Claim No:xxxx

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 H.E. JUSTICE SHAMLAN AL SAWALEHI

BETWEEN

Gilmore Associates Limited

Claimant

and

Giulia Limited

Defendant

Hearing: **18 April 2016**

Judgment: **31 May 2016**

JUDGMENT OF H.E. JUSTICE SHAMLAN AL SAWALEHI

UPON hearing the Claimant and the Defendant

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

IT IS HEREBY ORDERED THAT:

1. The Defendant pay the Claimant AED 119,728.53 in full and final resolution of the claim.

2. Each party shall bear its own costs.

THE REASONS

Parties

3. The Claimant is Gilmore Associates Limited (the "Claimant"), a company providing consulting services.

4. The Defendant is Giulia Limited (the "Defendant"), a company that hired the Claimant's services.

Background and the Preceding History

5. The parties entered into two Consultancy Agreements, dated 22 June 2014 and 17 August 2014, which detailed the provision of certain services to be provided by the Claimant to the Defendant.

6. The First Consultancy Agreement, dated 22 June 2014, was signed by the parties on 23 July 2014 and provided for certain professional services for three projects (Project 1, Project 2 and Project 3).

7. The Second Consultancy Agreement, dated 17 August 2014, was signed on 4 September 2014 and provided for the same listed professional services for the Project 2 project but listed a different cost for the various services.

8. There was some disagreement between the parties as to the payment of some invoices pursuant to the Consultancy Agreements, with the Claimant contending that invoices remained unpaid for a number of months. The Claimant then demanded payment of the outstanding amounts by 17 September 2015 or else it would temporarily suspend services.

9. The Defendant did not pay the alleged outstanding amounts and instead made arrangement for replacement services. The Defendant issued a "Notice of Termination" letter on 29 September 2015. The Defendant did not subsequently make any additional payments to the Claimant.

9. On 5 January 2016, the Claimant filed a case with the DIFC Courts in the Small Claims Tribunal alleging the below summarised claims.

10. No settlement was reached by the parties at the end of the Consultation. The parties were given additional time to discuss settlement and failed to reach an agreement. Consequently, the case was sent for adjudication. On 18 April 2016 I heard submissions from the Claimant and the Defendant at a hearing and directed the parties to provide further written submissions.

11. On 21 April 2016, the Claimant filed additional submissions for consideration of the Court. The Claimant served those submissions on the Defendant on 24 April 2016. On 27 April 2016, the Defendant filed additional submissions and served the same on the Claimant. Following this final submission, the Claimant requested that the Court throw out the Defendant's final submission due to lateness and for including an unauthorised counterclaim.

12. The case was then reserved for Judgment based upon the parties' submissions at the hearing and their later paper submissions.

Particulars and Defence

A. The Claimant's Initial Submission

14. The Claimant initially argued in the Claim Form that the Defendant owed the Claimant payment of an outstanding amount of AED 158,274.09 pursuant to the revised proposal ref. xxxx, Giulia email ref. 23 April 2015 at 17:28, proposal ref. xxxx and invoices numbered 6988, 7002, 7003, 7018 and 7037.

B. The Defendant's Initial Submission

15. The Defendant responded, defending against all of the claim. While the Defendant agreed that it employed the Claimant to provide professional Quality Surveying services, it argued that there were a number of problems with the services provided by the Claimant, specifically with continuity of service and the level of expertise of the staff provided. Furthermore there was dispute as to the rate increases above the amounts originally agreed upon.

16. The Defendant argued that the Claimant became aware of discrepancies in the accounting in mid-2015 and requested that the Defendant stop payments until the problems could be resolved and adjusted invoices could be provided. This effort resulted in a Credit Note being issued in June 2015, but the Defendant alleges that this credit was insufficient to cover the amount overpaid.

17. The Defendant highlighted its efforts to resolve the issues amicably with the Claimant, including issues about the quality of service, hours and amounts invoiced. The Defendant acknowledges that the Claimant generally had the same attitude, at least until 15 September 2015 when the Claimant issued a demand for payment of AED 80,851.01 within two days.

18. The Defendant argues that it tried to resolve the dispute but the Claimant ignored attempts at resolution and instead stopped providing the services it had contractually agreed to provide. The Defendant alleges that this stoppage was a breach of the contract between the parties. The Claimant ceased providing services immediately and did not wait one month as required by the contract and the Defendant claims that it was forced to make other arrangements to cover the services that the Claimant ceased providing at a significant additional cost.

19.The Defendant provided a Final Account Statement detailing the amounts invoiced by the Claimant, the amounts allegedly over-invoiced by the Claimant, payments already made by the Defendant and adjustments for costs incurred by the Defendant. According to the Defendant's Final Account Statement, the Defendant owed a total of AED 855,297.76 to the Claimant, the Defendant paid a total of AED 835,151.82 to the Claimant, and thus, the Defendant still owed to the Claimant an amount totalling AED 20,145.95.

20. The Defendant highlights that the Claimant has not made any adjustment to its claims for the reduced level of service provided, the time wasted in handing over the project to new staff, and the risk and costs incurred by the failure to provide sufficient notice for the stoppage of work. The Defendant reserves its right to claim the additional costs of employing new consultants at higher rates.

C. The Claimant's Post-Hearing Submission

21.After the hearing, the parties provided additional submissions to summarise their arguments. The Claimant filed a document entitled "Statement of Claim" with a number of attachments and the Defendant filed their "Answer and Defence to the Statement of Claim" with two attachments.

22. The Statement of Claim outlines the Claimant's arguments with regard to the allegedly unpaid invoices. The Claimant points to non-payment of several invoices as the source of dispute, triggering the Claimant to issue a demand for payment by 17 September 2015. The Claimant summarises that the Defendant made no attempt at payment pursuant to the demand letter and this forced the Claimant to suspend their services. The Defendant then issued a Notice of Termination on 29 September 2016 which indicated the Defendant's intention to retroactively review the previously issued invoices over the last 12 months to make reductions. The Claimant contends that this was a violation of the Consultancy Agreements.

23. The Claimant details the history of the two Consultancy Agreements, highlighting the increased fees charged in the second agreement. They contend that the First Consultancy Agreement was entered into for the supply of "Contract Administration Support Services" regarding the Project 1, 2 & 3 projects. The Claimant contends that the First Consultancy Agreement was not intended to cover additional and more complex claims management services although such language was included in the agreement. The First Consultancy agreement included a contract fee of AED 60,000 per month calculated pursuant to 195 hours of work by a "Senior Contracts Administrator" at the cost of AED 307.69 per hour.

24. The Claimant contends that the Second Consultancy Agreement, which applied to the Project 2 project in Abu Dhabi, included provisions for both "Contract Administration Support Services" and additionally was intended to cover claims management. Although the language was the same as the First Consultancy Agreement, this different intention was evidenced by the inclusion of specific rates for claims work. The monthly retainer payment under the Second Consultancy Agreement was AED 90,000. The payment breakdown included rates and hours for "Contract Admin"

work and higher rates for "Claims Prep" work.

25. The Claimant argues that after the second Consultancy Agreement was executed, both parties acknowledged that the new rates for the claims preparation work would apply through the end of the year, although the Claimant would continue to charge the original rate for services on the Project 1 project as detailed in the First Consultancy Agreement until the end of 2014.

26. The Claimant contends that there was an understanding that the rates would increase in the New Year 2015, as the rates listed in the First and Second Consultancy Agreements were up for renewal at this time. The contracts state that the fees are "subject to an internal review and possible increase for the period January 1st 2015 and annually thereafter."

27. The Claimant argues that the parties sought to agree on new rates to be applied in 2015 but the negotiations were difficult and prolonged. Therefore, there was no valid agreement as to the rates in 2015. The Claimant confirms that it proceeded to charge the higher rates already listed in the Second Consultancy Agreement for the period from January 2015 until April 2015. On 23 April 2015, the parties finally reached an agreement on the rates to be charged. This included "Contract Admin Work" at the original rate plus 10% and "EOT Work" on an hourly basis based on the prices listed in the Second Consultancy Agreement.

28. The Claimant admits that the rates charged from January 2015 until March 2015 were higher than the rates eventually agreed between the parties and thus, there was a discrepancy in the accounts which required the Claimant to issue a credit note and revised accounting statements. According to the Claimant, the overpayment in the account was AED 35,926.04 by the end of March 2015.

29. The Claimant contends that once the overpayment was recognised, it acted properly by informing the Defendant to stop payments until the issue was resolved and the credit note was issued. The Claimant argues that due to the large amount of work being performed at this time, the overpayment was reduced to AED 3,529.65 by the end of June 2015 and by the end of July 2015, the Defendant owed the Claimant a total of AED 129,196. Thus, the Claimant argues, the overpayment was reduced due to credit notes, work performed and reduced invoices during this time.

30. Based on this history, the Claimant contends that the Defendant was aware of the amounts it owed the Claimant and was not withholding payments from May 2015 to September 2015 based on the direction of the Claimant. Instead, by 15 September 2015, the Defendant had an outstanding balance of AED 124,935.63 with AED 80,851.01 being long overdue. The Claimant acknowledges that in early September, the Defendant did pay two overdue invoices in the total amount of AED 65,000. The Claimant argues that this shows that the Defendant knew about the overdue invoices and was capable of paying them.

31. Thus, the Claimant argues that it was in its legal right to suspend its services for non-payment of invoices especially based on the UAE Civil Transactions Law, Article 247 which allows for either party to abstain from performing their obligations if the other contracting party fails to perform their obligations. The Claimant contends that it was not required to provide a certain notice period under UAE law or under the Consultancy Agreements. Thus there is no valid claim that the Claimant failed to provide some required notice of its intention to suspend services.

32. After the Claimant demanded payment on 15 September 2015, the Defendant responded on 17 September 2015 seeking clarification of the Claimant's intent to suspend services so the Defendant could make other arrangements. The Claimant took this notice as a threat to terminate the contract.

33. On 29 September 2015, the Defendant sent a letter containing notice, pursuant to Clause 2.9 of the Agreements that the services and Consultancy Agreements would be terminated. The Claimant replied on 6 October 2015 that it had not breached the Agreement and was willing to participate in settlement discussions.

34. The Defendant replied on 27 October 2015. The Claimant contends that this reply was disingenuous and that the Defendant clearly wished to terminate the contract. The Claimant confirms that it was the Defendant who terminated the Agreements by issuing notice and triggering Clause 2.9 of the Agreements.

35. As the Claimant contends that the Defendant was the one to terminate the contract, the Claimant also argues that it is nonsensical for the party to terminate an agreement to then claim for the expenses caused by the same termination. The Claimant argues that none of these costs relevant to the termination are recoverable under the contract.

36. In sum, the Claimant contends that it had binding Consultancy Agreements with the Defendant, the Defendant breached those agreements by failing to pay the amounts due and that the Claimant therefore had a legal right to suspend service for non-payment. The Claimant alleges that the Defendant then terminated the Agreements without paying the outstanding amounts due. In total, the Claimant claims that the Defendant owes AED 158,274.09 as detailed in Appendix - A of the Claimant's post-hearing submission. The Claimant also seeks reimbursement of legal costs in the amount of AED 64,000 and interest on the late payments.

D. The Defendant's Post-Hearing Submission

37. The Defendant submitted its Answer and Defence to the Statement of Claim on 27 April 2016. In the submission, the Defendant admits to entering into two Consultancy Agreements with the Claimant.

38. The Defendant claims that from August 2014 there were many discrepancies in the invoices received from the Claimant which the Defendant brought to the Claimant's attention. The Defendant points out that they continued to make payments during this time, although the accounts were incorrect.

39. The Defendant contends that the Claimant suspended work in bad faith when the Defendant was willing to come to a settlement and had just made a payment of AED 65,000 showing their willingness to continue the relationship.

40. The Defendant claims that it had no choice but to terminate the services of the Claimant, giving consideration to the Claimant's continuing actions and the Defendant's responsibilities to its clients. Upon termination of the Agreements, the Defendant contends that it was already reviewing the work done and invoices issued by the Claimant.

41. The Defendant encourages the Court to refer to the Consultancy Agreements when identifying the scope of work agreed upon, rather than deferring to the Claimant's submissions. Further, the Defendant contends that the Second Consultancy Agreement was meant to provide an additional Consultant to assist on one project. It was not meant that the original Consultant would be charged at a new rate. This is evidenced in invoices issued after the Second Consultancy Agreement, where the original Consultant was still charged at the original rate. Therefore, it seems that the Defendant has amended the invoiced amounts to reflect that any work done by the original consultant, Mr CR, be charged at the original rate of 195 hours for AED 60,000 as reflected in Appendix - AR.

42. The Defendant claims that it was not aware of any internal discussion in the Claimant's company regarding any intention to charge at a lower rate after the Second Consultancy Agreement was signed to give the Defendant the benefit of the lower rate. Furthermore, the Defendant argues that it had not agreed upon any increased rates at the end of 2014.

43. With regard to Clause 2.1 of the First Consultancy Agreement and Clause 2 of the Second Consultancy Agreement stating that increases in rates may apply at the end of 2014, the Defendant contends that the Claimant could have offered increased rates, but it was at the Defendant's discretion to accept those increased rates.

44. The Defendant goes on to state that the Claimant sought to increase the rates by an unreasonable amount. The inability to agree on new rates was due to the Claimant's unreasonable offers. Had the Claimant offered reasonable rates, the parties would have agreed on new rates much sooner than 26 April 2015. The Defendant points out that the Claimant could have terminated the agreement if the increased rates discussion was taking too long.

45. The Defendant argues that in the absence of new, agreed upon rates, the value of the work done must be assessed based on the existing agreements. Any payments made during the beginning of 2015 do not show an acceptance of the incorrect rates being charged.

46. The Defendant argues that the increased invoicing issued by the Claimant from January to March 2015 was intentional and untrustworthy. The Defendant paid the invoices trusting the amounts, not accepting the increase.

47. The Defendant argues that it is established that the Claimant over invoiced and have refused to adhere to the provisions of the Consultancy Agreements. The Claimant admitted to over invoicing and sought a stoppage of payments to remedy this error and thus the Defendant feels the remaining invoices are just as unsubstantiated.

48. The Defendant argues that the 23 April 2015 agreement for new rates was actually finalised on 26 April 2015[1] and that the terms of this agreement were still governed by the First Consultancy Agreement. The Defendant goes on to state that the amounts listed in the Claimant's Submissions are unsubstantiated and not agreed upon by the Defendant.

49. The Defendant highlights that it made payments continuously to the Claimant until asked to stop due to over invoicing. The Defendant states that there was considerable uncertainty in the accounts and thus the figures presented in the Claimant's Submission are contested. The Defendant submitted its own summary of invoices and payments at Appendix - AR of its post-hearing submission. This Appendix detailed a current credit owed of AED 164,919 as against any amounts due. While Appendix - AR is not very clearly explained, it seems that the Defendant has reduced the rates charged for any done by Senior Contract Administrator Mr CR to the original rate of 195 hours for AED 60,000, regardless of the project billed or the date of the work invoiced.

50. The Defendant argues that there were no amounts due and payable to the Claimant and thus the action of suspending works was without reason and contrary to the terms of the Agreements. Instead, the Defendant made a payment of AED 65,000 in good faith, not knowing the actual amounts due. The Claimant then demanded payment dishonestly and threatened to suspend services. The Defendant argues that it had no choice but to terminate the Agreements as it had commitments to clients that it needed to meet.

51. In conclusion, the Defendant alleges that the Claimant's submission is misleading. The Defendant asks that the Claimant pay AED 100,000 as compensation to Giulia Limited for filing frivolous litigation.

52. Finally, the Claimant requested that the Court throw out the Defendant's final submission for lateness and for including an unauthorised counterclaim.

53. The dispute was then reserved for judgment based on the hearing and subsequent submissions from the parties.

Finding

A. Jurisdiction and Applicable Law

54. Both of the Consultancy Agreements detail in the section entitled "General Terms & Conditions" that "[s]hould amicable settlement discussions not be successful or the period expires the Parties agree to refer any dispute or difference arising out of or in connection with this Consultancy Contract, including any question regarding its existence, validity or termination, shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre and where financially appropriate the Small Claims Tribunal." Thus, the parties have opted-in to DIFC Courts jurisdiction and are properly before the Small Claims Tribunal based on the amount of the disputed claim.

55. The parties are in agreement that they entered into two valid Consultancy Agreement contracts. The dispute arises over the entitlement to increase or reduce the fees owed under the Consultancy Agreements, the history of payments between the parties, and the legal right to suspend the services or terminate the contracts.

56. As the parties did not specify what law would apply to their Consultancy Agreements but did specify that the DIFC Courts would have exclusive jurisdiction, it is appropriate for the Court to apply DIFC law to the dispute at hand, rather than UAE law, which has not been agreed upon by the parties. Therefore, the DIFC Contract Law, DIFC Law No. 6 of 2004 ("DIFC Contract Law") shall apply to this dispute. I will therefore take these issues in the order they occurred, with due reference to the DIFC Contracts Law.

B. General Court Findings as to the Financial Summaries

57. Generally, I have undertaken a detailed review of the summaries, invoices and time sheets provided to the Court in order to understand the history of invoices, payments and the resulting dispute. Much of this detailed review is reflected in the analysis below, especially as to the adjusted rates to be charged in 2015 and the inconsistencies and errors found in the invoicing as compared to the time sheets provided. I have worked with what was provided by the parties.

58. Based on my careful review of the documents, the total amount originally invoiced by the Claimant was AED 1,048,917.15[2]. The Claimant subsequently adjusted some invoices such that the total amount invoiced was actually AED 993,426.22. Based on the agreed total of payments from the Defendant of AED 835,151.82, this leaves a disputed and allegedly unpaid amount of AED 158,274.40[3].

59. The Defendant contests this amount, providing further reductions to invoices in their Appendix - AR. These reductions total AED 164,916.00 that the Defendant argues should be reduced from the invoiced amount, although it is important to note that this amount does not include the amounts already reduced by the Claimant. Therefore, the Defendant claims they owe a total of AED 879,775 as reflected on page 7 of Appendix - AR. Based on their agreed payment history of AED 835,151.82 the Defendant would owe a further AED 44,623.18 (calculated as the undisputed amount paid of AED 835,151.81 subtracted from the Defendant's alleged total invoice amount of AED 879,775).

60. Therefore, the difference between the parties' claimed amounts owed is AED 113,651.22: the difference between the Claimant's claimed amount owed of AED 158,274.40 and the Defendant's concession of AED 44,623.18.

61. The Court has made further adjustments to the amount owed as detailed below based on the outcome of the relevant legal issues.

C. Entitlement to Increase Fees

62. As for the entitlement to increased fees under the Consultancy Agreement, it is undisputed that both Consultancy Agreements included the relevant language that "[t]he lump sum monthly retainer fee is fixed for the period of December 31st Thereafter it is subject to our internal review and possible increase for the period January 1st 2015 and annually thereafter." It is clear from the wording of the agreements that the parties were due to negotiate potentially increased fees as of January 2015 but there was no requirement to do so. Furthermore, although not explicitly stated, the implication is that the parties would agree to the new rates; the Claimant was not entitled to set them unilaterally. Thus, the parties had to agree on the fees and it was incorrect for the Claimant to pre-emptively charge increased fees before an agreement was reached.

63. The parties did agree on new fees to apply to the Consultancy Agreements moving forward. It is disputed when this new agreement was actually made and for what period it applies. The Claimant contends that the new rate agreement was made via email on 23 April 2015 and should apply for the entire of 2015 and thus it adjusted the accounts to address this change such that there is still an underpayment of AED 158,274.09 on the books. The new rates were to mirror the old rates for Contract Administration Work, plus an additional 10% and charged EOT work on an hourly basis. The Defendant contests this, stating that the email of 23 April 2015 was purely an offer from the Claimant and the actual agreement was made on 26 April 2015 via email from the Defendant confirming acceptance of the new terms.

64. Regardless of the date of agreement for the new payment terms, the real dispute remains over whether those new terms applied to the entirety of 2015 or only for those works performed after the new rates were agreed upon. The Claimant argues for the entire year, having allegedly adjusted their early-2015 invoices to reflect the new amounts. The Defendant argues that in the absence of a new agreement, the additional work done in early-2015 would need to be charged based on the existing agreements.

65. As the parties were not in agreement until at least 23 April 2015 as to the new rates to charge for services provided, it is only appropriate that the Claimant charge at the previously agreed upon rates up until that point. The Claimant cannot charge the new, increased rates for January 2015 until April 2015 unless the Defendant agrees to such a charge and the Defendant has not agreed. The Claimant was free to terminate the agreement based on the Consultancy Agreements if the agreed upon rates were too low for the services provided.

66. Based on this finding, the Invoices numbered 6884, 6888, 6903, 6904, 6914 and 6915 for work performed in January 2015 until March 2015 must be further adjusted to reflect the original agreed upon rates.

Invoice Number	Date	Project[4]	Amount Originally Invoiced	Claimant's Adjusted Amount	Court's Further Adjustment
6884	2/8/2015	P1	AED 30,140.50	AED 16,669.23	AED 16,692.31
6888	2/11/2015	P2	AED 59,427.89	AED 61,044.23	AED 51,507.69
6903	3/10/2015	P1	AED 61,945.00	AED 36,215.38	AED 34,307.69
6904	3/10/2015	P2	AED 15,332.52	AED 17,378.08	AED 13,892.31
6914	4/2/2015	P1	AED 49,725.00	AED 28,261.54	AED 27,538.46
6915	4/2/2015	P2	AED 8,377.60	AED 9,887.50	AED 7,717.95
TOTALS:			**AED 224,946.89**	**AED 169,455.96**	**AED 151,656.41**

67. The above chart shows the need to further adjust these relevant invoices down to a total of AED 151,656.41, serving to reduce the Claimant's claim by AED 17,799.55 from AED 158,274.40 to AED 140,474.85.

68. Next, I must determine when the new rates actually came into effect. The Claimant argues that the new rates applied from 23 April 2015 while the Claimant argues that the agreement was actually made on 26 April 2015. The email of 23 April 2015 from the Defendant to the Claimant upon which the Claimant relies states a proposed rate scheme and then continues "[i]f this is agreeable, I will review the hourly rates . . ." The use of the term "if this is agreeable" implies that the Claimant is asked to accept the offer contained in the email for proposed rates. The 26 April 2015 email from the Claimant to the Defendant upon which the Defendant relies confirms the rates proposed by the Defendant. Thus, the offer for new rates was properly accepted on 26 April 2016 and from that date moving forward it was appropriate for the Claimant to bill the Defendant at the new rates.

69. Based on this determination, there may be an additional calculation that must occur for Invoices 6947, 6948 and 6949 which include work done both before and after the new rates were agreed upon in April 2015. Upon review, Invoice 6947 is likely for work done on 29 April 2015 and therefore the new rates are properly applied to this invoice and no change is necessary.

70. Skipping to Invoice 6949, this invoice is for 0.75 hours under the Lump Sum time from Mr TA and 92.5 hours under the Lump Sum time from Mr CR for work performed in April 2015 on the Project 2. According to the time sheets corresponding to this invoice, the 0.75 hours billed from Mr A were worked after 26 April 2015 and are therefore correctly charged at the new rates. 66.5 of the 92.5 hours worked by Mr R were from before 26 April 2015 while 28 hours were worked on 26 April 2016 onwards. This brings light to the fact that on this particular invoice, the Claimant seems to have undercharged the Defendant by 2 hours as Mr R's total hours for the relevant time sheets is 94.5 as compared to the 92.5 hours billed. This 94.5 hours does include 5.5 hours billed for EoT time all worked after 26 April 2015, which therefore shouldn't be added to this particular invoice for Lump Sum Contracts work. This means that the Claimant actually overcharged by 3.5 hours, taking into account the 2 hours seemingly undercharged. Therefore, this invoice must be recalculated based on the original rates as to a total of 66.5 hours of Mr R's time and further reduced by removing 3.5 hours incorrectly invoiced at the new rates. This results in a new invoice amount of AED 29,353.85, which includes AED 600 for Mr A's time, 66.5 hours of Mr R's time at the original rate of AED 60,000 for 195 hours and 22.5 hours of Mr R's time at the new rate of AED 66,000 for 195 hours. This calculation differs slightly from the Defendant's submission which recalculates this invoice using the original rate for all of Mr R's work, but comes to a similar amount. This recalculation requires a reduction of AED 3,230.78 with the original invoice charging AED 31,910.40. This takes the total owed by the Defendant down to AED 137,244.07.

71. Invoice 6948 provides some further problems. This Invoice is for 1.25 hours of EoT/Cost Claim time from Trevor Anscombe and 29.5 hours of EoT/Cost Claim time from Mr C, Mr R. This Invoice is for work performed from January 2015 through April 2015 on the Project 2. According to the time sheets corresponding to this Invoice, the 1.25 hours billed from Mr Anscombe were worked before 26 April 2015. 24 of the 29.5 hours worked by Mr R were from before 26 April 2015 while 5.5 hours were worked on 26 April 2016 onwards. These 5.5 hours include the 3.5 hours incorrectly billed in Invoice 6949. Therefore, this Invoice must be recalculated based on the original rates as to a total of 25.25 hours. Upon further review of this particular Invoice, it seems that all of the hours billed for Mr.R, except for the 5.5 from after 26 April 2015 were already billed to the Defendant on previous Invoices including the same work descriptions and work dates (see work details for invoices 6884, 6903, 6914 and 6949 as compared to the work details for invoice 6948).

Date	Description from time sheet for Invoice 6948	Previous Description from time sheets for Invoices 6884, 6903, 6914, and 6949
01/04/2015	Meet with QS and planner to discuss impacting the new programme for the works with delay notices. Review impacted programme with planner, assist in drafting delay event record table and how the cover notice should read. Should receive AFC progress for December tomorrow, impacted programme will be sent over to check.	Meet with QS and planner to discuss impacting the new programme for the works with delay notices Review impacted programme with planner, assist in drafting delay event record table and how the cover notice should read Should receive AFC progress for December tomorrow, impacted programme will be sent over to check.
01/22/2015	Review impacted programme with planner, draft cover notice and submit.	Review inpacted programme with planner, draft cover notice and submit [sic]
02/04/2015	Draft response to Impacted Programme letter received from AFC.	Draft response to Impacted Programme letter received from AFC
02/05/2015	Response to impacted programme drafted and sent.	Resppnse to impacted programme drafted and sent [sic]
02/19/2015	Review impacted programme for end January, extension to completion dates and impacts of each event. Draft cover letter for impacted programme.	Review impacted programme for end January, extension to completion dates and impacts of each event Draft cover letter for impacted programme

03/09/2015	Meeting with AFC in regards to mitigating employer delays and possible costs which would be incurred. Review impacted programme up to end February 2015, draft cover letter and submit.	Meeting with AFC in regards to mitigating employer delays and possible costs which would be incurred Review impacted programme up to end February 2015, draft cover letter and submit
03/24/2015	Respond to Impacted Programme of Works letter.	Respond to Impacted Programme of Works letter
03/30/2015	Draft response to Impacted Programme of Works letter	Draft response to Impacted Programme of Works letter
04/05/2015	Meeting with Planner to discuss impacted programme. Meeting with AFC to discuss impacted programme and request to submit EOT claim.	Meeting with Planner to discuss impacted programme Meeting with AFC to discuss impacted programme and request to submit EOT claim
04/09/2015	Review impacted programme for end of March and draft cover / eot claim letter and submit	Review impacted programme for end of March and draft cover / eot claim letter and submit
04/20/2015	Meet with planner to discuss EOT, spoke with AFC planner, not on site today.	Meet with planner to discuss EOT, spoke with AFC planner, not on site today
04/21/2015	Draft overall response to mitigation plan and delays recorded against the Baseline Programme.	Draft overall response to mitigation plan and delays recorded against the Baseline Programme

While these charges were originally billed as Contract Administrator or Lump Sum amounts, the charges in Invoice 6948 are for EoT work, which may indicate why there was a change. Still, nothing the Claimant has submitted proves to the Court that these are not duplicate charges. Therefore, other than the 5.5 hours charged at post 26 April 2015 rates and the 1.25 hours for Mr A billed at the original rates for Project 2, the remainder of this invoice should be reimbursed. The Defendant's submission regarding this invoice discounted Mr R's hours from 29.5 to 14 and then recalculated the invoice amount using the old rates but the Court finds its own calculation to be more appropriate. The new invoice amount calculated by the Court is AED 3,492.11 (including AED 384.61 for Mr A's time and AED 3,107.50 for Mr R's time), compared to AED 17,667.50. This results in further AED 14,175.39 being deducted from the amount owed by the Defendant bringing the total down to AED 123,068.69.

D. The Defendant's Entitlement to Decrease Fees

72. The above detailed review of the invoicing does give support to the Defendant's argument that the general invoicing practice contained errors. Based on this argument, the Defendant has made a number of unilateral decreases to the invoiced amounts provided by the Claimant, reducing hours worked and amounts due as reflected in the Defendant's submission entitled "Appendix - AR".

73. Specifically, it seems that the Defendant has reduced any work done by Senior Contracts Administrator Mr CR to the original agreed upon rates charged for the Project 2 project in 2014. Even after new rates were agreed and when Mr R worked on different projects and in different roles (EoT work as opposed to work covered by the Lump Sum). The Defendant claims that these reductions are appropriate and that they brought up their discrepancies with the Claimant before this case began. There is some merit to their statements as there is evidence of ongoing confusion and error in the accounts. But, it seems that the parties generally worked together to remedy these challenges. Furthermore, the Defendant has not provided any proof as to why such changes to the accounts and invoices should be made. There is no documentation to indicate that Mr R's work was meant to be billed at these original rates at all times.

74. Appendix - AR reflects an alleged over charge of AED 164,919 after the Defendant's reductions, although the Defendant does not submit any further evidence or documentation to justify these reductions beyond the amounts already admitted by the Claimant for overcharging. Beyond what the Court can surmise from the documents provided, there is no evidence showing why further deduction should be made. Thus, the Court cannot accept these reductions in total as they fail to meet any standard of proof and should have been substantiated in order to receive further consideration.

E. Dispute Over the History of Payments and Invoicing

75. The parties have included submissions summarising the invoiced amounts over the term of the Consultancy Agreements. The Defendant has also indicated the amount it argues it should have been charged given the alleged poor service and additional costs caused by the Claimant. While the Claimant comes to the conclusion, based on their account summary, that the Defendant owes them AED 158,274.09, the Defendant contends based on their account summary that they must reduce the invoices by AED 164,919.

76. These contrary filings represent significant disagreement over the history of invoices although it is important to note that there is no dispute between the parties about the amounts already paid by the Defendant to the Claimant. The dispute remains over how much remains to be paid.

77. These conflicting statement of accounts have caused the Court to take a careful look at the invoices and corresponding time sheets provided by the Claimant to substantiate their invoicing. As mentioned above, the Court has decided to dismiss the Defendant's unsubstantiated reductions in hours and rates as reflected in Appendix - AR in favour of the Court's careful review as reflected above and continued here.

78. There are a number of issues with the invoicing and time sheets as provided to the Court. I cannot be sure if the lack of documentation in some areas is due to oversight or reflects a lack of evidence to support these specific figures. I will take each issue with the history of invoicing in turn.

79. First, there is no documentation provided by the Claimant for invoices 6744, 6764 and 6780, although the amounts for these invoices are reflected in the financial summaries provided by both parties. As there is little dispute between the parties on these three invoices, the Court will allow them to stand as is, even without the supporting documentation.

80. Second, as to invoice 6888, the Claimant has not provided time sheets to substantiate the hours charged for two individuals. The 4.5 hours charged for Mr.T A's time and the 36 hours charged for Mr GWC's time are not substantiated by corresponding time sheets as provided for the other invoices. As there are time sheets to substantiate virtually all of the other invoices, the Court deems that the Claimant has not met its burden of proof to show that these amounts were properly charged. Still, the Defendant has not challenged these particular charges as Appendix - AR does not reflect any adjustment to these two line items from Invoice 6888. Therefore, it is appropriate to leave these charges as is.

81. Third, as to invoice 6914, it seems that the Claimant has over invoiced by 1 hour. The listed time worked by Mr R is 89.5 hours but there are only 88.5 hours reflected in the attached time sheets as to the Project 2 project and therefore, this invoice should be reduced by one hour to the amount of AED 27,230.77, further reducing the alleged amount owed to AED 122,760.99.

82. Fourth, as already mentioned above, invoice 6948 includes substantial issues which have been addressed and reflected in the adjusted amounts.

83. Fifth, as also already addressed above, invoice 6949 seems to be under charged by 2 hours but is actually over charged by 3.5 hours due to duplications with invoice 6948. This is also been adjusted in the amount owed.

84. Sixth, as to invoice 6971, the Claimant has not included the time sheets to substantiate the hours of one individual, namely the 98.5 hours charged for work done by Mr CR. As there are time sheets to substantiate virtually all of the other invoices, the Court deems that the Claimant has not met its burden of proof to show that these amounts were properly charged. The Defendant has reduced these particular hours to the original rate of 195 hours at AED 60,000 in their Appendix - AR. Therefore, as the Claimant has not substantiated these charges and the Defendant has reduced them to the original rates, the Court deems it appropriate reflect the Defendant's reduction in this case. This requires recalculating the 98.5 hours charged to the original rate, changing the total invoice amount to AED 32,306.00 and reducing the alleged amount owed further to AED 119,728.53.

F. Right to Suspend Services

85. The parties further argue about the termination of their Consultancy Agreements. The Claimant alleges a legal right to suspend services due to non-payment by the Defendant, pursuant to UAE Civil Transactions Law, Article 247. The Defendant responds that no such right was available and instead that the Claimant breached the Agreements by suspending services.

86. The relevant law, as mentioned above, is not UAE Civil Transaction Law but the DIFC Contract Law. The relevant provision is Section 79 which states "[w]here the parties are to perform simultaneously, either party may withhold performance until the other party tenders performance."

87. The Consultancy Agreements, as written, indicate a simultaneous performance structure, as evidenced by Clause 3(ii)(a) which states "[i]nterim monthly payments are payable maximum 30 days from invoice date substantiated by daily records of work done submitted vide our weekly reports". Therefore, the work done needed to be paid 30 days after invoiced and simultaneously with further work provided and not yet invoiced or yet due to be paid.

88. Both parties agree that at least AED 44,623.18 was due to the Claimant at the time of the Claimant's suspension of services. In fact, the Court has found that by 17 September 2015, the date of the suspension of services, the Defendant owed the Claimant AED 120,405.46. This amount can be lessened by the AED 44,084.62 and AED 33,338.46 invoiced on 7 September 2015 and 11 October 2015 respectively, leaving AED 42,982.38 as over 30 days past due.

89. This past due amount gave the Claimant the right to suspend services as per Section 79 of the DIFC Contract Law. The Claimant did not purport to terminate the contracts and instead sought to suspend services until payment of the overdue amounts were paid. The Claimant was not outside of its legal right to do so.

G. Right to Terminate the Agreements

90. The Defendant responded to the suspension of services on 29 September 2015 with notice of termination pursuant to Clause 2.9 of the Consultancy Agreements stating that the Claimant had breached the contracts by suspending service.

91. Clause 2.9 of the Consultancy Agreements states that "[o]ne month's written notice by either party to terminate our services and the Consultancy Agreement is required." The Consultancy Agreements do not provide any further qualifications on the parties' rights to terminate the agreements.

92. As the Defendant needed no reason to trigger Clause 2.9 notice and as the Defendant gave notice pursuant to Clause 2.9, there is no reason by which the Defendant can be found in breach of the Consultancy Agreements for terminating them with 30 days' notice. The Defendant may have been in breach for long overdue payments over which there was dispute, but the Court makes no finding as to that issue.

93. Therefore, the Defendant was within its right to terminate the agreements.

Conclusion

94. Based on the above, the Claimant's alleged claim value of AED 158,274.40 has been reduced for amounts invoiced at incorrect rates, for

duplicative charges, for incorrect invoicing and for failure to provide substantiation of the invoiced amounts. In total, this amount has been reduced to AED 119,728.53 owed to the Claimant from the Defendant.

95. Neither party has been found in breach of the Consultancy Agreements. The Defendant's claim against the Claimant is dismissed for incorrectly filing a counterclaim and for failure to substantiate that claim with proof. The Claimant's claim for legal costs and interest are dismissed as well.

96. Therefore, the Defendant is required to provide the Claimant with AED 119,728.53 in full and final resolution of the claims between the parties.

97. Each party shall bear their own costs.



Issued by:

Maha Al Mehairi

Judicial Officer

Date of issue: 31 May 2016

At: 11am