**Claim No: SCT 127/2017**

**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**

**BEFORE SCT JUDGE MAHA AL MEHAIRI**

BETWEEN

**HAROLD PJSC**

Claimant

and

**HAVA**

Defendant

Hearing:**14 June 2017**

Final Submissions:**19 June 2017**

Judgment:**22 June 2017**

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**JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI**

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**UPON** hearing the Claimant's representative and the Defendant's representative

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

**IT IS HEREBY ORDERED THAT**:

1.The Defendants' application to contest jurisdiction is granted.

2. The DIFC Courts have no jurisdiction to hear and determine this claim and the claim is therefore dismissed.

3. Each party shall bear their own costs.

Issued by:

**Maha AlMehairi**

SCT Judge

Date of issue: 22 June 2017

At: 12pm

**THE REASONS**

**Parties**

1.The Claimant is Harold, a Dubai based Bank (hereafter the "Claimant").

2. The Defendant is Hava, an individual taking a loan from the Claimant (hereafter the "Defendant").

**Background and the Preceding History**

3. On 11 February 2013, The Defendant availed a personal loan from the Claimant in the amount of AED 200,000 for 48 Months, at an agreed annual interest rate of 11.74%. The total repayments made by the Defendant towards the loan amounted to AED 158,928.02 with the last payment being received on 27 October 2015. The current outstanding amount on this loan is AED 87,893.45.

4. The Defendant has also availed a Credit Card from the Claimant with a limit of AED 50,000. The last payment toward his credit card was on 20 September 2015, leaving an outstanding amount of AED 64,574.58. The value has increased from that time due to interest accruing and the outstanding amount became AED 136,051.30.

5. The Defendant also availed another Credit Card with a limit of AED 100,000 and the last payment made by the customer was on 21 September 2015, leaving an outstanding amount (on that date) of AED 114,004.90.

6. The total claim amount is AED 292,776.73, being the sum of the personal loan (AED 87,893.45) and the two credit cards amounting to AED

204,883.28.

7. The Claimant's representative and the Defendant's representative attended on 25 May 2017 before SCT Judge Ayesha Bin Kalban. However, the parties were unable to reach a settlement during or after the Consultation.

8. On 14 June 2017, I heard the submissions of the Claimant's representatives and the Defendant's representative at a Hearing.

**Particulars and Defence**

9. In the Jurisdiction hearing the Claimant's representative was asked about the DIFC jurisdiction and how it applied in this case. The Claimant's representative offered a copy of the loan agreement based on the enclosed terms and Conditions agreed and consented by the Defendant:

> "As per clause 23 in the loan agreement, the customer has agreed that the terms and conditions of the agreement is governed by the law of the emirate of Dubai and the UAE, also he has consented that himself and Harold submit to the non-exclusive jurisdiction of the civil courts of the UAE and such submissions shall not restrict Harold to bring proceedings against him in other jurisdiction."

10. The Defendant argued that the loan was taken from the Claimant's branch outside the DIFC and all transactions were outside the DIFC. As such the Claimant has nothing to do with the DIFC and the clause in the Loan Agreement does not specifically says DIFC Courts exclusive jurisdiction.

**Finding**

11. Having considered the arguments put forward at the Hearing, I find that this dispute does not fall within the jurisdiction of the DIFC Courts and the Small Claims Tribunal and, therefore, the Claimant's claim must be dismissed for lack of jurisdiction.

12. Rule 53.2 of the Rules of the DIFC Courts ("RDC") requires that the Small Claims Tribunal ("SCT") hear only cases that fall "within the jurisdiction of the DIFC Courts."

13. The jurisdiction of the DIFC Courts is determined by Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended, which provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, which are, as relevant:

> "(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;
>
> (b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract;
>
> (c) Civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within DIFC and is related to DIFC activities; ...
>
> (e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations...
>
> (2) .civil or commercial claims or actions where the parties agree in writing to file such claim or action with [the DIFC Courts] whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

14. Neither party is, or was, a DIFC registered and licensed entity.

15. There is no evidence that the relevant loan agreement was "partly or wholly concluded, finalised or performed within DIFC or will be performed or is supposed to be performed within DIFC". There is also no evidence that this case relates to "actions arising out of or relating to any incident or transaction which has been wholly or partly performed within DIFC and is related to DIFC activities."

16. The parties have made no reference to a DIFC Law or Regulation granting jurisdiction over this dispute, nor do I consider any to be relevant to this dispute.

17. Finally, there is no indication that the parties have opted-in to the jurisdiction of the DIFC Courts, especially as the agreement between the parties is a form agreement issued by the Claimant.

18. As per Article 5(A)(2) of the Judicial Authority Law, parties can opt-in to the jurisdiction of the DIFC Courts with a "specific, clear and express" provision. The Loan Agreement, as executed between the Claimant and Defendant, is an agreement that has a general jurisdiction clause and does not name the DIFC Courts.

19. Thus, the Defendant did not specifically agree to opt-in to the jurisdiction of the DIFC Courts by virtue of the loan agreement.

20. I find the Claimant's argument to be unpersuasive. The DIFC Courts do not have jurisdiction over the underlying dispute as it does not relate to the DIFC and the parties have not opted-in to the DIFC Courts' jurisdiction.

21. For cases to be heard in the SCT they must fall within the DIFC Courts' jurisdiction, as addressed above, and the case must also be appropriate for the SCT. As there is no DIFC Courts' jurisdiction, it follows that there cannot be jurisdiction for the SCT to hear the dispute.

22. For the above cited reasons, I find that the Defendants' application to contest jurisdiction is granted. Therefore, I am not in a position to consider the merits of this case.

23. Each party shall bear their own costs.

Issued by:

**Maha AlMehairi**

SCT Judge

Date of issue: 22 June 2017

At: 12pm