Claim No:SCT 092/2014

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

FILIB

Claimant

and

FIFI

Defendant

Hearing: **9 February 2015**

Judgment:**23 February 2015**

JUDGMENT

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 shall pay the Claimant the sum of AED 52,771.65.

2. The Defendant shall pay the Courts fee.

THE REASONS

Parties

1.The Claimant is Filib.

2. The Defendant is Fifi.

Background and the Preceding History

3.The Claimant is a legal entity that was established pursuant to the DIFC Strata Title Law No.5 of 2007 as amended, to monitor the upkeep of the building and collection of the service charges among other activities.

4. The Claimant alleged that all unit owners at Filib- DIFC(including the Defendant) had been invoiced to pay Service Charges in order to manage the building yet, the Defendant had failed to pay these charges despite a number of follow ups and letter, consequently, thus had led the Claimant to file this claim before the Court.

5. No settlement was reached by the parties at the end of the consultation and, consequently, the case was sent for adjudication. On 09 February 2015 I heard both parties' submissions.

Particulars and Defence

6.The Claimant argues that according to their records, the Defendant has failed to pay the service charges for his Filibfor the period from June 2013 to May 2014, in addition to interest, in spite of the continuous follow - ups and caution letter sent to the Defendant.

7. The Defendant initially questioned the authority of the Claimant's representative in these proceedings and requested that the case be dismissed.

8. The Defendant further argued that the Claimant had failed to furnish evidence that the Defendant as landlord was under an obligation to pay the claim amount. In addition, the Defendant argued that the building was not being managed in line with expectations in accordance with "an Ordinary Man's Care and Diligence", and requested the Claimant to provide additional documents.

Finding

9.	The question that needs to be answered is whether the Claimant's Claim for unpaid unit service charges is legitimate or not?

10. To answer that question, I have first examined all documents filed in this case, and I am satisfied to rely on those documents as written evidence in support of the Claimant's position in this Claim.

11. After that, I have found that the Filib, who is the Claimant in these proceedings, was established pursuant to the DIFC Strata Title Law No.5 of 2007 as amended (DIFC Strata Law), and certified by the DIFC Registrar of Real Property on 25 September 2014, as it has been registered under registration number FIFI.

12. Then, I have noticed that at the Annual General Meeting, which was held on 20 August 2014, xxxx was elected as an office bearer of the Body Corporate. Therefore, I am of the view that the Claimant has been legally represented by xxxx in this case.

13. Then, I have reviewed Article (68) of the DIFC Strata Law , which provides that: (1) the body corporate may from time to time levy on owners contributions in respect of the lots to raise amounts that the body corporate decides are necessary to meet anticipated expenditure, (2) and such contributions are to be proportionate to the unit entitlements of the lots, (3) the owner of the lots at the due date for payment is liable for the contribution, and (4) interest accrue on overdue contribution at a rate fixed by the ordinary resolution of the body corporate , which must be fixed on a fair and reasonable basis .

14. After that, I have noticed that the XXXX Committee of Management at the XXXX each year , prepare the Service Charge Budget with the Body Corporate Manager, titled XXXX, this budget includes anticipated expenditure and is shared with the DIFC Registrar at the XXX, and then adopted by simple majority through a resolution and has the approval of the DIFC Registrar of Real Property, who would never have certified an XXXX had it not been conducted as per the DIFC Strata Title Law.

15. As an example, the service charge budget of AED 26.50 per Sq. ft. for the Defendant Residential property for the financial year 01/06/2014 to 31/05/2015 was adopted at the "AGA" meeting held on 20 August 2015, and then the Minutes of the meeting have been signed by the independent lawyers XXXX, followed by the DIFC Registrar of Real Property Certificates.

16. Lastly, I am persuaded that the interest rate of 12% per annum on the Defendant's overdue contributions was fixed on a fair and reasonable basis.

17. Therefore, I have found that the Claimant's claim is legitimate and has a legal basis as calculated on the XXXX statement dated 16 February 2015.

18. For those reasons, I hold that the Claimant is entitled to be paid the sum of AED 52,771.65 by the Defendant.

Issued by:

Nassir Al Nasser

Judicial Officer

Date of Issue: 23 February 2015

At: 10am