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 MARIAM DEEN

BETWEEN

HEELA PARTNERS FZE

Claimant

and

Hyrum

Defendant

Hearing: 12 September 2017

Final submissions: 12 October 2017

Judgment:17 October 2017

JUDGMENT OF SCT JUDGE MARIAM DEEN

UPON the Claim Form being filed on 11 July 2017;

AND UPON the Defendant acknowledging service of the Claim Form and indicating his intention to contest jurisdiction on 17 July 2017;

UPON a Jurisdiction Hearing having been held before SCT Judge Mariam Deen on 7 August 2017, with the Claimant's representative Hines in attendance, and the Defendant participating via telephone;

UPON the Order of SCT Judge Mariam Deen dated 8 August 2017, finding that the DIFC Courts's Small Claims Tribunal has jurisdiction to hear the Claim and that the laws of England and Wales shall apply;

UPON the parties being called on 22 August 2017 for a Consultation with SCT Officer Lema Hatim and the parties not having reached settlement;

UPON a Hearing having been held before SCT Judge Mariam Deen on 12 September 2017, with the Claimant's representative Hridaan in attendance and the Defendant participating via telephone;

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

IT IS HEREBY ORDERED THAT:

1.The Defendant pay the Claimant GBP 1,998.75 in respect of unpaid invoices.

2. Each party shall bear its own costs.

Issued by:

Nassir Al Nasser

SCT Judge and Registrar

Date of issue: 17 October 2017

At: 1pm

THE REASONS

Parties

1.The Claimant/Respondent is Heela Partners FZE, a legal consultancy company incorporated in Fujairah, UAE; represented by Hridaan (the "Claimant").

2. The Applicant/Defendant is Hyrum, an individual who sought the services of the Claimant (the "Defendant").

Background and the Preceding History

3. The underlying dispute arises in relation to a retainer agreement dated 6 October 2016 (the "Agreement"). It is alleged that the Defendant agreed to use the services of the Claimant pursuant to the terms of the Agreement.

4. On 11 July 2017, the Claimant filed a claim (the "Claim") in the DIFC Courts' Small Claims Tribunal (the "SCT") for damages relating to the Defendant's alleged breach of the Agreement in the sum of GBP 3,383.50 (USD 4,353.53), being the value of outstanding invoices owed by the Defendant. The Claimant also sought reimbursement of the SCT Court fee.

5. The Defendant responded to the claim on 17 July 2017 by contesting the jurisdiction of the DIFC Courts and the Small Claims Tribunal over the dispute. Following a Hearing on jurisdiction before me on 7 August 2017, I issued on Order on 8 August 2017 declaring that the DIFC Courts' Small Claims Tribunal has jurisdiction to hear the Claim and that the laws of England and Wales shall apply.

6. On 22 August 2017, the parties participated in a Consultation with SCT Officer Lema Hatim, however, no settlement was reached and a Hearing took place before me on 12 September 2017, with the Claimant's representative attending in person and the Defendant participating via telephone. Additional time was provided for the parties to make further submissions and the matter was reserved for Judgment.

The Claim

7. The Claimant's case is that it is owed a total of GBP 3,383.50 for services rendered to the Defendant pursuant to the Agreement. The Claimant submits that the amount owed is the sum of three unpaid invoices, as follows:

(i) Invoice Number 2017/04/04 dated 5 April 2017 for GBP 1,537.50 ("Invoice 1");

(ii) Invoice Number 2017/05/03 dated 8 May 2017 for GBP 768.75 ("Invoice 2"); and

(iii) Invoice Number 2017/06/04 dated 7 June 2017 for GBP 1,076.25 ("Invoice 3").

8. Copies of the above invoices (the "outstanding invoices") have been submitted into evidence and the Claimant also relies on the fact that the Defendant paid three earlier invoices (Numbered 2016/11/18, 2016/12/07 and 2017/02/03) prior to the outstanding invoices, as demonstrating his full awareness and acceptance of the Agreement and basis upon which the Claimant charged for its services.

The Defence

9. The Defendant put forward his reply to the Claim on 28 August 2017 by expressing his dissatisfaction with the `high' rates contained within the Agreement. He also submitted that he had raised concerns to the Claimant about the way in which he was billed in the past and refers to an email dated 9 December 2016, in which he stated:

"The charging is very strong and very high and we still have not got very far in this case. I really need to have a discussion about the billing,

I want to work with you, but if the bills come in like this and we haven't got very far, it is going to be a problem."

10. On 5 January 2017, the Claimant responded:

"we have now made some real progress. Obviously, the next step is to wait until the arrest is made, I will liaise with Higino on this. I envisage very little if any time being incurred prior to that, which I hope answers your concern below. Once it does happen, perhaps we can then discuss a fee arrangement going forward?"

11. The Defendant submitted that he had been significantly overcharged and gave an example of a 3-hour meeting with `Haziq' which included approximately 45 minutes of pleasantries between him and the Claimant, for which the Defendant had been invoiced. The Defendant negotiated a GBP 2,000 reduction in the invoiced fees but claimed that he `felt rather bullied and cornered' and `agreed to this nominal reduction and paid the balance' on the basis that the Claimant would no longer act on this matter unless specifically requested to do so and a new fee arrangement was agreed. He relied on an email from the Claimant dated 21 February 2016, in which the Claimant stated:

"I've agreed with Higino that I will (put) my pen down and leave it all with him for now."

12. On 9 March 2017, the Defendant confirmed that he emailed the Claimant to consider whether there could be a role for the Claimant in dealing with the Defendant's new law firm / lawyer ("Higino") as the Defendant was not in Dubai. On 10 March 2017, the Claimant replied that he would talk to Higino and get back to the Defendant. On 14 March 2017, the Claimant emailed the Defendant the following:

"I've discussed with Higino. I can see value in my attending to see the prosecutor and also in being there for any further meetings with Honey's lawyers. I had previously put my pen down in accordance with you earlier instructions. Shall I start work on this? If so, I will ask HiginoHigino to get me into the next meetings. I will also try to meet Halen to discuss this."

13. The Defendant responded on the same date:

"Yes if the prosecutor will hear you - you will need to ask Higino if he will -

Also speak to Halen -

I think if we could have a few minutes on the phone first just to set the scene, that would be great so we know what we are doing going forward."

14. The Defendant submitted that his email contained further instructions that were conditional upon the Claimant being able to present the matter to the prosecutor and he claimed that he was expecting to agree a new fee arrangement in accordance with the Claimant's email of 5 January 2017.

15. No new fee proposal was agreed and the Defendant subsequently received Invoice 1. The Defendant asserts that he believed this to be an error and he tried to contact the Claimant to discuss it but there was no answer. He subsequently met the Claimant and Higino in Dubai on 8 May 2017, and the Defendant submits that he believed the Claimant was still deciding if he could act for the Defendant or not. It is alleged that Higino confirmed at the meeting that the Claimant would not be able to speak or represent the Defendant at any meeting with the prosecutor.

16. The Defendant argued that the outstanding invoices related to work done on and after 12 March 2017, however, it was only on 14 March 2017 that the Defendant communicated `conditional instructions' to the Claimant. It is submitted that any work that was completed by the Claimant after this date was merely background work in order to establish whether the Claimant could provide assistance moving forward.

17. The Defendant takes issue with the invoiced items and submitted that the Claimant charged for time spent in matters which were not going to advance the Defendant's case further, when he should have advised that he could not act for him and saved the Defendant from incurring unnecessary expenses.

18. The Defendant also relies on assurances contained within the Claimant's website, particularly "if you are not satisfied with our service, you do not have to pay for it" and the fact that the Claimant's complaints procedure was not adhered to.

The Claimant's reply

19. The Claimant responded to the Defence on 30 August 2017 by reiterating that the Defendant's payment of previous invoices demonstrated that he understood and accepted the Agreement and hourly rates of the Claimant. It was also asserted that had the Defendant disapproved of any of the charges he should have raised his concerns at that time. Furthermore, it is submitted that the Defendant's allegation regarding the 3-hour Haziq meeting related to a previous invoice which was already paid and not the subject of this dispute. In any event, the Claimant states that the allegation is false, that the meeting exceeded 3-hours and travel time was not included in the bill.

20. Regarding the `pens down' aspect of the Defence, the Claimant denied that this amounted to termination of the retainer and required a new engagement and fee arrangement upon further instructions being received by the Claimant. It was also denied that Higino informed the parties that the Claimant would not be able to speak for or represent the Defendant. The Claimant submitted that had the Defendant complained about the invoices in a timely manner following receipt of the invoice, that the Claimant may have waived some charges; however, the Claimant continued his work on the basis that the Defendant was satisfied.

21. Following the meeting with Higino on 8 May 2017, it is submitted that the Defendant continued to instruct the Claimant and an email dated 10 May 2017 is produced in support of this. The Claimant asserts that it was not until 27 June 2017 that the Defendant sought to convey his dissatisfaction with the Claimant's services and explain his non-payment of the April, May and June invoices.

The Defendant's reply

22. The Defendant put forward additional observations on 11 September 2017. The Defendant disputed the outstanding invoices in their entirety, claiming that no details of the work done had been provided in support of them. He takes the position that in the absence of a fee arrangement being agreed, the items contained within the invoices are non-chargeable.

23. The Defendant submitted that the Claimant had been disingenuous in the advice he gave to the Defendant and that had he known that the Claimant did not have rights of audience in the Dubai Courts, he would not have instructed him.

24. It is also claimed that his email to the Claimant on 10 May 2017, did not contain further instructions, but was merely an update from the prosecutors meeting:

"The purpose of this email was to assist the Claimant on formulating any strategy to see how he could help and advance my case and if he was able to do so what his fees would be so I could decide whether to appoint him for this work"

25. The Defendant refutes the Claimant's assertion that he did not raise concerns about the invoices and claims that he had numerous calls with the Claimant's practice manager, to whom he expressed his dissatisfaction, but the Claimant refused to discuss the matter. The Defendant produces an email dated 17 May 2017, in support of his submission that he had voiced concerns over the amount he was billed:

"Most of this time seems to be for getting updates by telephone/email from me or MAD. I do not know what strategy you are working towards and I feel that costs seem to be adding up for just keeping you updated. I think you should be updated, use that information so you can then add value and move forward to the next stage and charge for that work you do in moving the case forward."

26. The Defendant also produces the Claimant's response on the same date, stating:

"Sorry Hyrum, but I am not willing to enter into a lengthy discussion over an invoice of this size. If you don't want to keep using me then feel free to disinstruct me. If you do, then I need to stay updated and as that takes up my time, I am entitled to charge for it."

27. In addition, the Defendant provides a further email regarding the invoices, sent by him to the Claimant on 27 June 2017, in which he continues to express dissatisfaction with the amount he has been billed and challenges what work has been done.

The Hearing and further submissions

28. At the Hearing, the parties reiterated their arguments and I allowed additional time for the Claimant to produce further evidence with respect to the alleged misrepresentation made by the Claimant and also in support of the items in each of the outstanding invoices. Below I shall consider each aspect of the Claim and Defence in turn, together with the submissions made by the parties, and my finding.

Misrepresentation

29. In the course of the Defendant's submissions it was argued that he was led to believe that the Claimant would be able to represent him in the local Courts and that if he had known that the Claimant did not have rights of audience in the Dubai Courts, he would not have instructed him.

30. From the allegations made by the Defendant in his written submissions and at the Hearing, I inferred that an argument of misrepresentation was being made. In accordance with English contract and tort law, I may find that misrepresentation has occurred if the Defendant is able to show that he was induced into the Agreement by virtue of a false assertion by the Claimant.

31. On its face, the Defendant's argument appears quite reasonable as it would have made more economical sense for the Defendant to have directly instructed local counsel with rights of audience in the Dubai Courts from the outset. However, the Claimant produced an email sent by him to the Defendant on 9 October 2017, which was three days after the Agreement was entered into and prior to the retainer being paid. In the email, the Claimant states:

> "The best way to minimize the costs is to present your case fully from the outset. We need a statement from you explaining the whole story, and appending or referring to as many documents as possible, it needs to tell the story so I understand it as quickly as possible and that we can then brief others - local counsel etc - on the subject."

32. The Claimant has clearly referenced "local counsel" in his correspondence with the Defendant at a very early stage of their dealings with one and another and I'm of the view that the Defendant did or should have realised at this stage that additional lawyers would need to be instructed.

33. In the event that the Defendant genuinely did not understand the concept of "local counsel" or was unaware that the Claimant did not have rights of audience in the Dubai Courts, it is clear from the content of his subsequent emails with the Claimant that he became aware that local counsel was required. In fact, there was a time from February to March where the Defendant discontinued his instructions to the Claimant and solely engaged local counsel instead. This is demonstrated in the Claimant's email to the Defendant on 21 February 2016, in which the Claimant stated:

> "I've agreed with Higino that I will (put) my pen down and leave it all with him for now."

34. In light of the above, the allegation of misrepresentation would have been more plausible if it had been made in relation to invoices relating to work completed prior to February 2016. However, the Defendant has not raised any challenge to work completed prior to that time and has already settled all previous invoices with the Claimant.

35. Upon further exploration of the facts and some of the communications between the parties, it becomes clear that the Defendant was concerned about how information was being conveyed in his case. For example, in an email to the Claimant on 9 March 2017, the Defendant states:

> "I do not feel that the all the correct evidence has either been provided or understood by the prosecutor. Higino was at the meeting however he was not allowed to "tell the story". The interpreter did tell the story as I was telling it, however Higino said that half the story was not relayed to the prosecutor by the interpreter and she missed out many facts.
>
> I really need to get this right and feel that we are simply not doing this right and the prosecutor needs to be shown more accurately how this is a theft of the company and its money.
>
> Perhaps we could decide if there is any role for you here to play as this might be our one big chance to resolve this."
>
> This email demonstrates that the Defendant has an understanding of the need to instruct local counsel, however, he is still seeking the assistance of the Claimant as a means of ensuring his message is conveyed accurately.

36. In light of the above observations I am not persuaded by the Defendant's arguments that he is not liable to pay the Claimant's fees on the basis that the Claimant misrepresented his ability to represent him in the Dubai Courts. A number of emails between the parties demonstrate that, even if the Defendant was unclear on the need for local counsel at the immediate outset, he did become aware of this requirement and continued to instruct the Claimant in any event.

`Conditional instructions'

37. The real issue arises in relation to the Defendant's `pens down' argument. Following on from the Defendant's email to the Claimant on 9 March 2017, in which he considered whether there was any role for the Claimant to play moving forward, the Claimant responded on 14 March 2017, as follows:

> "I've discussed with Higino. I can see there is value in my attending to see the prosecutor and also in being there for any further meetings with Honey's lawyers. I had previously put my pen down in accordance with your earlier instructions. Shall I start work on this? If so, I will ask Higino to get me into the next meetings. I will also try to meet Hasib to discuss this."

38. The Defendant responded on the same day:

"Yes if the prosecutor will hear you - you will need to ask Higino if he will -

Also speak to Hasib -

I think if we could have a few minutes on the phone first just to set the scene, that would be great so we know what we are doing going forward ."

39. It is the Defendant's case that his above email contained instructions to the Claimant which were conditional upon the Claimant's ability to be heard by the prosecutor. The Claimant denies that the instructions were conditional and submitted at the Hearing that he could not be expected to complete any work for free.

40. On the face of it, the first sentence of the Defendant's email does appear to contain a conditional instruction. `Yes' is in answer to the Claimant's question `Shall I start work on this?', but is followed by `if the prosecutor will hear you - you will need to ask Higino if he will'. In my view the Defendant is clearly instructing the Claimant to start work on this but only if the prosecutor will hear from him and the Defendant goes on to instruct him to find out from Higino whether he will. If this was where the Defendant's email ended I would be inclined to agree that the instructions to `start work on this' were conditional upon Higino's answer. However, the Defendant's email continues with further instructions which are disjointed from the initial condition, he asks the Claimant to `Also speak to Hasib' and for `a few minutes on the phone'.

41. It was irresponsible for the Claimant not to have clarified the contents of the Defendant's email and the nature of his instructions, but I agree that the Claimant had been providing the Defendant with a service which was paid for up to this point, and just because the Claimant had previously put his `pen down' didn't mean the Defendant could have expected the Claimant to undertake future work for free. Furthermore, even the Defendant's initial conditional instruction would have required the Claimant to complete work that was reasonably necessary to find out if the prosecutor would hear him. Therefore, I am of the view that the Defendant was seeking to instruct the Claimant and that the services provided by the Claimant to the Defendant ought to be paid for, the question now is how much should be charged for those services.

Fee arrangement

42. Following earlier complaints from the Defendant regarding the amount he had been billed and what work had been done, the Claimant emailed the Defendant on 5 January 2017 with the offer of discussing a new fee arrangement going forward. However, there is no evidence of any discussions of a new fee arrangement having been agreed or even discussed by the parties prior to the new instructions being received from the Defendant in his email of 14 March 2017.

43. The Claimant made submissions regarding his email of 21 February 2017, in which he informed the Defendant that he had put his `pen down'. It was argued that this did not amount to a termination of the Agreement and that in the absence of a new fee arrangement being agreed between the parties, the existing Agreement and its fee arrangement should continue to apply.

44. The Defendant submitted that the Claimant's email of 5 January 2017, constituted a promise that a new fee arrangement would be provided for any work going forward. It is clear that the offer of a new fee arrangement was made by the Claimant, however, the Defendant does not appear to have taken up the Claimant's offer of renegotiating the fees prior to sending instructions on 14 March 2017. In light of the Defendant's previous complaints and the Claimant's earlier offer of a new fee arrangement, it would have been good business practice for the Claimant to have clarified what fees would apply moving forward on the new instructions. However, in the absence of a new fee arrangement having been agreed between the parties, I am inclined to accept the Claimant's argument that the existing Agreement and its fee arrangement shall apply.

Invoices

45. The Defendant challenges the majority of the contents of the invoices and effectively puts the Claimant to proof. The Claimant relied on the Claimant's payment of earlier invoices as demonstrating his acceptance of the Agreement and method of charging. However, the Defendant has demonstrated that he conveyed dissatisfaction with the way he was being charged in those earlier invoices and that this resulted in a deduction being made as well as an offer of a new fee arrangement. The Defendant also sought to contradict the Claimant's assertion that the Defendant did not challenge the April and May invoices in a timely way by submitting that he had numerous calls with the Claimant's practice manager regarding them and producing his email dated 17 May 2017. I am of the view that the Defendant did seek to challenge the invoices in an appropriate manner and did not receive an adequate response from the Claimant.

46. At the Hearing, the Defendant sought for the Claimant to prove what work had been completed by him, as he expressed dissatisfaction with the progress made in his case and the method of charging. The Claimant argued that these were not provided in respect of earlier invoices and that the Defendant had accepted the Agreement and the Claimant's method of charging by paying them in the past without seeking supporting evidence. However, in light of the history of the parties, particularly my observations regarding the `pens down', `conditional instructions' and new fee arrangement issues considered above, as well as the challenges to the invoices that have been made by the Defendant, I am of the view that the invoices ought to be supported by evidence and that only those invoiced items which are adequately supported by evidence shall be owed by the Defendant to the Claimant.

47. I have considered both parties' submissions with respect to the invoices and will discuss my finding for each item in the tables below.

48. Invoice 1

Date	Finding	Amount (GBP)

	Telecon with MAD	
12/03/2017	The `conditional instructions' were sent by the Defendant on 14 March 2017 and on the same date the Claimant sought permission to `start work', therefore I agree with the Defendant's argument that any items invoiced prior to that email and after the `pens down' email of 21 February 2017 should not be chargeable.	307.50 Dismissed
	Email correspondence	**153.75**
14/03/2017	The Claimant has produced emails between the parties on or around 14 March 2013.	**Awarded**
	Call with client; emails	
20/03/2017	The Claimant has produced a brief note of this call and an email chain - although the Defendant argues that the Claimant was only copied into emails to keep him updated, I agree with the Claimant's submissions that to keep informed and spend time on emails is chargeable.	**307.50** **Awarded**
	Discussions with MAD re progress and strategy	**307.50**
22/03/2017	The Claimant has produced a brief note of this call.	**Awarded**
	Telecon with MAD	153.75
28/03/2017	No supporting evidence produced.	Dismissed
	Telecon with MAD	153.75
29/03/2017	No supporting evidence produced.	Dismissed
	Telecon with client	
29/03/2017	Although no supporting evidence has been produced, this is an item that was admitted by the Claimant. The Defendant submitted that the duration of the call was 10 minutes and 53 seconds, however, as the Claimant has charged every item in quarters of an hour, which is not uncommon in the legal services sector, I find that it is not unreasonable for him to round up this item to 15 minutes (0.25 hours).	**153.75** **Awarded**
	Total Awarded GBP =	**922.50**

49. Invoice 2

Date	**Finding**	**Amount (GBP)**
	Telecon with MAD; correspondence	**307.50**
12/04/2017	The Claimant has produced correspondence which includes evidence of a discussion with Higino.	**Awarded**
	Telecon MAD	153.75
25/04/2017	No supporting evidence produced.	Dismissed
	Call with client; Discussion MAD	307.50
27/04/2017	No supporting evidence produced.	Dismissed
	Total Awarded GBP =	**307.50**

50. Invoice 3

Date	**Finding**	**Amount (GBP)**
	Meeting with client; Discussions MAD; Follow up	**768.75**
08/05/2017	The Claimant has produced a brief attendance note of this meeting and the Defendant has accepted that the meeting took place.	**Awarded**

	Emails; Discussions MAD	
13/05/2017	Inadequate supporting evidence produced. Although no evidence in support of this item was included in the `three sets' of evidence produced by the Claimant in his most recent submissions regarding the invoices, I have referred to all previous written submissions and had sight of a short email chain which ends with an email from the Claimant to the Defendant on 13 May 2017. In the circumstances, I am of the view that this would have been reasonable `Follow up' work for the `Meeting with client' which were both included in the Description column of Invoice 3 for 8 May 2017 (awarded above).	307.50 Dismissed □
	Total Awarded GBP =	**768.75**

51.□Accordingly, the sum of the totals I have awarded for each of the outstanding invoices is **GBP 1,998.75** (GBP 922.50 + GBP 307.50 + GBP 768.75) and this is due and payable by the Defendant to the Claimant.

52. Each party shall bear its own costs.

□

Issued by:

Nassir Al Nasser

SCT Judge and Registrar

Date of issue: 17 October 2017

At: 1pm

□