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 MAHA AL MEHAIRI

BETWEEN

JOEL

Claimant

and

JULISSA

Defendant

Hearing:**3 April 2019**

Judgment:**15 April 2019**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 31 January 2019;

AND UPON the Defendant filing submissions in response on 18 March 2019;

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the amount AED 82,753.10 being the service charge for the Defendant's Property.
2. The Defendant shall reimburse the Claimant for the Court fee in the sum of AED 4,137.65.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 15 April 2019

At: 9am

THE REASONS

The Parties

1. Joel (hereafter the "Claimant") is a housing management company with offices located in Dubai.
2. Julissa (hereafter the "Defendant") is an individual who owns property at Unit 1234.

Preceding History

3. On 31 January 2019 the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for certain sums allegedly owed as a result of service charges to the aforementioned property owned by the Defendant.
4. On 12 February 2019 the Defendant filed an Application Notice requesting the claim be suspended as he was pursuing the matter in the Dubai Court.
5. On 18 March 2019 the Defendant responded to the Claim Form and Application Notice.
6. The matter was called for a hearing before myself, SCT Judge Maha Al Mehairi, on 3 April 2019.

The Claim

7. The Claimant contends service charges are due for the last 7 quarters; equating to AED 82,753.10 as of 10 January 2019.

8. The Claimant argues that, on 7 October 2013, pursuant to Strata Title Law (DIFC Law No. 5 of 2007), Joel was established to manage the building in DIFC and this entity is therefore responsible for invoicing all unit owners to pay service charges in order to manage the building.

9. The dispute arising between the parties is in regard to the Defendant's alleged failure to pay the service charges in relation to the residential Unit No. 1234, , DIFC. The Claimant contends that the Defendant, despite a number of follow-ups and letters, has failed to pay the service charges.

10. The Claim Form specifies that the amount due is AED 82,753.10, yet in the summary of the claim it states, as of 31 January 2019, no less than AED 95,200.05, in addition to the administrative fee of the Joel Manager in attending the SCT hearing.

The Defence

11. On the Defendant's account, the case before the SCT should be suspended pending the outcome of a case filed in Dubai Courts Real Estate Expert Department (Case Number 167/2018). This case was allegedly brought by the Defendant against the Claimant on 18 December 2018.

12. The Claimant states that he brought this claim to Dubai Court `in order to have a Court appointed expert to review the invoices as related to his property, as the amount is in dispute' as he seeks `an expert review of the entire claim, particularities, and derive an independent and credible report with the detailed breakdown and amounts of service charges lawfully entitled in accordance with the size of the apartment, history of payment, and any other evidence parties may provide'.

Discussion

13. The question put before the Court is: are the amounts invoiced by the Claimant bound legally to be paid by the Defendant or not?

14. Based on the arguments put forward at the Hearing and based on consideration of the DIFC Strata Law and the SMS Document applicable in this dispute, I am satisfied that the Claimant has proven its position.

15. The Joel ("Joel") Committee of Management at the Annual General Assembly ("AGA") prepares the Service Charge Budget with the Joel Manager for each year. This budget includes anticipated expenditures and is shared with the DIFC Registrar at the AGA, and then adopted by simple majority through a resolution with the approval of the DIFC Registrar of Real Property. Such approval would not be granted had the process not been conducted as per the requirements of the DIFC Strata Title Law.

16. The service charge budget for the Defendant's Property for every financial year was approved by the Joel and adopted at the AGA meeting. The Minutes of the meeting have been signed by the Board Corporate Members and have been approved by the DIFC Registrar of Real Property. As such, the service charge calculations go through a lengthy and transparent process to become certified and then these calculations are circulated to all owners.

17. As to the Defendant's obligation to pay the service charge, as mentioned above, Schedule C of the SMS Document requires that:

> "Component Joel and Owners must promptly pay Service Charges and the relevant Committee pursuant to the Strata Title Law has the power to enforce By-laws, or to enforce payment of Service Charges or any other sums properly payable by Component Joel or Owners, through the use of the By-laws Compliance Notice procedure and other dispute resolution mechanisms set down in the Strata Title Law."

18. Therefore, it is clear that, the Defendant, as an owner in the building, is required to pay the service charges relevant to his Property. The Defendant has not submitted any evidence to suggest or support his allegation that the calculations provided by the Claimant are incorrect or exaggerated. While the Defendant has expressed dissatisfaction with how the service charges are being calculated and has opened a claim in the Dubai Courts to recalculate the charges, he has not brought any counterclaim against the Claimant and such dissatisfaction does not justify failure to pay.

Further charges

19. In a letter dated 18 March 2019 to the Court the Claimant states that the action taken by the Claimant in another jurisdiction has caused the Claimant to incur additional charges. The amended claim is 125,464.04, comprised of:

    (a) ❖❖❖❖❖❖ Current claim - AED 82,753.10;

    (b) ❖❖❖❖❖❖ Additional levy to date - AED 25,922.04;

    (c) ❖❖❖❖❖❖ Filing costs - AED 4,137.65;

    (d) ❖❖❖❖❖❖ Managers fees - AED 2,100; and

    (e) ❖❖❖❖❖❖ Third party indemnified defense - AED 10,551.25.

20. The Court is of view that the other costs that were incurred to prepare and defend the case that is ongoing in Dubai Courts should be taken with the concerned Court and the Court will deal with the issues that are brought before it.

21. This matter is concerning property located within the DIFC and a matter which clearly falls within the jurisdiction of the SCT.

22. I find the action of the Defendant in filing a case with the Dubai Court deliberately divisive, by way of creating further delays.

23. On the evidence before this Court, I find the Claimant had ample opportunity to query the service charges. In any event, the charges are in accordance with the binding agreements between both parties and the Defendant, as owner of a unit within, is liable to pay such service charges.

24. The Defendant evidently has a history of unpaid service charges, and I find the Claimant at a disadvantage for both the lack of payment and furthermore, the fact it has had to represent itself at Dubai Court, which does not have jurisdiction in this matter.

Conclusion

25. For the above-mentioned reasons, the Defendant is liable to pay the sum of AED 82,753.10 in addition to AED 4,137.65 as Court fees.

Issued by:

Maha Al Mehairi

SCT Judge

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