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 H.E. JUSTICE MAHA ALMHEIRI

BETWEEN

LAMONG

Claimant

and

LANDRUN

Defendant

Hearing : **5 April 2022**
Further Submissions : **8 April 2022**
Judgment : **13 April 2022**

JUDGMENT OF H.E. JUSTICE MAHA ALMHEIRI

UPON this Claim being filed on 7 March 2022

AND UPON the Defendant filing an Acknowledgment of Service intending to defend all of this Claim dated 14 March 2022

AND UPON a Consultation being held before SCT Judge Hayley Norton on 22 March 2022

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

AND UPON a hearing having been listed before H.E Justice Maha Al Mheiri on 5 April 2022, with the Claimant and the Defendant attending

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

IT IS HEREBY ORDERED THAT:

1. The Claimant's Claim shall be dismissed.

2. Each party shall bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Registrar
Date of issue: 13 April 2022
At: 3pm

THE REASONS

The Parties

1. The Claimant is Lamong (the "Claimant"), an individual filing a claim regarding his apartment situated in the DIFC, being Unit 123 (the "Premises").

2. The Defendant is Laszlo (the "Defendant"), an individual leasing the Premises.

Background and the Preceding History

3. On 30 October 2021, the Claimant and LarueLarue ("Larue") entered into an agreement to lease the Claimant's Premises for one year (the "First Lease Agreement") and allowed Larue to sub lease the Premises to other individuals.

4. The rental amount agreed between the Claimant and Larue was AED 120,000, to be paid in 4 instalments. On 28 October 2021, Larue paid the Claimant the first installment in the amount of AED 30,000 through wire transfer. The rest of the payments were provided via postdated cheques to the Claimant.

5. Larue and the Defendant entered into a sub-tenancy contract on 26 November 2021 (the "Second Lease Agreement") for the period of 1 year. The Claimant paid the full amount of AED 90,000 for the rent and AED 5,000 as a security deposit for the Premises.

6. At the time of encashing the first postdated cheque issued by Larue to the Claimant, the latter was informed by the bank that Larue had withdrawn all funds in its account and proceeded to close the account, meaning that the cheque had returned and payment was unsuccessful.

7. Upon investigation, the Claimant discovered that Larue had also left the country, defaulting on its obligations towards the Claimant.

8. Shortly after, the Claimant sought to find out whether the Premises was tenanted. After attending to the Premises and seeking advice from building security, the Claimant was under the impression that the Premises were vacant. The Claimant also enquired through the DIFC's Registrar of Property to determine the status of the Premises' tenancy, whereby no registration of a lease was found. The Claimant then proceeded to seek a change of the Premises' locks. Upon entering the Premises, the Claimant discovered that there was indeed a tenant occupying the unit.

9. The Defendant arrived at the Premises to find that the Claimant changed the locks and denied him access to the Premises. The Defendant called the Dubai Police and reported his situation, where an officer arrived and documented the case. The officer advised the Defendant to consult with the Rental Dispute Center ("RDC") for next steps.

10. On 2 March 2022, the Claimant filed the following two claims with the RDC, the first being a petition to the Index Tower's building management to grant him the right to remain in the Premises without cutting any services subject to a court order being issued. The second claim before the RDC amounts to a petition for the Dubai Police Department to finalise the complaint filed against the Claimant for changing the locks of the Premises without permission.

11. The Judge of Urgent and Temporary Matters ruled in favor of the Defendant's request to grant him access to the Premises (the "Ruling"). On 3 March 2022 and upon receipt of the Ruling, the Defendant called the Index Tower building management who confirmed receiving the same from the RDC. However, they sent the Ruling to Claimant and Defendant stating that they cannot be involved in the matter and advised the parties to remedy this matter between them.

12. On 7 March 2022, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming back the possession of his Premises from the Defendant.

13. On 14 March 2022, the Defendant filed an Acknowledgment of Service setting out his intention to defend all of the claim.

14. The parties met for a Consultation with SCT Judge Hayley Norton on 22 March 2022 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 5 April 2022.

The Claim

15. The Claimant's case is that Larue did not register the Second Lease Agreement on the DIFC system, which makes the agreement between Larue and the Defendant invalid. In addition, Larue has defaulted on the remainder of its payments owed to the Claimant under the First Lease Agreement.

16. The Claimant seeks the return of possession over the Premises from the Defendant due to lack of payment.

The Defence

17. The Defendant submits that he entered into the Second Lease Agreement after reviewing the Title Deed for the Premises, the Claimant's Passport Copy, and the First Lease Agreement, which authorised Larue to manage and sublease the Property.

18. Furthermore, the Defendant contends that the Property Management Agreement between the Claimant and Larue amounts to evidence that the Second Lease Agreement between Larue and the Defendant is indeed valid since Larue had the requisite authority and consent from the Claimant to lease the Premises.

19. The Defendant reiterates that he entered into the Second Lease Agreement in good faith, having made the standard and appropriate inquiries before signing the Second Lease Agreement.

20. The Defendant also made requests in his submissions seeking the following:

(a) an order dismissing the Claimant's Claim in its entirety

(b) an order for the Claimant to pay following all fees and expenses associated with this claim, including but not limited to, the RDC Claims and filing reports with the Dubai Police;

(c) an order for the reimbursement of all expenses incurred by the Defendant during the time he was locked out from the Premises such as hotel expenses, added transportation costs, and future expenses that may be incurred pending the resolution of the case;

(d) An order from the Court to stay at the Premises until the end of the lease period being 11 December 2022; and

(e) any other relief, as the SCT shall deem just and appropriate.

21. The Defendant failed to formally submit the above claims in the form of a counterclaim therefore I shall not address them in my findings below.

Discussion

22. First and foremost, the relevant Lease Agreements are in relation to a unit in the DIFC, therefore by default, any agreement shall be governed by the prevailing law of the DIFC, United Arab Emirates and that upon failure to resolve any disputes connected to the Lease Agreements, the dispute shall be referred to the DIFC Courts. Therefore, it is clear and undisputed that the DIFC Courts have jurisdiction to decide this matter.

23. It is crucial to examine both Agreements, to understand the legal obligations of the parties. The First Lease Agreement was a lease agreement which allowed the Claimant to lease the Premises to Larue. When the Court requested from the Claimant to provide the NOC for Larue to sub lease the Premises, the Claimant replied that the only agreement signed was the First Lease Agreement.

24. In the Hearing, the Claimant explained the nature of the relationship between him and Larue, meaning the Claimant was well aware of the role that Larue would play in the agreement signed.

25. As such, Larue was given permission to act as a tenant authorised to contract and enter into a new property lease with no more than two tenants in a year, otherwise the rental cheques would have been required to be paid directly to the Claimant himself rather than to Larue.

26. The Claimant also understood that Larue is a holiday home company that is allowed to short lease the Premises to no more than two tenants as shown in the First Lease Agreement

> "3.1 the Parties agree to the following additional terms to the Lease, which shall form an integral part of the Lease expect in the event of any conflict with the above provisions where such additional term will be considered invalid1:
>
> 1. .
>
> 4. this is a company let and is agreed to a maximum of two tenants per annum
>
> ."

27. Moreover, when Larue issued the Second Lease Agreement the company was acting in accordance with its rights bestowed upon it by the Claimant.

28. In review of the First and Second Lease Agreement, I note that both agreements are valid and legally binding upon the parties and the Claimant and Defendant have provided enough evidence to support their claims. It is an unfortunate event that Larue has fled the country without fulfilling the agreed terms of the Agreements because the Claimant and Defendant have signed the Agreements with Larue only.

29. Ultimately, it is very obvious that in this case we are dealing with two separate property leasing agreements, both of which have been legally affirmed. The two agreements have two different sets of parties and two different considerations, but the subject of both of the agreements is the same. The general principle is that any party to either Contract cannot use or interfere with another party's Contract rights or liabilities.

30. Furthermore, I am of the view that the Second Lease Agreement was entered into by the Defendant in good faith, seeking to occupy the Premises. I do not find that it was everthe Defendant's intention to enter into an invalid lease agreement, seeing asthe Defendant demonstrated steps to check if the First Lease Agreement was valid and legal and also sought to cross-reference the Claimant's name to match the documents provided by Larue.

31. The Court disagrees with the Claimant's argument that since the Second Lease Agreement was not registered that its invalid, as this is a fallout on the part of Larue and not the Defendant. The Claimant's First Lease Agreement was breached by Larue's failure to pay and not the Defendant's failure to pay the rent amount. The Defendant should not bear the consequences of Larue's actions to the First Lease Agreement, as the Defendant is not part of that agreement.

32. As stated above, in this case there are two separate lease agreements, and only the parties to a contract incur rights and obligations under the contract or under the rule of third parties. This is not applicable in this case as the Claimant's rights were not expressly identified in the Second Lease Agreement, in accordance with Part 10 Rights of Third Party of the DIFC Contract Law No.6 of 2004.

> "104. Right of third party to enforce contractual term
>
> (1) Subject to the provisions of this Law, a person who is not a party to a contract (a "third party") may in his own right enforce a term of the contract if:
>
> (a) the contract expressly provides that he may; or
>
> (b) subject to Article 104(2), the term purports to confer a benefit on him.
>
> (2) Article 104(1)(b) does not apply if on a proper construction of the contract it appears that the parties did not intend the term to be enforceable by the third party.
>
> (3) The third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description but need not be in existence when the contract is entered into.
>
> (4) This Article does not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract.
>
> (5) For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party to the contract (and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly).
>
> (6) Where a term of a contract excludes or limits liability in relation to any matter references in this Law to the third party enforcing the term shall be construed as including references to his availing himself of the exclusion or limitation."

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33. The Court is not convinced that the Claimant is entitled to seek a remedy from this Court to order the Defendant to vacate the Premises, as the Claimant is not a party to the Second Lease Agreement.

34. As the Defendant has already paid for the whole duration of 1 year the Claimant cannot reclaim his possession of the Premises until the expiry of the Second Agreement being on 11 December 2022.

35. For the above cited reasons, I find that the Claimant's Claim must be dismissed.

36. Each party shall bear their own costs.