Claim No. SCT 050/2020

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
BEFORE SCT JUDGE AND DEPUTY REGISTRAR AYESHA BIN KALBAN

BETWEEN

LULAN COMMERCIAL BANK (PJSC)

Claimant

and

LARINA

Defendant

Hearing

: 29 April 2020

Judgment

: 29 April 2020

JUDGMENT OF SCT JUDGE AND DEPUTY REGISTRAR AYESHA BIN KALBAN

UPON the Claim Form being filed on 18 February 2020

AND UPON the parties being called on 15 April 2020 for a Consultation with SCT Judge Delvin Sumo and the parties not having reached settlement

AND UPON a Hearing having been held before SCT Judge Ayesha Bin Kalban on 29 April 2020, with the Claimant's representative appearing by way of telephone and the Defendant failing to attend although served notice of the Hearing

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant AED 68,957.84 in respect of the sums owed to the Claimant by the Defendant, plus interest at the rate of 9% per annum.

2. The Defendant shall pay the Claimant the Court Fee in the sum of AED 3,447.89.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of issue: 29 April 2020

At: 2pm

THE REASONS

Parties

1. The Claimant is Lulan Commercial Bank (PJSC), a bank providing financial services to customers (the "Claimant").

2. The Defendant is Ms. Larina, an individual customer of the Claimant Bank (the "Defendant").

The Claim

3. The parties entered into a written agreement on 10 July 2019, entitled `Lulan Personal Loan' (the "Agreement"). Under the terms of the

Agreement, the Claimant approved the sale of a loan to the Defendant in the amount of AED 83,000. The Defendant also availed of a MasterCard Gold Credit Card (the "Credit Card") on 24 July 2018, with a limit of AED 3,000. I shall discuss each of these products below.

The Personal Loan

4. Pursuant to the Agreement, the Defendant received an amount of AED 83,000 on 12 July 2018, to be repaid in 48 monthly instalments in the amount of AED 2,367. The Claimant alleges that the Defendant fell into arrears on 18 December 2019 and claims that the outstanding sum of the Loan amounts to AED 68,957.84.

The Mastercard Gold Credit Card

5. The Defendant also availed of a credit card with a limit of AED 3,000 and allegedly fell into arrears in regards to this product. The Claimant claims the outstanding sum owed to it to be AED 3,481.59.

6. Following the Defendant's failure to settle the amounts outstanding, the Claimant proceeded to file its claim for the recovery of the sums due and owed to it with the Small Claims Tribunal (the "SCT").

7. No defence or Acknowledgment of Service was submitted by the Defendant in relation to the claims brought by the Claimant, nor was the Defendant present at the listed Hearing.

8. The parties met for a Consultation with SCT Judge Delvin Sumo on 15 April 2020 but were unable to reach a settlement.

Discussion

9. In its written submissions and in the Hearing, the Claimant relied on the terms of the Agreement which set out the sums owed to it by the Defendant and the dates by which the Defendant was to settle its liabilities to the Claimant. The Claimant confirmed that it sought repayment of the outstanding amounts of the products it provided to the Defendant, which, as of the hearing date, amounted to AED 73,544.43. It also confirmed that it is seeking post-judgment interest on the sums due, as well as the recovery of the fee paid to the Court for the filing of this Claim, in the amount of AED 987.67.

10. In reviewing the documents filed by the Claimant, it appears that the Mastercard Credit Card application form does not contain an express clause by virtue of which the DIFC Courts would be able to exercise jurisdiction over the claim for the credit card. Further to the Hearing, I asked the Claimant to provide further submissions in regards to this and its submissions provided by way of email to the Registry are as follows:

> "As agreed by the defendant the Lulan Credit Card holder agreement and the service and price guide were provided in any form including but not limited to in either printed or digital form along with credit card. As mentioned in welcome kit, the detailed Terms and condition is always available on Lulan's official website - http://www.Lulan.com/Images/Lulan_CC_TC__Aug11.pdf "Governing Law clause 16" that the DIFC Courts have jurisdiction over all matters arising under the agreement. This contractual provision constitutes a submission to the DIFC Courts' jurisdiction by the parties."

11. In my view, a referral from a welcome kit to terms and conditions available on the Claimant's website cannot be construed to be a valid opt-in clause. The wording of Article 5(A) sets out that there must be a form of written agreement between the parties to refer their disputes to the DIFC Courts, whereby each party agrees to submit to the DIFC Courts' jurisdiction. A referral to terms and conditions that are available in digital form do not constitute to be a written agreement, as it does not guarantee in any form that the Defendant may have seen them, or that the Defendant agrees to submit to the DIFC Courts' jurisdiction. My finding in relation to this claim is also made in accordance with His Excellency Justice Shamlan Al Sawalehi's decision in [2019] CFI 70 Limsy vs Licoln.

12. I note that, in regards to the Agreement, Clause 18 sets out a valid opt-in, whereby the parties agree to submit to the DIFC Courts' jurisdiction.

13. Therefore, I dismiss the Claimant's claim for AED 3,481.59 in relation to the outstanding sum owed pursuant to the Mastercard Credit Card.

14. Based on the evidence before me and in the absence of any substantial evidence being put forward by the Defendant in regards to this Claimant's Claim for sums owed pursuant to the Personal Loan, I am satisfied that the Agreement between the parties is valid and binding, and that the Claimant is owed a total of AED 68,957.84, being the sum of the Linda Personal Loan availed of by the Defendant.

Finding

15. In light of my finding above, it is hereby ordered that the Defendant shall pay the Claimant the amount of AED 68,957.84. The Claimant is also entitled to the Court fee paid for the filing of this Claim, and in taking into consideration the Claimant's failure to succeed on all its claims I find it appropriate that the Defendant be ordered to pay the Court fee applicable to the judgment sum set out above, in the amount of AED 3,447.89.

16. The Claimant shall also be entitled to post-judgment interest at a rate of 9% per annum pursuant to the DIFC Courts' Practice Direction No. 4 of 2017.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of issue: 29 April 2020

At: 2pm