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 OF DIFC COURTS
BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

MONA FZ - LLC

Claimant

and

MEUN

Defendant

Hearing : **9 November 2020**
Judgment : **13 December 2020**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 4 October 2020

AND UPON the Defendant filing an Acknowledgment of Service intending to defend all of this Claim dated 11 October 2020

AND UPON a Consultation being held before SCT Judge Delvin Sumo on 14 October 2020

AND UPON the parties failing to reach a settlement at the Consultation

AND UPON a hearing having been listed before SCT Judge Maha Al Mehairi on 9 November 2020, with the Claimant's and the Defendant's representatives attending

AND UPON reading the submissions and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of USD 56,969.82.

2. The Claimant shall file its submissions in relation to its claim for interest that has accrued until the date of this Judgment by no later than **4pm on Sunday, 20 December 2020**.

3. The Defendant shall pay the Claimant a portion of the Court fee in the sum of USD 2,848.49.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 13 December 2020
At: 3pm

THE REASONS

The Parties

1. The Claimant is Mona FZ-LLC (the "Claimant"), a Dubai-based software company.

2. The Defendant is Meun (the "Defendant"), a travel and leisure company based in Dubai, UAE.

Background and the Preceding History

3. On 25 October 2018, the parties entered into an Affiliate Partner Programme Agreement for the implementation of an affiliate marketing programme ("Marketing Agreement"). The Marketing Agreement set out the fee structure which determined the payment mechanism agreed to by the parties, namely for the Defendant to make payment off each transaction that is concluded through the Claimant. The Defendant failed to settle the invoice generated from the transactions, which lead the Claimant to file a claim against the Defendant.

4. On 4 October 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming the pending invoices in the amount of USD 56,969.82 in addition to the contractual interest, and court fees.

5. On 11 October 2020, the Defendant filed an Acknowledgment of Service setting out its intention to defend all of the claim.

6. The parties met for a Consultation with SCT Judge Delvin Sumo on 14 October 2020 but were unable to reach a settlement. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 9 November 2020.

The Claim

7. The Claimant submits that it is entitled to payment from the Defendant in the amount of USD 56,969.82 in regards to outstanding sums owed for transactions carried out through the Claimant under the Marketing Agreement between the parties. The Claimant submits that the Defendant's failure to pay was due to the lack of the Defendant's knowledge in relation to how the transactions are generated through the trade Mona system, however, the Claimant states that the Marketing Agreement between the parties explicitly sets out the mechanism under which each transaction is generated. On this basis and pursuant to the transaction being carried out, an invoice is duly generated. The Claimant further submits that the Defendant's failure to pay is a breach of that Agreement.

8. The Claimant asserts that the Marketing Agreement under the section titled `Commercial Terms' provides a schedule of the Claimant's costs which, the Claimant submits, the Defendant was aware of. As such, the Claimant contends that the Defendant was invoiced in accordance with the schedule, which also provides the procedures for invoicing.

9. The amounts invoiced by the Claimant were denied by the Defendant and therefore the Claimant proceeded to file his Claim with the SCT.

10. The total sum claimed by the Claimant as set out in the Claim Form is USD 56,969.82, and the Claimant further sought the payment of interest and the court fee applicable to the filing of the Claim

The Defence

11. The Defendant confirms that it had undergone an internal audit which concluded that the amount claimed by the Claimant is not accurate and does not match the analytical report from generated from the Defendant's side. The Defendant submits that this report, being maintained by the Defendant, determines that the total commission payable to the Claimant is USD 10,784.43 and not the amount claimed by the Claimant.

Discussion

12. First and foremost, the relevant Engagement Agreement falls under the DIFC Courts' jurisdiction as set out in the Marketing Agreement, at the below Clauses:

> 5.1.1 "Any dispute, difference, controversy or claim arising out of or in connection with this Agreement (and the appendices attached herewith), including (but not limited to) any question regarding its existence, validity, interpretation, performance, discharge and applicable remedies shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre ("the DIFC Courts")
>
> 5.1.2 The Small claim tribunal (SCT) will hear and determine any such dispute, difference, controversy or claim within the jurisdiction of the DIFC Courts, where the amount of the claim or the value of the subject matter of the claim does not exceed AED 1,000,000."

As the claim value is less than AED 500,000, this claim is properly before the Small Claims Tribunal of the DIFC Courts.

13. There is just one issue to be decided in this dispute: is the Claimant entitled, under the Marketing Agreement, to the payment claimed, which the Claimant sets out, was calculated in accordance with the fee schedule? There is no dispute between the parties as to the existence and applicability of the Marketing Agreement, but the Defendant contends that pursuant to its understanding of the Marketing Agreement the calculations provided by the Claimant are incorrect. The Claimant asserts that the amount was in fact correct and are owing and due under the Marketing Agreement.

14. Clauses 3.3 and 7.2 of the Marketing Agreement, drafted by the Claimant, reads as follows:

> "3.3 During the term of this Agreement, the Client shall;
>
> 3.3.1 cancel or reimburse any purchase made by Mona to test the proper operation of the Tracking Code.
>
> 3.3.2 provide any information, assistance or access required by Mona to comply with its obligations.
>
> 3.3.3 nominate a representative who shall:
>
> (a) be authorized to act on behalf of the client
>
> (b) be available during normal business hours on Business Days;
>
> (c) at least twice each week, select and reject Affiliates to promote the Client. Any Affiliates which are not rejected within 5 Business Days shall be deemed accepted; and
>
> (d) approve or decline Transactions with 30 days of the date of the Transactions. Any Transactions which are not declined within 30 days shall be deemed approved irrevocably"
>
> "7 INVOICING AND PAYMENT
>
> 7.1 Mona will issue an invoice for:
>
> 7.1.1 the Set-up Fee on the Effective Date;

7.1.2 Monthly Software Licence & Network Access Fee, the Hosting Fee; the Transaction Fee, any Downtime Charges and any charges in respect of additional services on a monthly basis (as applicable), charged in arrears; and

.

7.2 Invoices shall be sent by email, and are payable within 15 days of the invoice date, without deduction or set off, to a bank account nominated by Mona.

7.3 All banking or payment charges, costs of exchange or currency fluctuation will be borne by the Client.

7.4 The Tracking Code shall be the sole basis for the calculation of payments under this Agreement.

7.5 In addition to any other rights or remedies of Mona, if the Client fails to make any payments by the due date or otherwise in accordance with this Agreement:

7.5.1 interest will accrue on such due amounts at an annual rate equal to 8% over the then current base lending rate of The United Arab Emirates lending Interest Rate at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment; and

7.5.2 Mona may immediately suspend the provision of any access to the Programme or its Services on notice to the Client.

7.6 All amounts in this Agreement exclude VAT if applicable."

15. In accordance with the abovementioned Articles, the invoices generated by the Claimant are subject to the Defendant's approval or rejection for a period of 30 days. Upon the expiry of that period of time, and if no rejection has been made, the invoices are deemed accepted and payment must be made within 15 days of the date of the invoice.

16. The evidence provided demonstrates that the invoices were sent to the Defendant, by way of emails containing pdf versions of each invoice, which may also be accessed from the web interface by the Defendant. The email also contains the following message

"Dear Meun,

Please find attached the invoice relating to our last invoice period. We ask you to pay this invoice within 15 days. Should you have any questions and/or remarks regarding this invoice, please do not hesitate to contact us."

17. The invoice specification can be accessed directly from the email, as its content clearly specifies. Furthermore, when clicking on the invoice number in the pdf, it directly links to the invoice specification. By clicking on the first PDF icon, the pdf can be downloaded from the platform. The second PDF icon allows the Defendant to download the specification of all transactions related to the invoice. As such, the Defendant can download all the specifications from the email sent with the invoice.

18. The Defendant signed the Marketing Agreement, thereby acknowledging and agreeing to the terms contained within it. The Defendant should have raised issues in relation to the concerned invoice if any during the time allotted under the Marketing Agreement. The Defendant failed to provide any evidence to show any issues were raised.

19. The Claimant also adds that the Defendant had full operational access and insight into the marketing campaign results, incoming transactions, invoices and invoice specifications. The Claimant further contends that the Defendant has not followed the Agreement, neither has it executed its IT obligations pursuant to it.

20. I find in favour of the Claimant and agree with its submissions. Accordingly, the Defendant is ordered to pay the Claimant the amount of USD 56,969.82.

Interest Calculations

21. As per Clause 7.5 of the Marketing Agreement, the outstanding invoices would accrue interest at a rate of twelve percent (8%) per annum, to be calculated on a daily basis, from the due date of the relevant invoice until receipt of payment. The Claimant is seeking Interest of 8% per annum, on the outstanding amount of USD 56,969.82. Clause 7.5 reads as follows:

"7.5 In addition to any other rights or remedies of Mona, if the Client fails to make any payments by the due date or otherwise in accordance with this Agreement:

7.5.1 interest will accrue on such due amounts at an annual rate equal to 8% over the then current base lending rate of The United Arab Emirates lending Interest Rate at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment; and

."

22. The Court finds that the Defendant shall pay the Claimant the sum in relation to the unpaid invoices according to the contractual interest due on the amount as per the Marketing Agreement between the parties. The abovementioned clause sets out the Claimant's contractual entitlement to interest in accordance with the Marketing Agreement, and I am of the view that the Claimant must be paid this amount accordingly. The Claimant has not provided submissions in regards to the amount of interest accrued to date, and I hereby direct that these amounts be provided by no later than 20 December 2020.

Conclusion

23. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of USD 56,969.82.

24. The Claimant shall file its submissions as to its claim for interest accrued until the date of this Judgment by no later than **4pm on Sunday, 20 December 2020**.

25. The Defendant shall pay the Claimant the Court fee in the sum of USD 2,848.49.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 13 December 2020
At: 3pm