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

JAINAB CONSTRUCTION LLC

Claimant/Counter-Defendant

and

JURIEL CONCEPTS INVESTMENT LLC

Defendant/Counter-Claimant

Hearing:**1 April 2019**

Judgment:**8 April 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant and the Defendant

AND UPONreading 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 327,227.50, which equates to the remaining amount of the Agreement plus interest at the rate of 9% from the date of this Judgment until the date of full payment.

2. The Defendant shall pay the Claimant Court fees in the sum of AED 16,361.39.

3. The Defendant's Counterclaims shall be dismissed.

4. The Defendant shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 8 April 2019

At: 3pm

THE REASONS

The Parties

1. The Claimant is Jainab Construction LLC (herein "the Claimant"), a Company Registered in Dubai and located in, , Dubai, UAE
2. The Defendant is Juriel Concepts Investment LLC (herein "the Defendant"), a company registered in Dubai, located in Dubai, UAE.

Background and the Preceding History

1. The dispute pertains to a fit-out Agreement signed by both parties dated 13 February 2018 (herein the "Agreement"). However, the commencement date of work was on or around 4 March 2018.
2. Pursuant to the Agreement, the Claimant was to undertake renovation works on the Defendant's restaurant located at Ibn-Battuta Mall, Dubai (herein the "Premises"). The sum of AED 1,359,750 as per the Agreement was due from the Defendant in payment of works carried

out by the Claimant.

3. The Claimant completed the entirety of the work as per the Agreement conditions, however, the Defendant failed to settle the final invoice in the sum of AED 327,227.50.

4. On 27 January 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of the final invoice in the sum of AED 327,227.50.

5. The Defendant responded to the claim on 20 February 2019 defending the claim and filed a Counterclaim on 11 March 2019 claiming the sum of AED 499,253.17 for losses and damages as a result of an alleged breach and neglect by the Claimant.

6. The parties met for a Consultation with SCT Judge Ayesha Bin Kalban on 21 February 2019 but were unable to reach a settlement.

7. Both parties attended the hearing before me, listed on 1 April 2019.

The Claim

8. The Claimant's case is that on or around 4 February 2018, the Claimant wrote to the Defendant enclosing a final offer for the execution of fit-out works of two restaurants at ibn Battuta mall. On 13 February 2018, the Defendant accepted the offer. The Claimant contends that the parties agreed on a total sum of AED 1,359,750.00.

9. On 4 March 2018, the fit-out works commenced and were carried out by the mutually agreed subcontractor, Creative Concepts (herein the "Subcontractor"). The works were completed on or around 20 June 2018 and the completion certificate was issued on 4 July 2018 by Jaine, Department of Planning and Development.

10. The Defendant opened the restaurant on or around 15 July 2018, on which date the Defendant notified the Claimant that the hood fan switch was malfunctioning. The Agreement provided the Defendant with a warranty for a period of one year following completion.

11. The Claimant alleges that immediately upon receiving the notification of the alleged malfunction, the Claimant dispatched a team for the installation of a temporary fan within 24 hours.

12. On 25 and 30 July 2018, the Claimant attended the restaurant along with the supplier to inspect the fan but were refused entry by the Defendant on both occasions. On 25 July 2018, the Defendant emailed the Claimant and advised that "any services required [.] will be outsourced from other contractors and the expenses will be charged to your account. All pending payments to the Claimant will be held for 120 days until we ensure proper commissioning for all mechanical equipment and infrastructure installed by Creative Concepts".

13. The Claimant alleges that the warranty was void as per the Agreement which states that "the warranty does not cover the misuse of any modification or alterations on his works done by the contractors."

14. The Claimant alleges that he is entitled to all pending payments in relation to the work completed pursuant to the Agreement in the sum of AED 327,227.50. The Claimant also claims interest and expenses of the Court proceedings.

The Defence and Counterclaim

15. The Defendant alleges that the Claimant did not complete the job within 90 days as agreed in the Agreement.

16. The Defendant also alleges that the Claimant and the work of the Sub-contractor has resulted in significant losses and damages to the Defendant by installing the ESP Units, the Carbon Filter and the hood system (the "System"), which is the most important part of any restaurant, not in compliance with the design drawings provided by Green Energy Air Conditioning System LLC ("Green Energy") who has been appointed by the Claimant. Accordingly, the Defendant's business has been interrupted in order to remedy these installation issues.

17. Furthermore, the Defendant contends that from 22 July 2018 to 30 July 2018 the Claimant was unable to fix the aforementioned issues and therefore the Defendant had to close its business during this period, thus incurring losses and damages.

18. The Defendant alleges that he had to appoint a third-party consultant (EMW) to check, evaluate and advise on the System, whom came to the conclusion that the System not sufficient nor fit for purpose. Furthermore, another consultant (from Consult) provided the Defendant with a proposed solution for the System which the Defendant alleges was wrong, and defective work of the Claimant.

19. In addition to the above, on 7 March 2019, the Defendant filed a Counterclaim claiming the sum of AED 499,253.17.

20. The Defendant alleges that the Claimant had breached and neglected its obligations under the Agreement and accordingly has installed a defective system which resulted in severe losses and damages.

21. The losses and damages sought by the Defendant are as follows: cost of the system; cost of repairing the system; loss of business; incurred consultancy fees; loss of income and cost of new equipment.

Discussion

22. This dispute is governed by the relevant Agreement between the parties dated 13 February 2018.

23. The parties are both registered and located outside the DIFC but opted-in to the DIFC Courts by a clause in the Agreement which states the following: "this LOA shall be governed and construed in accordance with the Laws of Emirates of Dubai and the Federal Law of the United Arab Emirates. All disputes and differences arising out of this LOA shall be referred to the exclusive jurisdiction of DIFC Courts."

24. Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended which 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;

    (f) ❖❖❖❖❖❖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.

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

The Claim

26. The Claimant now seeks payment of AED 327,227.50 which is the remaining payment of the Agreement between the Defendant.

27. The Claimant and the Defendant entered into an Agreement in which the Defendant agreed to pay the remuneration being AED 1,359,750 as per the Agreement in return of completing the fit-out of the Defendant's restaurant by the Claimant.

28. The Claimant completed the job on or around 20 June 2018 and the completion certificate was issued on 4 July 2018 by Trakhees, Department of Planning and Development. However, the Defendant failed to pay the remaining amount.

29. The Defendant argues that the opening date was around 15 July 2018. However, on 22 July 2018, the Defendant suffered defects on the system installed by the Claimant, in which he had to communicate with the Claimant to fix the issues. However, the Defendant argues that the Claimant completed 9 days without fixing the issues. On the other hand, the Claimant alleges that their response to the Defendant was within 24 hours in which they have installed a temporary solution for the system. However, on 25 July 2018, the Claimant argues that the Defendant sent an email to the Claimant which states the following:

    "any services required . will be outsourced from other contractors and the expenses will be charged to your account. All pending payments to the Claimant will be held for 120 days until we ensure proper commissioning for all mechanical equipment and infrastructure installed by Creative Concepts".

30. On 28 and 30 July 2018, the Claimant communicated with the Defendant via email in order to fix the issues in the restaurant.

31. The Claimant states that the works carried out were approved by the authorities in the first instance and there was no complaint.

32. The Claimant argues that in order to comply with the warranty clause of the Agreement, the Defendant was required to notify the Claimant of any issues promptly, and thereafter the Claimant should be allowed sufficient time to rectify said issues. This was not the case.

33. The pertinent question before me is whether or not the Claimant is entitled to the sum owed.

34. Article 892 of the Civil Transaction Code issued by Federal Law No. 5 of 1985 and amended by Federal law No. 1 of 1987 "The master is bound to pay the remuneration for the work upon taking delivery of the work contracted, unless otherwise agreed or practiced by custom."

35. In accordance with Article 56 of the DIFC Contract Law:❖ "the contractual obligations of the parties may be expressed or implied." Pursuant to the Agreement, the parties expressly agreed that the Claimant will carry out fit-out works within a certain period of time, and in return the Defendant shall pay the sum of AED 1,359,750 in 4 instalments. However, the Defendant only paid 60% of the amount.

36. A contract consists of a number of terms which determine the scope of the performance obligations which the parties have accepted. A failure to perform in accordance with these terms is a breach of Contract.

37. Therefore, I find that the Claimant fulfilled his part of the Agreement by performing the works which were approved by the authorities. I also find the Defendant in breach of the Agreement by not fulfilling his part of the Agreement and making the payment.

38. Pursuant to the above I find that the Defendant is obliged to pay the Claimant the sum of AED 327,227.50 owed for the work done as per the Agreement.❖

39. The Defendant alleges that the works completed are incompatible with the drawings. The Agreement between the parties included a clause that states the following:

    "the Contractor warrants all his work for a period of one year following completion. This warranty does not cover the misuse or any modification or alteration on his work done by the contractors or any misusing of the premises."

40. Therefore, the Claimant has an obligation to accommodate any issues in the premises for the period of one year as per the above clause.

Pursuant to the evidence provided, the emails dated 28 and 30 July 2018, the Claimant tried to fix the issues raised by the Defendant, but the Defendant contracted a third party to resolve them.

41. With the information provided to the Court before me, it would not be appropriate for me to decide whether the warranty is void or not, as such a judgement requires experts to examine the premises and provide a report on whether a misuse occurred. Therefore, I shall leave it to the parties to file a separate claim in relation to warranty.

42. In addition, the Defendant argues that the Claimant was supposed to complete the job within 90 days as per the Agreement signed on 13 February 2018. Though the Claimant completed the job by 20 June 2018, the Claimant argues that the work commenced on 4 March 2018, yet due to a leakage in the Mall, the landlord took time to fix the leakage which was out of the Claimant's control.

43. At the hearing, both parties confirmed that the leakage was the landlord's responsibility and not the parties. Once the issue of leakage was fixed the Claimant commenced work and handed over the premises to the Defendant within the 90 days as per the Agreement.

The Counterclaim

44. The Defendant in its Counterclaim sought the sum of AED 499,253.17.

45. The Defendant alleges that the Claimant had breached and neglected its obligations under the Agreement and accordingly has installed an improper and defective system which resulted in severe losses and damages.

46. The losses and damages sought by the Defendant include: cost of the system; cost of repairing the system; loss of business; incurred consultancy fees; loss of income and cost of new equipment.

47. Aforementioned, as per the Agreement, the Claimant warrants all his work for the period of one year.

48. I find that the Defendant did not provide the Claimant with sufficient time to carry out the work. Although the Defendant argues that the Claimant had 9 days to resolve the issue in which he failed to do so, but pursuant to the evidence provided the Claimant had only 2 days, thereafter, the Claimant was refused from entering the premises.

49. I shall dismiss the Defendant's Counterclaim for the cost of the system and cost of repairing the System due to the fact that the Claimant, pursuant to the warranty clause, had an obligation to remedy the issues at the Claimant's cost. However, the Claimant was not given the opportunity to resolve these issues; should the Claimant have been given ample opportunity and failed to do so, then and only then could such an argument be established.

50. In relation to the Defendant's counterclaim for loss of business and loss of income, the Defendant failed to provide solid evidence of losses, although he had provided work permits from the landlord for several period of time, but once again the Defendant did not allow the Claimant to carry out his part of the obligation to fix the issues of the System.

51. In relation to the Defendant's Counterclaim for consultancy fees, the Claimant challenges the Consultant, as the report provided by the third-party "Consult" did not include a stamp and neither is it a company registered in Dubai. Therefore, I dismiss the Defendant's claim for consultancy fees.

52. In relation to the Defendant's counterclaim for cost of new equipment, the Defendant failed to provide evidence in relation of new equipment. Therefore, I dismiss the Defendant's counterclaim for said new equipment.

Conclusion

53. In the light of the aforementioned, I find that the Defendant is liable to pay the Claimant the remaining amount in the sum of AED 327,227.50 plus interest at the rate of 9% pursuant to Practice Direction No. 4 of 2017 which states "[a]ny Judgment of the DIFC Courts issued after the date of this Practice Direction shall carry simple interest, from the date the Judgment is entered, at the rate of 9% or such other rate as the judge may prescribe." From the date of the Judgment until the date of full payment.

54. The Defendant shall pay the Claimant the court fees in the sum of AED 16,361.39.

55. The Defendant's counterclaims shall be dismissed.

56. The Defendant shall bear the court fee of the Counterclaim.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 8 April 2019

At: 3pm