Claim No. SCT 162/2018

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 OF DIFC COURTS

BEFORE SCT JUDGE NASSIR AL NASSER

BETWEEN

IGALIKO FINANCIAL SERVICES LLC

Claimant

and

IFETA LLC

Defendant

Hearing: **13 June 2018**

Judgment: **13 June 2018**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON this claim having been called for a Hearing, the Claimant attended the hearing and the Defendant was absent although the Claim form was served;

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 500,000 of the lease.

2. The Defendant shall pay the Claimant the Court Fees in the sum of AED 25,000.

Nassir Al Nasser

SCT Judge

Date of issue: 13 June 2018

At: 2pm

THE REASONS

The Parties

1. The Claimant is Igaliko Financial Services LLC (herein "the Claimant"), the Landlord of Tower, DIFC, Dubai, UAE.

2. The Defendant is Ifeta LLC (herein "the Defendant"), a tenant of the Claimant atTower, DIFC, Dubai.

Background and the Preceding History

1. The underlying dispute arises over the Tenancy Contract between the parties dated 9 December 2013 (the "Contract") and pursuant to Article 39 of the Contract it states that this contract replaces and supersedes the previous four agreements entered into by the Claimant. The Contract provided that the Claimant makes provision for the rental of units C143, C144, C145 and C146 for 10 years in return for AED 2,359,808.05 per year.

2. The annual rent of AED 2,359,808.05 consisted of the following:

(a) AED 1,391,820/- per year for the indoor Area (3 cheques)

(b) AED 708,092/- per year for the Outdoor Area 1 (3 cheques)

(c) AED 120,385/- per year for the Outdoor Area 2 (3 cheques)

(d) AED 139,511/- per year for the Mezzanine Area 1 (1 cheque)

3. On 12 April 2018, the Claimant filed a Claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming nonpayment of rent in the sum of AED 676,579.

4. On 3 May 2018, the Claimant amended the Claim Form and lowered the claim amount to AED 500,000.

5. The Defendant responded to the Claim on 25 April 2018, indicating its intention to defend part of the claim.

6. On 9 May 2018, A notice letter was sent from Imbian Chartered Accountant LLP informing the Courts that a meeting of the Creditors will be held on 20 May 2018.

7. The parties met for a Consultation with SCT Judge Mariam Deen on 15 May 2018 but were unable to reach a settlement.

8. On 7 June 2018, the Liquidator, Mr. Imbian, sent a letter to the Small Claims Tribunal, stating that he is appointed as the liquidator of the Defendant via a member's resolution dated 7 May 2018 and subsequent unanimous acceptance of the creditors at the meeting held on 20 May 2018.

9. A Hearing before me was scheduled on 13 June 2018. The Claimant attended the Hearing and the Defendant was absent although he was served.

The Claim

10. The Claimant's case is that the Defendant breached the Clause 31 and 32 of the lease by not paying the rent balance amount of AED 2,029,737.01.

11. The Claimant alleges that the tenancy started on 28 October 2012 and expires on 27 October 2022, in the sum of AED 2,359,808.05 pursuant to the Contract. In addition, at the Hearing, the Claimant confirmed that the Defendant paid the sum of AED 330,071.04, however, it was alleged that the Defendant failed to pay the remining sum of AED 2,029,737.01.

12. However, the Claimant only claims the sum of AED 500,000 as the remaining amount.

The Defence

13.The Defendant did not attend the Hearing and did not provide sufficient evidence to defend the claim.

Discussion

14. The Claimant provided the lease agreement which states the lease amount is AED 2,359,808.05 per year and the Defendant only paid 330,071.04 up to date, in which the remaining balance for the year 2017-2018 is AED 2,029,737.01. However, the Claimant in his SCT claim claimed only the sum of AED 500,000 of the lease.

15. The threshold of Small Claims Tribunal is AED 500,000 unless the parties agree in writing otherwise.

16. The Claimant made the choice to lower the amount claimed to AED 500,000 in order for the claim to be heard and determined by the Small Claims Tribunal. By doing so, the Claimant waived the amount in excess of AED 500,000. This means that the Claimant will not be able to file another claim in regard to the same subject matter. If the Claimant wished to claim the whole amount of AED 2,029,737.01, he should have filed a claim in the Court of First Instance.

17. The Claimant argues that he is entitled to the sum of AED 500,000 of the lease and that the Defendant did not attend to defend his position and also failed to notify the Courts with the reason of his absence.

18. Therefore, it is ordered that the Claimant is entitled to the sum of AED 500,000 of the lease pursuant to the lease agreement between the parties.

Conclusion

19. In conclusion, I find that the Defendant shall pay the Claimant the sum of AED 500,000 of the lease.

20. The Defendant shall also pay the Claimant the Court fee in the sum of AED 25,000.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 13 June 2018

At: 2pm