Claim No: SCT ◆006/2015

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE SMALL CLAIMS TRIBUNAL

BETWEEN

◆◆ FAYEZ

Claimant

And

◆

FARZIN FZE◆

Defendant

Hearing: 5 November 2015

Further Submissions: 12 November 2015

Judgment: ◆22 November 2015

JUDGMENT OF JUDICIAL OFFICER MAHA AL MEHAIRI

Background

1.The Claimant is Fayez, a barrister practising from xxxx in London.

2. The Defendant is Farzin FZE, a free zone company registered in Hamriyah free zone in Sharjah, UAE.

3. The Defendant was seeking representation in an Arbitration case held in Dubai Arbitration centre ("DIAC"), the Defendant assigned a law firm under the name of Global Advocates to search and negotiate with the candidate on their behalf with a notarised power of Attorney provided by the Defendant.

4. The law firm got in touch with the law representative, the Senior Managing Clerk in the Claimant's Chambers, whereby the Claimant was instructed to advise and represent the Defendant in the arbitration case number No. xxxx in DIAC to seek representation and preparation of the case, to conduct a site visit and to attend a 3 day hearing.

5.◆The Senior Managing Clerk and the Law Firm representative were in discussion through email in regards to the scope of work and the job requirements, the representative would communicate the information back to the Defendant as shown in the email correspondence provided by the Claimant. The Clerk also provided the representative with a copy of the contract, which in her emails indicated that she sent it through to the Defendant.

6.◆On 29 January 2014, The representative emailed The the Law Firm representative the Claimant's Clerk confirming that the Defendant was happy for the Claimant to represent them in the 3 day hearing from 18 to 20 February 2014 in DIAC and to perform a site visit on 18 February 2014. They also added that they were happy with his fees being GBP 24,000 exclusive of travel related expenses. The Defendant's in house legal Counsel's contact information was provided in regards to direct invoicing of the Claimant's payment fees, as stated below:

> "Dear xxxx,
>
> I have the good news for you that our client, the Respondent, has selected Fayez to advocate his claim and defense at the hearing of 18, 19, and 20 February and site visit on February for DIAC XXXX/2012. Our client has selected Roger on the understanding that his fees which include review of the case, preparation of his pleadings, advocacy in the hearing and his participation in the site visit are capped at GBP 24,000 exclusive of travel related expenses.
>
> In terms of an agreement relating to terms and conditions of Fayez's retainer, invoicing and payment of his fees, the Client is to be contacted directly. Your client contact and contact information is as follows:
>
> Mr. Ahmed Rashid
>
> Legal Consultant
>
> Investment Group LLC
>
> PO Box 000
>
> Sharjah, UAE
>
> In order for Fayez to begin his review and preparation, I would be grateful if you would advise me what statements and/or documents

we can initially forward to you. Our paralegal, who is copied above will be your contact for documents.

If there are any questions you have, please feel free to contact me.

Kind Regards,

(The Representative)"

7. On 12 February 2014, Mr Ahmed sent an email to The representative from Advocates confirming his satisfaction in regards to retaining the Claimant as stated below:

"Dear Ms. The representative,

First of all I would like to thanks all of you for your hard work and we really appreciate your sincere efforts.

With respect to mentioned subject, please see the attached document of clean version of retained agreement of which we have received from his office regarding for DIAC XXXX/2012.

Kindly let us know if you have anything to add or if you would like to make any comment, after your feedback we shall arrange to sign it and transfer the first payment.

Looking forward to hear from you soon.

Kind regards,

Ahmed"

8. On 19 February 2014 the Defendant paid the amount of GBP 12,000, half of the GBP 24,000 as per the requirement of the agreement for the Claimant to commence the preparation for the arbitration case.

9. After the three day hearing, the tribunal directed the parties to the proceedings to file written closing submissions, this requirement was not included in the initial work scope, the Claimant estimated that the drafting of the closing submissions would cost the amount of GBP 6,000. The Defendant agreed in writing to pay the extra GBP 6,000 amount for the additional work in the email sent from the representative dated 5 March 2014, and it reads as follows:

"Dear The Clerk,

The Client has approved the additional GBP 6,000 for the additional work for the written closing submission. Please send an invoice for payment to the Client's in-house counsel, Ahmed to process it for payment.

Kind Regards,

The Representative"

10. On 17 February 2014, the second half of the payment was due to be paid, on 26 February 2014 Mr Ahmed sent an email to the Claimant's clerk xxxx stating that he acknowledged that the second payment was due but the authorised signatory of the company was on emergency leave outside the country and the payment would be processed in the next 10 to 15 days as stated in his email:

"As you are aware that the second 50% of the agreed fees is due, however, due to an emergency travel of our authorized signatory out of country this week, we would like to inform you that this payment will be processed in the next 10-15 days as soon as he arrives back in the office."

11. On 5 March 2014 the Claimant sent an invoice to the Defendant with the amount of GBP 12,000 in addition to GBP 6,000 that was due, and stated that the balance due was GBP 18,000. Several reminders were sent in regards to payment to the Defendant but there was no response received.

12. On 18 October 2015 the Claimant filed a case with the DIFC Courts Small Claims Tribunal requesting that the Defendant pay the pending amount of GBP 18,000 in respect of outstanding fees and to pay the contractual interest of US $1,797.57 to the date of judgment.

13. After acknowledgement of service, the Defendant replied as follows:

A.	There was no contract between the Claimant and the Defendant, which referred the case to the Small Claims Tribunal.

B.	The copy of the contract provided by the Claimant was not signed by the Defendant.

C.	The Contract provided by the Claimant was between the Claimant and a third party, which was not the Defendant.

The Hearing

14. On 5 November 2015 a hearing was conducted before me, the Claimant and the Defendant's in house legal Counsel attended the hearing.

The Contract

15. The first issue deals with the acceptance of the contract dated 29 January 2014 and whether it was a valid, binding contract for the Defendant

to comply with. I am of the opinion that the contract constituted a valid, binding contract pursuant to DIFC Contract Law, Law No. 6 of 2006, Part 3, Sections 14 & 15 of which state:

"PART 3: FORMATION

14. **Manner of formation**

A contract is concluded by the acceptance of an offer.

15. **Definition of offer**

A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offer or to be bound in case of acceptance."

16. It is clear that the contract constituted an offer with definite criteria and job scope, the agreement sufficiently indicated the intention of the Claimant to be bound in case of acceptance by the Defendant and further, the offer was accepted by the Defendant through his conduct in issuing a power of attorney for the Claimant and sitting with him in the 3 day hearing in DIAC in addition to paying the first half of the payment, and as stated in the evidence put forward above.

17. It is also clear from the email correspondence between The Clerk and The Representative from the law firm, which were authorised to represent the Defendant and had a Power of Attorney that they were happy with the terms of the contract, as indicated in the evidence put forward above.

Jurisdiction

18. These proceedings arise out of a written agreement between the Claimant and the Defendant dated 29 January 2014. The Defendant accepted the contract by agreeing to pay the first half of the payment and attending the 3 day hearing with the Claimant in respect of which the transcripts of the arbitration hearing which the Claimant attended are proof of attendance and acceptance.The Contract states clearly in paragraph (e) on page two that any disputes will be resolved by the Small Claims Tribunal of the DIFC Courts and reads as follows:

> *"E. Payment and Enforceability*
>
> *..Counsel's terms as above or as varied by agreement will constitute a contract between you and counsel, subject to UAE law and the exclusive jurisdiction of the DIFC Courts."*

19. Article 5(2) of Law No. 16 of 2011, amending Law No. 12 of 2004 provides as follows:

> "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."

20. With regards to the Small Claims Tribunal in particular, Rule 53.2 of the Rules of the DIFC Courts (RDC) provides:

> "The SCT will hear and determine claims within the jurisdiction of the DIFC Courts:
>
> (1) Where the amount of the claim or the value of the subject matter of the claim does not exceed AED 500,000 or;
>
> (2) Where the claim relates to the employment or former employment of a party; and
>
> all parties elect in writing that it be heard by the SCT (there is no value limit for the SCT's elective jurisdiction in the context of employment claims); or
>
> (3) which do not fall within the provisions of sub-paragraphs (1) or (2) above, but in respect of which:
>
> (a) the amount of the claim or the value of the subject matter of the claim does not exceed AED 1,000,000; and
>
> (b) all parties to the claim elect in writing that it be heard by the SCT, and such election is made in the underlying contract (if any) or subsequent to execution of that contract.
>
> or
>
> (4) such other claims as may be ordered or directed by the Chief Justice to be heard by the SCT from time to time.;
>
> ."

21. It is clear that the parties explicitly agreed in writing pursuant to specific, clear and express provisions in the Contract that any disputes arising out of the Agreement would be submitted to the DIFC Courts and therefore satisfies Article 5(2) of Law No. 16 of 2011. Furthermore, Rule 53.2 of the RDC is also met as the amount of the Claimant's claim does not exceed AED 500,000. Therefore I am satisfied that this Court possesses exclusive jurisdiction to hear and determine this claim.

Defendant's Liability

22. On 29 January 2014, the Claimant sent a contract to the Defendant, which the Defendant agreed to through his authorised legal Counsel and through various email correspondence between the Defendant and his legal Counsel. The Defendant paid the first half of the payment with the

promise to pay the full amount when the time to do so came, the Defendant's in-house legal Counsel also indicated that the company would pay for the additional amount in closing submissions.

23.	The Clerk, on behalf of the Claimant, sent emails to the Defendant containing reminders to pay the amounts outstanding to the Claimant. Those emails are dated 25 March 2014, 28 April 2014, 27 May 2014, 11 June 2014 and 19 June 2014. No response to these emails was received by the Claimant or by the Clerk.

24. On 5 November 2014 the law firm, on behalf of the Claimant, issued a legal notice to the Defendant, requesting payment of the outstanding GBP 18,000 (AED 113,310) within 10 days, failing which legal proceedings would be initiated.

25. Accordingly, the Defendant is in breach of the Contract, and the amount of GBP 18,000 remains due and payable by the Defendant to the Claimant.

26. Pursuant to part E of the Contract, the Claimant is entitled to charge interest at the rate of 4.25% on any amounts outstanding. The interest due to the Claimant as at 4 February 2015 and continuing to accrue at a daily rate is as calculated in the table below:

Amount	**Date due**	**Days outstanding**	**Rate**	**Daily rate**	**Interest payable**
GBP 12,000	17 February 2014	352	4.25%	GBP 1.397	GBP 491.84
GBP 6,000	5 April 2014	305	4.25%	GBP 0.698	GBP 213.08
Total interest due as at 4 February 2015	** **	** **	** **	** **	**GBP 704.92** **(US$ 1,069.50)**

	

27. For the reasons stated above, it is hereby decided that the DIFC Courts in general and the Small Claims Tribunal in particular have jurisdiction to hear and determine the dispute in question and the Defendant's application to contest jurisdiction is dismissed and the Defendant shall pay the sum of AED 107,716 to the Claimant.

FOR THE ABOVE CITED REASONS IT IS ORDERED THAT:

1. The Defendant's application to contest jurisdiction is denied.

2.	The Court has jurisdiction to hear and determine this claim.

3.	The Defendant shall pay the Claimant the amount of AED 107,716.

4. Each party shall bear their own costs.

	

Issued by:

Nassir Al Nasser

Judicial Officer

Date of Issue: 22 November 2015

At: 4pm