in the sum of AED 331,086.01, reflecting the number of hours spent by the relevant billing practitioner and a brief description of the service performed as per clause 5(a) of the Agreement.

36. The Defendant refused to pay the Claimants invoices stated in an email dated 7 April 2020, sent by her daughter-in-law which reads as follows:

> "in the last couple of weeks, due to corona crisis majority of our customers didn't pay for renewals for their companies which is our bread and butter. so since customers of our customers not paying, our customers are not paying to us. Which means that Lucy business which was buying food for our family on the personal level, is not bringing any money. Under such economic force major situation [Covid-19], we can no longer afford your work and appreciate if you can stop working on anything for us for the moment. we simply don't have that kind of money and with the current business situation will go bankrupt".

37. On 9 April 2020, by way of an email to the Claimant, the Defendant's daughter-in-law further stated that:

> "the engagement Agreement we signed back in January was based on the economic situation back in January. We no longer can afford your services as our business and income has become literally zero over the last few weeks"

38. As per Clause 5 of the Agreement, the "firm's invoices are due upon receipt". Pursuant to the same clause, "any issues regarding entries in the invoices, be it in part or in whole, must be raised with the firm's accounting department within seven (7) calendar days of receipt of the relevant invoices. In the meantime, the remaining entries on the invoices (meaning, those not raised as issues) are deemed to be confirmed and payable upon receipt."

39. In accordance with the abovementioned clause 10 of the Agreement, the fees and costs incurred by the Defendant are non-refundable.

40. The Defendant signed the Agreement, thereby acknowledging and agreeing to the terms contained within it. The Defendant should have raised issues in relation to the invoices within 7 calendar days following receipt of the concerned invoice. The Defendant failed to provide any evidence to show that she had raised such concern within the 7 days period.

41. The Claimant argues that the COVID-19 pandemic does not release a party from its obligations to honour the Agreement. It is asserted that the Defendant received legal services from the Claimant, as per their obligation pursuant to the Agreement, and it is the Defendants obligation to pay the Claimant for the performance of said services.

42. In relation to the code of conduct issues raised by the Defendant, this matter is one to be raised with the authority that registers and regulates the Claimant to operate as a provider of legal services. Matters pertaining to code of conduct fall under the jurisdiction of the entity that registered the Claimant, and the Defendant shall raise such matters with the rightful entity. The matter at hand being the subject matter of this Claim relates to a contractual obligation on behalf of the Defendant to make payments for services provided to it by the Claimant, and the issues of the Claimant's conduct are of no relevance to this dispute.

Interest Calculations

43. As per Clause 13 of the Agreement between the parties, the Outstanding Invoices will accrue interest at a rate of twelve percent (12%) per annum, to be calculated on a daily basis, from the due date of the relevant Invoice until receipt of payment. The Claimant is seeking Interest of 12% per annum, on the outstanding amount of AED 425,121.36. Furthermore, as per the Engagement Agreement, the interest is calculated from the due date of the invoices, up until receipt of payment.

44. The Court finds that the Defendant shall pay the Claimant the sum in relation to the unpaid invoices according to the contractual interest due on the amount as per the Agreement between the parties.

45. The Claimant shall provide the Court with its submissions in relation to its claim for interest that has accrued until the date of this Judgment.

Translation Costs

46. On 19 February 2020, and in connection with the Defendant's matters, the Claimant arranged for the legal translation of the Defendant's documents, by a third-party Legal Translator. The Claimant presented proof of the invoice for translation costs that they paid on behalf of the Defendant, which the Defendant failed to reimburse to the Claimant, in the amount of AED 477.75.

47. The Court is satisfied that this amount is pending and payable of the Claimant as it is a straightforward matter. The Defendant shall pay the claimant the amount of AED 477.75 for the translation costs.

Damages

48. The Claimant seeks for the Court to order damages which it has incurred in connection with having to address the Defendant's counterclaim and relies upon Articles 109 and 110 of the DIFC Contract Law No. 6 of 2004, which states as follows:

> "109
>
> Any non-performance gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies except with a non-performance excused under this law"
>
> "110
>
> The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance. Such harm includes both any loss which it suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm)."

49. The Claimant submits that they dedicated a significant portion of its resources to meet the urgency and demanding nature of the Defendant's many requests and matters as previously outlined. Therefore, the Claimant's business has suffered and continues to suffer damages by virtue of not having the benefit of the payment for the services which it had performed. Furthermore, the Claimant has incurred additional damages in connection with having to litigate this claim and counterclaim. In particular, throughout these proceedings, the Defendant has deployed highly vexatious and objectionable tactics in posing additional burden on the Claimant and having to address said frivolous litigation tactics. The Claimant argues that much of its time spent on addressing the Defendant's demands could have instead been dedicated to working for other clients and earning income.

50. Specifically, the Claimant has incurred an amount of AED 71,141.67 in lost billable time by initiating and managing this claim. As such, the Claimant is seeking damages that the firm incurred in connection with pursuing this claim which again amount AED 71,141.6.

51. In reply, the Defendant submits that the Claimant is seeking its costs of bringing the SCT case against the Defendant under the pretence of "damages". The Defendant submits that, pursuant to Rule 38.15 of the Rules of the DIFC Courts, parties are not entitled to claim their costs in the SCT, with only two exceptions, including instances where a party has acted unreasonably, which is not the situation here. The relevant Rule, is set out below:

> "Costs in The Small Claims Tribunal (`SCT')
>
> The SCT may not 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, except:
>
> (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."

52. The Court agrees with the Defendant's submissions, that costs under the SCT are only to be awarded in limited circumstances, and I find that neither of those circumstances apply in this case.

The Counterclaim

53. The Defendant filed a counterclaim claiming the sum of AED 389,140 in respect of monies already paid to the firm, which she seeks to be refunded in light of her claims that the Claimant failed to perform its obligations and provide services.

54. The Defendant's argument in relation to the counterclaim is similar to its defence. The Defendant argues that the Claimant's actions indicate that the Claimant has fallen well below the standards that are to be expected by a member of the public, that has engaged a law firm for its services. The Defendant also argues that the Claimant had breached its ethical obligations under Ministerial Resolution No. 666 of 2015 on the code of ethics and professional conduct of the legal profession in the UAE Minister of Justice.

55. As I demonstrated above, matters related to the code of conduct fall under the responsibility of the entity registering the Law firm.

56. In relation to the Defendant's argument that the Claimant is over charging and using non-lawyers to carry out legal advice, I find that the Defendant had 7 calendar days to raise any issues in relation to the invoices as per clause 5 of the Agreement. The Defendant failed to provide any evidence that she raised said concerns in relation to the invoice within that specified timeframe, and that the Defendant only raised issues when the Claimant requested payment from the Defendant.

57. The Court has examined the Defendant's comments upon the Claimant's hours billed and the practitioners involved in preforming the tasks, and I find that all comments could have been raised by the Defendant within 7 days following receipt of the first invoice for the work completed in February 2020. The Defendant could have requested that the Claimant stopped working for her due to their overly priced charges, however, the Defendant did continue working with the Claimant and requested additional works even after receiving the first invoice for the work done in

February 2020.

58. The Defendant raised the question as to the legal burden of proof, and in this claim the burden of proof lies upon the Claimant to demonstrate that they completed the work for which they are seeking payment. The Court is of view that each party has an obligation to provide evidence to support their claim, putting in mind the restrictions of SCT, disclosure of documents falls outside the proximities of the SCT. I note that the Defendant requested that the Claimant provide the firm's files, memos, attendance notes, and any similar material that would enable it to make its Defence properly.

59. It is the Court's view that these issues were only raised upon the Claimant's request for payment and that the Defendant was already aware of the Claimant's charges following receipt of the first invoice. In addition, the Defendant was provided notice of the Claimant's charges at the point of signing the Agreement. I am of the view that the Defendant choosing to continue to work with the Claimant is an indication that she accepted the Claimant's charges and wished to continue instructing them.

60. Therefore, I find that the Defendant is not entitled to a refund nor is she entitled to any sums from the Claimant. As such I dismiss the Defendant's counterclaim.

Conclusion

61. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 425,121.36 for the unpaid invoice plus interest at the rate of 9% per annum from the date of this Judgment until the date of payment.

62. I order that the Claimant files its submissions as to its claim for interest that has accrued until the date of this Judgment by no later than 4pm on Thursday, 22 October 2020.

63. The Defendant shall pay the Claimant the amount of AED 477.75 for translation costs.

64. I dismiss the Claimant's claim for damages and the Defendant's Counterclaim.

65. The Defendant shall pay the Claimant the Court fee in the sum of AED 21,279.95.

Issued by:
Maha Al Mehairi
SCT Judge
Date of issue: 15 October 2020
At: 3pm