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
BEFORE SCT JUDGE NASSIR AL NASSER

BETWEEN

LUCINA

Claimant

and

LINDAE SOLUTIONS

Defendant

Hearing **: 12 April 2020**
Judgment **: 23 April 2020**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON this claim being filed on 8 March 2020

AND UPON the Defendant filing an Acknowledgment of Service with an intention to defend all of this claim dated 16 March 2020

AND UPON a Consultation having been held before SCT Judge Delvin Sumo on 24 March 2020, at the Claimant and the Defendant's representative attended

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

AND UPON a hearing having been listed before SCT Judge Nassir Al Nasser on 12 April 2020

UPON hearing the Claimant and the Defendant's representative at the hearing;

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall refund the Claimant the sum of SAR 39,900.

2. The Claimant's other claims are dismissed.

3. The Defendant shall pay the Claimant the court fee in the sum of AED 1,995.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 23 April 2020
At: 4pm

THE REASONS

The Parties

1. The Claimant is Lucina (hereafter "the Claimant"), a Saudi National, resident in Saudi Arabia.

4. The Defendant is Lindae Solutions (hereafter "the Defendant"), a company registered in Dubai, located at office 1201, Sidra Tower, Media City, Dubai, UAE.

Background and the Preceding History

5. The underlying dispute arises over an alleged breach of the Pre-Opening Management Service Agreement (the "Agreement") signed by the Claimant and the Defendant.

6. On 8 March 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of AED 97,645.

7. On 16 March 2020, the Defendant acknowledged the claim with an intention to defend all of the claim.

8. The parties met for a Consultation with SCT Judge Delvin Sumo on 24 March 2020 but were unable to reach a settlement.

9. On 12 April 2020, a hearing was listed before me, at which the Claimant and the Defendant's representative attended.

The Claim

10. On 1 July 2019, the Claimant and the Defendant entered into the Agreement to establish and open a Caf�/restaurant inspired by the Claimant's existing hook food truck concept, currently running in Saudi Arabia.

11. The Claimant alleges that as per Clause 3 of the Agreement, the work was divided into different phases. Initially the Claimant asked the Defendant to remove Employment, staffing and training phases of the work, however, the Defendant insisted that this could be removed at later stage, although, the clause was never removed.

12. The Claimant adds that the total amount payable pursuant to the terms of the Agreement was SAR 193,990.25 + VAT, which is equivalent to AED 190,000 + VAT. As per Clause 4.1, it was agreed that the Claimant would pay "30% deposit of the management fee on signing the Agreement to initiate project phase 1 the concept development" and thus the Claimant transferred SAR 59,850 on 26 June 2019 to the Defendant.

13. The Claimant alleges that after the sum was transferred to the Defendant's account, the Defendant finalised the market study only, and submitted a general feasibility study, plus a general capital budget, which was in breach of Clause 3 (a) which required the Defendant to submit an actual report. The Defendant claimed that the actual feasibility study and actual capital budget would be handled at the end of the project, and it was decided that it would be edited during the progress of the project, and an open file would be handled at the end of the project. Thus, the Claimant signed for the completion of phase 1 and sent the same back to the Defendant by email, however, phase 1 was postponed and not actually completed.

14. Thereafter, the Claimant alleges that the Defendant asked for the second payment as per Clause 4.1 of the Agreement, and the Claimant transferred SAR 39,900 on 31 October 2019, paying the total of 49.97% of the total project value.

15. The Claimant adds that phase two of the work related to menu analysis, as mentioned in Clause 3.1 (d) (e) (f) and (g), which included menu engineering, recipe development, pricing services, developing recipes, preparing for trials and a recipe book. The Claimant alleges that the Defendant failed immensely to provide the service. The Defendant handled the communication badly and was unable to get an idea of the restaurant that the Claimant wanted. The Claimant adds that he kept having to direct the Defendant on things that they should not do in the menu skeleton, however, the Defendant failed to follow the instructions of the Claimant.

16. It is alleged that it was the Claimant who completed the menu skeleton for the Defendant and eventually sent it to the Defendant on 16 September 2019 after mentioning that it was not suitable on 31 August 2019.

17. The Claimant adds that due to bad communication, there was no team effort from the Defendant, for example, despite informing the Defendant that the Claimant would be available in Dubai from 23- 25 January 2020 for testing and trials, the Defendant again asked the same questions on 20 January 2020, thereby, meaning that they were not prepared to present the trial menu.

18. The Claimant also adds that the Defendant provided a draft menu on 5 January 2020, which the Claimant returned with a list of comments and items that he required to be changed. However, the Defendant failed to adhere to the suggestions of the Claimant and sent back almost the same menu which was rejected by the Claimant without providing any supporting reasons. The Claimant alleges that the Defendant did not fulfil its obligation as per the Agreement.

19. Thus, the Claimant sought a refund for the entirety of phase 1 and 2. It should be noted that there are 5 phases and the Claimant is of the view that Defendant has failed to complete phase 1 and still has not submitted an open source of final feasibility as well the capital budget vs. actual budget report to the Claimant. The Claimant adds that the Defendant agreed that they would provide these documents during the progress of the project, up until the last phase, and that the Defendant would handle the actual feasibility study and actual capital budget, and each phase amounting to 20% of the total contract value. As such, the Claimant alleges that the Defendant failed to accomplish its contractual obligations as per the Agreement and therefore the Claimant is entitled to receive a full refund of SAR 99,750.

The Defence

20. The Defendant alleges that they have initiated a Concept Development and Feasibility study stage, as of 9 July 2019, and completed this stage on time as per the shared timeline of 27 August 2019, and that the Concept presentation, along with a financial study, was shared with the Claimant.

21. The Defendant adds that, based on the Claimant's comments they adjusted the concept submitted on 8 September 2019, and the feasibility study submitted on 3 September 2019.

22. The Defendant also adds that, as per the Agreement, there is no reference to the actual capital budget and feasibility as part of business planning, treasury and financing.

23. The Defendant confirms that the Claimant signed the completion certificate of phase 1.

24. The Defendant also adds that, as per the Agreement, menu development was supposed to be created along with the hired chef, however, the Claimant refused to hire a chef and decided to go ahead with a Chef Consultant. The Defendant also adds that they provided a Chef Consultant, but the Claimant refused to pay the Chef Consultant's fees. As a good gesture, l the Defendant agreed to take the expenses for 20 recipes developed by the Consultant Chef, but the costs of the kitchen rental had to be borne by the Claimant.

25. Moreover, the Claimant insisted to hire two Consultant Chefs for the menu development and this request was also taken into consideration by the Defendant.

26. Therefore, the Defendant alleges that, at their own expense, they hired Consultant Chefs and started developing the menu.

27. The Defendant alleges that the menu proposal produced by the Consultant Chef was shared along with the kitchen rental invoice. However, the Claimant failed to pay the cost of the kitchen rental, therefore, the kitchen was not booked.

28. The Defendant alleges that the scope of stage 1 of the Agreement was completed and the Claimant had signed a completion certificate to that effect. In relation to stage 2, the Defendant alleges that it was initiated and handled as per the Agreement. Moreover, as a good will gesture of the Defendant, they agreed to take on the expenses for the hire of a Chef Consultant, which was outside of the scope of work.

Discussion

29. The parties are both registered and located outside of the DIFC but have opted into the DIFC Courts' Jurisdiction, as can be seen at Clause 10.1 of the Agreement, which states the following:

"This Agreement shall be governed by, and construed in accordance with the laws of the DIFC, and the parties agree to submit to the jurisdiction of the DIFC Courts".

30. Article 5(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended 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."

31. Therefore, pursuant to Article (5)(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended, I am of the view that the DIFC Courts have the authority to hear and determine this claim.

32. In relation to the subject matter of the claim, the question which arises is whether the Defendant completed phase 1 and 2 of the Agreement, and whether the Claimant is entitled to a refund? Thus, I will discuss each phase separately below.

33. The Agreement consisted of different phases/services:

> (a) Business planning, Treasury Services and financing;
>
> (b) Menu Analysis;
>
> (c) Supply services; purchase of equipment;
>
> (d) Employment, staffing and training; and
>
> (e) Reporting

34. The total amount payable pursuant to the terms of the Agreement was SAR 193,990.25 + VAT, which is equivalent to the sum of AED 190,000 + VAT. As per Clause 4.1 of the Agreement, it was agreed that the Claimant would pay "30% deposit of the management fee on signing to initiate project phase 1 the concept development" and thus the Claimant transferred SAR 59,850 on 26 June 2019 to the Defendant.

35. The Claimant argues that, upon the Defendant receiving the money transfer of 30% in the sum of SAR 59,850, the Defendant finalised the market study only and submitted a general feasibility study, plus a general capital budget, which was in breach of Clause 3 (a), which required the Defendant to submit an actual report. The Defendant claimed that the actual feasibility study and actual capital budget would be handled at the end of the project, and that it was decided that it will be edited during the progress of the project, and an open file would be handled at the end of the project. Thus, the Claimant signed a completion certificate for phase 1, and returned the certificate to the Defendant by email, however, phase 1 was postponed and not actually completed.

36. Clauses 3 (a), (b) and (c) provide the following:

> (a) Preparing a market overview on the concept direction, financial feasibility study, competition analysis, trend review and to enable the consultant to present a detailed concept brief document.
>
> (b) Preparing the Budget and providing the Owner with respect to the Restaurant (x) a business plan, (y) cash flow and working capital statements, as well as capital and operating expenditures estimates and analysis, and (z) a five-year forward-looking profit and loss statement.

(c) Arranging for the owner to settle its debts and accounts payable to third parties in relation to the development and launching of the restaurant.

37. The Defendant argues that Clauses 3 (a) (b) and (c) make no reference to the Actual Capital Budget and feasibility as part of business planning, treasury and financing.

38. I agree with the Defendant's view that there is no reference to Actual Capital Budget and feasibility, and that it is an overview of the market rather than actual. However, in an email dated 29 September 2019, the Defendant confirmed that it would be handing over the open files of financial feasibility as well as Capital Budget Projected vs. Actual at the end of the Project. In the same email, the Defendant requested that the Claimant sign a completion certificate to move to the menu development stage.

39. The Defendant argues that it has completed its part in relation to phase 1 as per the Agreement and that the Claimant had signed the completion certificate to that effect.

40. I find that the Defendant has in fact has completed its part of phase 1. However, in relation to the actual feasibility study and Capital budget, this was not part of the Agreement, but the Defendant agreed that this would be handled throughout the project and would be submitted at the end of the project. However, the Claimant decided to terminate the Contract at an earlier stage.

41. In addition, by way of an email dated 20 January 2020, the Claimant wrote to the Defendant and stated as follows:

"thank you it seems that you still haven't got the idea for the menu I have asked for a change and it hasn't been reflected on the proposal I don't want to waste my time please I need a refund by tomorrow to my company account and ill stop from here and I would like to thank you on the first phase I don't think I'm moving forward I have no time to waste please send money back by tomorrow".

42. Therefore, as per the completion Certificate signed, and as per the above email within which the Claimant acknowledges the services completed in respect of phase 1, and following the Claimant's termination of the Agreement, I find that the Claimant is not entitled to a refund in relation to phase 1.

43. In relation to phase 2 of the Agreement, the Claimant paid the sum of SAR 39,900 on 31 October 2019. Phase 2 consisted of a "Menu Analysis".

44. The Menu Analysis, as per the Agreement consisted of:

a. Providing hired chef menu engineering, recipe development and pricing services and developing recipes;

b. Arranging up to 6 tasting sessions in a rented out facility prior to onsite food trials;

c. Menu based on 20/25 recipes, food trials to take place with a Chef Consultant or hired chef by the client in rent facility in Dubai; and

d. Additional 12/15 breakfast items developed - chef's fees are excluded.

45. The Claimant argues that the Defendant failed to provide the services agreed in phase 2. The Claimant alleges that the Defendant handled the communication badly and was unable to comprehend the idea of the restaurant that the Claimant wanted. The Claimant adds that he kept having to direct the Defendant to things that they should not do in the menu skeleton, however, the Defendant failed to follow the instructions of the Claimant.

46. The Claimant argues that he finalised the menu skeleton for the Defendant and eventually sent it to the Defendant on 16 September 2019, after mentioning that it was not suitable on 31 August 2019.

47. The Claimant adds that, due to bad communication amongst the Defendant's team, there was no team effort from the Defendant, for example, despite informing the Defendant that the Claimant would be available in Dubai from 23- 25 January 2020 for testing and trials, the Defendant reiterated the same questions on 20 January 2020, meaning that they were not prepared to present the trial menu.

48. The Defendant argues that as per the Agreement, the menu development was supposed to be with completed with the assistance of the hired chef, however, the Claimant refused to hire a chef and decided to go ahead with a Chef Consultant. The Defendant adds that they provided a Chef Consultant but that the Claimant refused to pay the Chef's fees. As a good will gesture, the Defendant agreed to bear the expenses for 20 recipes developed by the Consultant Chef, however, the cost of the kitchen rental had to be borne by the Claimant. Moreover, the Claimant insisted that they hired two Consultant Chefs for menu development, and this request was also taken into consideration by the Defendant.

49. Therefore, the Defendant argues that, at their own expense, they hired Consultant Chefs and started developing the menu.

50. The Defendant argues that the menu proposal from the Consultant Chef was shared along with the kitchen rental invoice. However, the Claimant failed to pay the kitchen rental and therefore, the kitchen was not booked.

51. By way of an email dated 30 December 2019, the Claimant requested for the trials to be listed on 23,24 and25 January 2020. The Defendant responded by way of an email dated 5 January 2020, informing the Claimant that the menu proposal and the invoice of 3 days' kitchen rental was to be paid by the Claimant. In the same email, the Defendant also informed the Claimant that he needed to pay the kitchen fees to secure it, but the Claimant failed to do so.

52. In the email correspondence between the parties, it is also clear that the Claimant made several comments in relation to the menu proposed by the Defendant, but this was not taken into consideration. It is also apparent that the Consultant Chef was not only hired for the Claimant's project, but for various projects held by the Defendant, as provided in an email dated 20 January 2020, sent by the Defendant to the Claimant, wherein it is stated:

"Apologies for late response as chef was quite busy with other projects at the moment. Attached in the new proposal based on your previous comments. Kindly review all options and let us know to up to 10 items you would like to trial during tasting. In addition, please let us know what available dates are to organize the tasting."

53. The above email was followed by a further email dated 20 January 2020, wherein the Defendant proposed dates between 30 January 2020 to 1 February 2020 for tasting. However, the Claimant submits that he did not agree to the proposed menu provided by the Defendant, as he states that it failed to take into account the comments he had provided to the Defendant. Therefore, the Claimant then proceeded to send send an email requesting a refund as the Defendant did not action his request. In light of this, I find that phase 2 was not fulfilled.

54. Due to the miscommunication between the parties and the Defendant's failure to fulfil the Claimant's request in relation to phase 2, I find that the Defendant is liable to pay the Claimant a refund in relation to phase 2, in the sum of SAR 39,900.

Conclusion

55. In light of the aforementioned, I find that the Defendant shall refund the Claimant the sum of SAR 39,900.

56. The Claimant's other claims are dismissed.

57. The Defendant shall pay the Claimant the court fee in the sum of AED 1,995.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 23 April 2020
At: 4pm