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 NASSIR AL NASSER

BETWEEN

LIVANA COMMERCIAL BANK (PJSC)

Claimant

and

LINOD

Defendant

Hearing

: 9 March 2020

Judgment

: 18 March 2020

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant and the Defendant at the Hearing on 9 March 2020

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the Loan amount in the sum of AED 184,112.28 plus interest at the rate of 9% per annum.

2. The Claimant's claim in relation to the Credit Card shall be dismissed for lack of jurisdiction.

3. The Defendant shall pay the Claimant the Court Fee in the sum of AED 9,205.61.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 18 March 2020

At: 10am

THE REASONS

Parties

1. The Claimant is Livana Commercial Bank (PJSC), a bank providing financial services including credit cards and personal loans to customers (the "Claimant").

2. The Defendant is Linod, an individual residing in Dubai, UAE (the "Defendant").

Background

3. The parties entered into a written agreement on 20 June 2018, entitled `LIVANA Personal Loan and Credit Card Application Form' (the "Original Agreement").

4. On 1 July 2018, following an application made by the Defendant, the Claimant granted him a personal loan in the sum of AED 149,900 that was repayable in 48 monthly instalments of AED 3,828, and at the point of filing this claim, the alleged outstanding sum due under the personal loan

was AED 141,256.16.

5. On 8 December 2018, the Defendant made a top-up on the personal loan, and on 10 December 2018, the Claimant approved and granted him a new loan under number 11175480SP01002, with an amount of AED 200,000, that was repayable in 48 monthly installments, each month in the sum of of AED 5,045 (the "Top-up Agreement").

6. The Defendant made regular repayments of the loan and continued to pay until 26 August 2019, after which time he fell into arrears. According to the Claimant, the remaining amount currently outstanding on the loan is AED 184,112.28.

7. The Claimant also alleges that, on 25 April 2018, the Defendant was granted a Credit Card (LIVANA Traveler World Mastercard) with a limit of AED 37,500 and it has been in arrears since 19 June 2019. Therefore, the current outstanding amount owed by the Defendant to the Claimant in relation to the Credit Card is AED 48,466.63.

8. Following the Defendant's failure to keep up with his repayments, the Claimant filed a claim with the DIFC Courts' Small Claims Tribunal (the "SCT") to recover the amounts on 6 January 2020 (the "Claim").

9. The Defendant responded to the Claim on 12 January 2020 intending to contest the jurisdiction of the DIFC Courts. However, the Defendant failed to file a contest of jurisdiction application nor file any submissions challenging the jurisdiction of the DIFC Courts.

Discussion

10. This Claim includes two main elements. First, it must be established that the DIFC Courts have jurisdiction over all of the products under this Claim, including the claim for alleged sums owed under the loan and the claim for alleged sums owed in relation to the Credit Card. Second, the two claims must be assessed based on the documentary evidence provided to adjudicate whether the Defendant is in arrears and how much remains owing to the Claimant.

11. Due to the important fact that the SCT cannot give judgment on claims falling outside of its jurisdiction, I will address the SCT's jurisdiction over each claim below.

The Loan Claim

12. The Claimant argues that the Original Agreement remains valid between the parties and was signed by the Defendant on 20 June 2018 (a copy of the Agreement was attached to the case file). The Defendant then applied for a top-up of the loan, following which, on 8 December 2018, the top-up was completed, and the Defendant received the total sum of AED 200,000, payable in 48 monthly instalments.

13. The Claimant contends that the DIFC Courts and the SCT has jurisdiction over the claim, as the Defendant agreed to the terms and conditions set forth in the top-up request, as presented on the LIVANA system, which states at Clause 18:

> "the Civil Court of the Individual Emirates. The Federal Civil Courts of the United Arab Emirates, and the Courts of the Dubai International Financial Centre (including without limitation the Small Claims Tribunal of the DIFC). Shall have non-exclusive jurisdiction over all matters arising under the products' terms and conditions save that bank shall have the right to file actions in any court with jurisdiction over you or your assets."

14. I find that the parties have opted-in to the jurisdiction of the DIFC Courts pursuant to Clause 18 of the Terms and Conditions.

15. In relation to the claim for sums allegedly owed under the loan, the Defendant admitted that he signed the Original Agreement and the Top-up Agreement. However, he fell in arrears due to the circumstances that he lost his job. Therefore, based on the documentary evidence, I am satisfied that the Defendant has been in arrears since 26 August 2019, and the remaining balance due under the loan is in the sum of AED 184,112.28.

16. The Claimant also requested for post judgment interest pursuant to Practice Direction No. 4 of 2017, which I find that the Claimant is entitled to.

The Credit Card Claim

17. In respect of the claim for sums due in relation to the credit card, the Claimant included the Credit Card Application form signed by the Defendant.

18. In relation to the jurisdiction, I note that neither of the parties are a DIFC entity and thus the SCT's jurisdiction over the Claim relies upon the parties having validly opted-in to the SCT's jurisdiction. While this is a valid argument for the claim in respect of the sums due under the loan, as per Clause 18 of the Terms and Conditions, this argument does not apply for the claim in respect of the Credit Card.

19. Therefore, I shall dismiss the Claimant's claim for the sum of AED 48,466.63 in respect of the Credit Card.

20. The Defendant shall pay the Claimant the Court fee in the sum of AED 9,205.61.

Finding

21. The Defendant shall pay the Claimant the loan amount in the sum of AED 184,112.28, plus interest at the rate of 9% per annum.

22. The Claimant's claim in relation to the Credit Card shall be dismissed for lack of jurisdiction.

23. The Defendant shall pay the Claimant the Court Fee in the sum of AED 9,205.61.

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Nassir Al Nasser

SCT Judge

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