THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Ruler of Dubai

IN THE COURT OF FIRST INSTANCE

BEFORE HIS EXCELLENCY JUDGE SHAMLAN AL SAWALEHI

BETWEEN

LIMSY

Appellant

and

LICOLN

Respondent

Hearing	**: 23 January 2020**
Appearing	: The Appellant, a litigant in person The Respondent appeared as a litigant in person
Judgment	**: 5 February 2020**

JUDGMENT OF JUDGE SHAMLAN AL SAWALEHI

UPON the Judgment of SCT Judge Nassir Al Nasser dated 31 July 2019 (the "SCT Judgment")

AND UPON the Appellant's application of 31 July 2019 seeking permission to appeal the SCT Judgment (the "Appeal Notice")

AND UPON the Order of SCT Judge Nassir Al Nasser dated 4 September 2019 granting permission to appeal (the "Permission Order")

AND UPON hearing both parties on 23 January 2020

AND UPON further evidence being submitted to the Registry on 26 January 2020

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

AND PURSUANT to Part 44 of the DIFC Court Rules (the "RDC") and Article 5 of the Law No.12 of 2004 in respect of The Judicial Authority at Dubai International Financial Centre as amended (the "JAL")

IT IS HEREBY ORDERED THAT:

1. The Appeal be dismissed.

2. There be no order as to costs.

Issued by:

Ayesha Bin Kalban

Assistant Registrar

Date of issue: 5 February 2020

At: 2pm

THE REASONS

1. This is an appeal brought by the Appellant from the Small Claims Tribunal (the "SCT" or the "Tribunal") to the Court of First Instance (the "CFI"), against the judgment of SCT Judge Nassir Al Nasser dated 31 July 2019 (the "SCT Judgment").

2. The SCT Judgment identifies with precision the nature of the dispute between the parties, and sets out the grounds for concluding that the Respondent is ordered to pay the Appellant a sum of AED 61,654.17 (plus interest at the rate of 9% per annum) and a court fee in the sum of AED 3,082.70. Claims in relation to a credit card also held by Respondent (the "Limsy Visa Infinite Card") were dismissed due to lack of jurisdiction.

3. The Appellant appeals the decision pertaining to the Visa Infinite Card; by way of its application of 31 July 2019 (the "Appeal Notice") it argues

`as mentioned in welcome kit, the detailed [t]erms and condition[s] is always available on Limsy's official website "Governing Law Clause 16" that the DIFC Courts have jurisdiction over all matters arising under the agreement'. The Appellant's position is that this `contractual provision constitutes a submission to the DIFC Courts' jurisdiction by the parties'. The Appellant submitted a bundle in preparation for this appeal, but on the hearing of 23 January 2019 the legal representative did not make oral submissions as to why the Appellant may have jurisdiction with regards to the Visa Infinite Card.

4. I gave the legal representative for the Appellant further opportunity to furnish the Court with evidence of the parties' alleged opt-in to the DIFC Courts' jurisdiction, and requested documentation be sent to the Registry following the hearing. On 26 January 2020, a representative of the Appellant wrote to the Registry stating that the `Limsy credit card holder agreement' and the `service and price guide' were provided to the Respondent, `including but not limited to [.] printed or digital form'. The representative drew attention to "Governing Law Clause 16" and reiterated that the Appeal Notice that such was provided in the welcome kit and is available on the Appellant's official website. However, no evidence of the Respondent's alleged acceptance or approval of these documents was provided to the Court.

5. In response, the Respondent states in an email to the Respondent of the same date that he was never `presented or asked to view these documents or agreed on anything other than what was mentioned in the document that I signed' and that he believes that the DIFC Courts have no jurisdiction over this case.

6. It is not in dispute that this Visa Infinite account, (card number 4131555014806l144) was opened on 12 March 2014 and has been in arrears since 5 February 2019 and the total outstanding amount owed by the Respondent is AED 239,355.55. It is, however, in dispute as to whether the DIFC Courts have jurisdiction over the Visa Infinite account and whether or not the Defendant submitted or opted-in to the jurisdiction.

7. In my assessment of this appeal, attention must first be drawn to Part 44.118 of the DIFC Court Rules (the "RDC") which clearly states:

> The Court of First Instance will allow an appeal from a decision of a tribunal provided for in the Law, DIFC Law or Rules of Court where the decision was:
>
> 1. wrong in relation to a question of law;
>
> 2. unjust because of procedural unfairness or a miscarriage of justice; and/or
>
> 3. wrong in relation to any other matter provided for in or under DIFC Law.

8. This is not a rehearing, but rather a review of the decision of the lower court. All questions of fact were for the Tribunal and were decided upon the evidence before the Court at the time. The purpose of the appeal is to assess the decision and the procedure. Any complaint in respect of the decision from the SCT must be either procedurally unfair or gave rise to an error of law. In order to succeed at appeal, it thus follows that the onus falls on the appellant to outline matters within the judgment which justify a complaint that the learned judge was wrong in law or was conducting proceedings in a manner which gave rise to unfairness or a potential miscarriage of justice.

9. The representative for the Appellant has been unable to prove the above and persuade this Court that, pursuant to RDC 44.118, the appeal should be allowed; the Appeal Notice was not accompanied by proper submissions in accordance with the Court rules; the Appellant's legal representative did not make oral submissions as to why the Appellant may have jurisdiction with regards to the Visa Infinite Card; and when given further opportunity to furnish the Court with evidence of the Appellant's alleged jurisdiction and offered extra time to provide documentation following the hearing, counsel failed to show the decision of the SCT was wrong or unjust.

10. On my perusal of the SCT file and the documents pertaining to this appeal, I do not find the conditions of RDC 44.118 are fulfilled. The decision of the learned Judge was simply not wrong nor unjust in relation to this question of jurisdiction. As explained at paragraph 25 of the SCT Judgment;

> "[the] Credit Card Application Form provided by the Claimant was not clear and at the hearing I requested that the Claimant provide a clearer version of the Application Form. By way of email, the SCT Registry also reminded the Claimant to file its submissions in respect of the DIFC Courts Jurisdiction over this claim. However, I received submissions in respect of the Loan only as mentioned above."

11. Paragraph 26 of the SCT Judgment then goes on to follow the logical conclusion that, as neither of the parties are DIFC entities, the SCT's jurisdiction over the Visa Infinite Card claim relies upon the parties having validly opted-in to the SCT's jurisdiction. The learned Judge concludes that although there was a valid argument for the loan claim in terms of jurisdiction, (namely pertaining to clause 23 of the relevant terms and conditions submitted onto the Court file), the same argument does not apply for the Visa Infinite Card Claim due to the lack of evidence before the Tribunal.

12. The relevant law here is Article 5 of the Law No.12 of 2004 in respect of The Judicial Authority at Dubai International Financial Centre as amended (the "JAL"),the pertinent part in terms of `opting-in' of which are highlighted below;

> (2) The Court of First Instance may hear and determine any civil or commercial claims or actions where the parties agree in writing to file such claim or action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions.

13. The SCT Judgment (notably paragraphs 24-28 under the subheading `The Credit Card Claim') is therefore not wrong in relation to a question of law. As neither the Appellant nor the Respondent fall under the first jurisdictional gateway of Article 5 of the JAL, they must opt-in, as outlined above under the `second' jurisdictional gateway (as the third gateway does not apply here). The DIFC Courts, and indeed the SCT, can only determine commercial claims falling within this second jurisdiction gateway if both parties agree in writing to use the DIFC Courts, provided that such agreement is made pursuant to specific, clear and express provisions.

14. The Appellant cannot argue, as they have tried to do, that the DIFC Courts have jurisdiction over all matters arising under the credit card

agreement by virtue of the fact that this Court is `mentioned in [the] welcome kit', that the `detailed [t]erms and condition[s] [are] always available on Limsy's official website', `including but not limited to [.] printed or digital form' and that customers have the opportunity to take it upon themselves to read "Governing Law Clause 16". A mention or mere nod to the opt-in clause (or `contractual provision' as Limsy calls it) does not constitute a `submission' to the DIFC Courts' jurisdiction by customers of the Appellant. Moreover, this was not provided to the Tribunal in the first instance, and there is still no evidence of the Respondent's alleged acceptance or approval of these documents, rather, he states he has not seen them.

15. There is ample case law on what constitutes specific, clear and express provisions to a contract, but it is not necessary to delve into this discussion as the Court was not furnished (at first instance), nor at appeal stage with evidence that both parties had opted-in to the jurisdiction of the DIFC Courts.

16. In light of the above, I hereby order than the Appeal be dismissed.

Issued by:

Ayesha Bin Kalban

Assistant Registrar

Date of issue: 5 February 2020

At: 2pm