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

GARRISON LLC

Claimant

v

GLORIA LLC

Defendant

JUDGMENT OF SCT JUDGE MARIAM DEEN

UPON the Claim Form being filed on 21 August 2016;

UPON a Jurisdiction Hearing having been held before SCT Judge Natasha Bakirci on 1 September 2016, with the Claimant's representatives in attendance and the Defendant failing to attend although notice was served;

UPON an Order being issued by SCT Judge Natasha Bakirci on 19 September 2016 finding the Small Claims Tribunal of the DIFC Courts to have jurisdiction to hear the dispute;

UPON the parties being called on 22 September 2016 for a Consultation with SCT Officer Mahika Hart and the parties not having reached settlement;

UPON a Hearing having been held before SCT Judge Mariam Deen on 12 October 2016, with the Claimant's representative in attendance and the Defendant's representative participating via telephone;

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

IT IS HEREBY ORDERED THAT:

1.The Defendant shall vacate the Premises by 18 October 2016, at which time the Claimant may take possession of the Premises.

2. The Defendant shall pay the Claimant AED 133,962.36 as rent due for occupying Retail Unit, DIFC, Dubai, Unites Arab Emirates (the "Premises") for the period of 31 March 2016 through 18 October 2016.

3. The Defendant shall pay the Claimant AED 28,500 to restore the Premises to its previous state.

4. The Defendant shall pay AED 5,462.67 as reimbursement of the Claimant's Court fee.

THE REASONS

Parties

5. Garrison LLC (hereafter the "Claimant") is an Abu Dhabi based company which owns Retail Unit in the DIFC which it purchased on 31 March 2016 (the "Premises").

6. Gloria LLC, owned by Mr Owner (hereafter the "Defendant") is a retail store formerly open in the Premises as per a lease agreement (the "Lease Agreement") with the former owner of the Premises, KAIR LLC.

Background and the Preceding History

7. The Defendant had rented the Premises from KAIR LLC under the terms of the Lease Agreement dated 26 September 2012, the term of the lease was three years, commencing on 24 December 2012 and ending on 23 December 2015. The Defendant continues to occupy the Premises despite the expiry of the Lease Agreement and the sale of the Premises by KAIR LLC to the Claimant on 31 March 2016.

8. On 21 August 2016, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for the Defendant's eviction and damages relating to occupation of the Premises. The total claim value of USD 31,215.29, equivalent to AED 114,716.19, was to include damages for lost rent from 31 March 2016 to date and the cost of restoring the Premises to its previous state.

9. The Defendant responded to the claim on 27 August 2016 by contesting the jurisdiction of the DIFC Courts and the SCT over the dispute.

10. Following a Jurisdiction Hearing on 1 September 2016 an Order was issued by SCT Judge Natasha Bakirci on 19 September 2016 finding the SCT of the DIFC Courts to have jurisdiction to adjudicate the case.

11. The Claimant's and the Defendant's representatives met for a Consultation with SCT Officer Mahika Hart on 22 September 2016 but were unable to reach a settlement.

12. On 12 October 2016 a Hearing was scheduled before me. The Claimant's representative Ms Representative attended in person, with the Defendant's representative Mr Owner participating via telephone. I heard submissions from both parties and the Claimant was granted additional time to submit evidence of its ownership of the Premises and the value of its claim for the cost of restoring them, following which the case was reserved for judgment.

The Claim

13. The Claimant submits that since its purchase of the Premises on 31 March 2016 it has not had access or made use of them due to the Claimant's occupation of them. The Claimant seeks the immediate formal eviction of the Defendant from the Premises and claims the following in terms of damages associated from his occupation of them:

(i) AED 80,686.64 pertaining to lost rent from 31 March 2016 to date; and

(ii) AED 28,500 as the cost of restoring the Premises to its previous state.

The Defence

14. The Defendant submits that it is actually his former landlord KAIR LLC and a third party claiming ownership of the Defendant company that are preventing the Defendant from delivering the Premises to the Claimant. He accepts that the Premises are owned by the Claimant and access should be granted but denies that it is his responsibility to deliver the Premises due to this outside interference.

Discussion

15. The Lease Agreement between KAIR LLC and the Defendant has a clearly defined term commencing on 24 December 2012 and expiring on 23 December 2015.

16. In the Hearing the Claimant explained that it purchased the Premises on 31 March 2016 and I have had sight of its Title Deed to the Premises which was provided following the Hearing. The Claimant submitted that it became aware of the Defendant's expired lease and continued occupation of the Premises following its purchase of them and the Defendant was duly requested to vacate. It was confirmed that there were no attempts to agree to a new lease agreement between the Claimant and Defendant.

17. The Defendant does not deny that the Lease Agreement has expired, nor that the Premises should be vacated but submitted that it should be KAIR LLC and the third party who are requested to deliver the Premises. The DIFC Public Register names Mr Owner as the sole shareholder and manager of the Defendant company and in the absence of evidence supporting the assertion that any third parties have an interest in the Premises or property therein, I am satisfied that this case has been bought against the appropriate Defendant, who should ultimately bear responsibility for overstaying at the Premises. The Claimant also confirmed that there had been no police or third party notice or involvement regarding the Premises, to its knowledge.

18. It is my view that the Lease Agreement was not renewed expressly or impliedly, therefore, the Defendant's continued occupation of the premises following the expiry of the Lease Agreement on 23 December 2015 was unlawful. The Premises were transferred to the Claimant on 31 March 2016 and in the absence of any new lease agreement being entered into by the parties, the Defendant became an illegal tenant of the Premises, entitling the Claimant to an Order for immediate eviction and damages for lost rent from that date.

19. It's worthy of note that the Lease Agreement contained a `Holding Over' provision at Clause 6.20 requiring the Defendant to pay the former landlord KAIR LLC, 150% of the aggregate of the last rent for every day the Defendant continued to be in possession of the Premises following expiry of the Lease Agreement. Ownership of the Premises transferred to the Claimant on 31 March 2016 and the Claimant explained in the Hearing that its claim for damages with respect to lost rent had been calculated on a pro rata basis, based on the rent payments made by the Defendant under the expired Lease Agreement. I consider this to be a fair and appropriate method of calculating what is owed by the Defendant. Accordingly, as the annual rent paid by the Defendant was AED 242,060 the daily rate applicable is 242,060 / 365 = AED 663.18 and I find that this began to accrue from 31 March 2016.

20. With respect to damages claimed for restoring the property to its previous state, the Claimant was asked in the Hearing to support the value being sought with evidence; this was subsequently provided on 16 October 2016 in the form of a quotation for the demolition of the Defendant's showroom dated 21 June 2016 from Construction LLC. The Defendant did not raise any objections to this claim and I am satisfied that it is

reasonable in the circumstances for the Defendant to incur the cost of restoring the Premises to its previous state, or to `shell and core' as the scope of work describes.

Conclusion

21. Pursuant to the afore mentioned, I find that the Defendant should vacate the premises by 18 October 2016 and that the Claimant is entitled to damages for lost rent for 202 days from 31 March 2016 through 18 October 2016, in the sum of AED 133,962.36 (202 x 663.18). Furthermore, the Defendant is liable in the sum of AED 28,500 for the cost of restoring the Premises to its previous state, and reimbursement of the Claimant's Court fee of AED 5,462.67.



Issued by:

Mariam Deen

SCT Judge

Date of issue: 16 October 2016

At: 4 pm

