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

HAGEN

Claimant

and

HANNIE

Defendant

Hearing: **16 February 2017**

Final submission: **21 February 2017**

Judgment: **28 February 2017**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

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 12,900 as payment for legal services.

2. The Defendant shall also pay interest on the awarded amount at the rate of 1% over the three months Emirates Interbank Offer Rate ("EIBOR") per annum from 31 January 2016 to the date of payment.

3. The Defendant shall pay the Claimant the Court fee in the sum of AED 644.96.

4. All other claims shall be dismissed.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 28 February 2017

At: 12pm

THE REASONS

The Parties

1. The Claimant is Hagen, an international law firm with a registered office in the DIFC ("the Claimant").

2. The Defendant is Hannie, an individual formerly working in the DIFC ("the Defendant").

Background and the Preceding History

3. On 25 July 2016, the Defendant discussed with the Claimant, by telephone, potential proceedings against the Defendant's employer. On the

same day, following the phone call, the Defendant sent an email to the Claimant with the details of his employer to run a conflict check and detailed some of the issues related to his employment. The Defendant also forwarded his resignation letter and his employment contract to the Claimant. That same day, the Claimant requested additional paperwork related to the issues raised by the Defendant in his discussion with the Claimant.

4. On 26 July 2016, after a meeting held between the parties at the Claimant's office, the Claimant sent the Defendant a proposal via email regarding its scope of work and professional fees for assisting the Defendant with his dispute with his employer. The email included a summary which reads: *"if you are agreeable to the above, please can you let me know so that I can send you our engagement letter"*.

5. On 27 July 2016, the Defendant responded to the Claimant's email stating the following: *"request you to please go ahead and prepare the engagement letter. I shall be in your office tomorrow morning around 10:30am for meeting to discuss questions and the strategy going forward"*.

6. At 8:54am on 28 July 2016, shortly prior to the meeting scheduled between the parties, the Defendant sent the Claimant an email with additional concerns and queries related to their meeting that same day. The concerns related to the dispute between the Defendant and his employer and the Defendant included a query in regards to the fee structure between the Claimant and the Defendant. On the same day, the Defendant also requested that the Claimant refrain from preparing any letters or legal notices to his employer until further instruction and also requested the Claimant to send him a final engagement letter and fee proposal. Later on that same day, the Claimant by email indicated that it had received further documents from the Defendant by email.

7. On 30 July 2016, the Defendant by email referred to the discussions had at the 28 July 2016 meeting, and requested the Claimant to provide the payment schedule which was discussed between the parties.

8. On 31 July 2016, the Claimant sent the Defendant the engagement letter to be reviewed and signed together with the Claimant's standard terms of business.

9. On 1 August 2016, the Defendant by email acknowledged receipt of the engagement letter and requested time to get back to the Claimant. On the same day, the Claimant via email mentioned to the Defendant that no further work would be undertaken on the matter until he responded and that if the Defendant decided not to proceed, the Claimant would only bill the Defendant for the time spent on the matter to date.

10. The Claimant did not receive any further correspondence from the Defendant until 9 August 2016, at which time the Defendant informed the Claimant that he was still waiting for his employer to file a claim and that he would update the Claimant at a later point.

11. On 10 August 2016, the Claimant sent the Defendant an invoice, Invoice No. 201640261 ("the Invoice"), dated 10 August 2016 for the amount of AED 12,900 for time spent on the Defendant's matter from 26 July 2016 until 28 July 2016. Since then the Defendant has not responded to any communications from the Claimant although the Defendant sent numerous emails to him from August until October 2016.

12. On 4 January 2017, the Claimant sent the Defendant a legal notice regarding the outstanding Invoice but the Claimant did not receive a response.

13. On 31 January 2017, the Claimant filed a claim in the Small Claim Tribunal of the DIFC Courts (the "SCT") claiming the sum of USD $ 3,510 (equivalent to AED 12,900) as per the Invoice sent to the Defendant on 10 August 2016.

Particulars and Defence

14. The Claimant's argument is that the core terms of the contract between it, an international law firm, and the Defendant, its client, are agreed in the scope of work and the fee structure provided by the firm to the client. These terms essentially provide that the legal advisors will charge the client for the time spent on the matter. These are the terms upon which a lawyer's proposal to a potential client are accepted or rejected.

15. The Claimant's argument continues that the email sent by it to the Defendant on 26 July 2016 was an offer to contract, including the intended scope of work and the professional fees required. The Claimant indicates at the end of the email that if the Defendant agrees to the above (scope of work and professional fees), he should respond affirmatively to the email. Thereafter, on 27 July 2016, the Defendant responded by email, stating that he "request[s] [the Claimant] to please go ahead and prepare the engagement letter" and "I shall be in your office tomorrow morning for meeting to discuss questions and the strategy going forward". Therefore, the Claimant argues, the parties created a valid and binding contract via an offer and an acceptance sent by email.

16. On the other hand, the Defendant argues that from 25 July 2016 there was no mention of charges for the time spent on his matter. The Defendant also added that he did not use the word "I agree" in his reply to the Claimant's offer, although he did request the Claimant to go ahead and draft the engagement letter. This request, he argues, was not an acceptance of the terms provided in the offer email.

17. On 28 July 2016, prior to the 10:30am meeting scheduled between the parties, the Defendant argues that he provided a list of questions related to the Disgorgement Claim, Visa Cancellation and the fee structure, implying that the parties were not yet in agreement on the terms of engagement. The Defendant conceded at the Hearing that the Claimant answered all questions raised by the Defendant at the meeting held on 28 July 2016.

18. The Claimant responded that the majority of these questions addressed on 28 July 2016 were considered legal advice given to the Defendant and any discussion regarding the fee structure was minor. The only amendment made to the fee structure based on the Defendant's requests of 28 July 2016 was to add stages to the scope of work and to cap the fee in each stage.

19. The Defendant also argues that the Claimant's charges reflected in the Invoice are not valid due to the fact that the Defendant mentioned to the Claimant that he was unable to pay the AED 10,000 required deposit (money on account). The Defendant argues that the Claimant assured him that the initial meetings held would not be chargeable until the engagement letter was signed. However, the Claimant argues that the terms used ("no payment will be necessary before the meeting") was with reference to a waiver of the AED 10,000 deposit which the Defendant said that he would

not be able to pay and which is generally required from a client before further legal work is performed.

Findings

20. The DIFC Courts and the Small Claims Tribunal have jurisdiction over this dispute as it concerns matters occurring within the DIFC and the amount in question does not exceed AED 500,000.

21. This dispute is governed by DIFC Law No. 6 of 2004 (the "DIFC Contract Law"), as stated in Article 3:

> *"Application of the Law*
>
> *This Law applies in the jurisdiction of the Dubai International Financial Centre."*

22. Pursuant to Article 15 of DIFC Contract Law, a valid offer to contract is defined as follows:

> *"A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of any acceptance".* ◆

23. The question is whether the Claimant's email of 26 July 2016 constitutes a valid offer to contract pursuant to Article 15 of the DIFC Contract Law and if so, whether that offer was accepted by the Defendant's email response of 27 July 2016. The Claimant's email clearly and expressly states that *"if you are agreeable to the above, please can you let me know so that I can send you our engagement letter"*. The Defendant, in his response on 27 July 2016, states that he *"request[s] you to please go ahead and prepare the engagement letter. I shall be in your office tomorrow morning around 10:30 am for a meeting to discuss questions and the strategy"*.

24. Upon reviewing the correspondence between the parties, I have reached the conclusion that a valid offer to contract was presented by the Claimant by way of email on 26 July 2016. The Defendant, in his email response of 27 July 2016, accepted the Claimant's offer although no formal contract was signed between the parties.

25. Article 24(1) of DIFC Contract Law states the following:

> *"A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer".*

26. The Defendant argued that there were additions and modifications made to the terms of the engagement letter drafted by the Claimant due to discussions at the meeting held between the parties on 28 July 2016 such that he provided a counter-offer rather than accepting the Claimant's initial offer. He added that the meeting resulted in the following modifications and additions:

a. the scope of work was split into different stages;

b. additional points were added to the scope of work;

c. legal fees were capped for each stage of the scope of work;

d. standard terms of business of Claimant were sent together with the engagement letter; and

e. payment on account was increased from AED 10,000 to AED 15,000.

27. The Defendant also argued that the Claimant on 27 October 2016 confirmed the modifications listed above, and that the Claimant stated the following *"We sent you our engagement letter on 1 August 2016 which mirrored our initial proposal but as requested set out the capped fees for each stage"*.

28. On the other hand, the Claimant argued that the Defendant has misunderstood Article 24(1) of DIFC Contract Law and that the article would apply if the Defendant had replied to the proposal requesting a substantive change made to the terms, which the Claimant argues did not happen. Furthermore, the Claimant added that the Defendant was not silent or inactive regarding acceptance; he indicated his assent and confirmed his acceptance to the proposal provided to him by the Claimant. The Claimant also added that the Defendant requested meetings, asked questions, and accepted legal advice and the Defendant was far from silent or inactive with regards to retaining the services of the Claimant.

29. I have examined the evidence provided by both parties and, as mentioned above, I am of the view that the parties entered into a valid and binding contract. However, the parties made a subsequent agreement for minor changes to be made at the meeting held on 28 July 2016; the Defendant's requested changes did not amount to a counter-offer. Therefore, the engagement letter mirrored the initial proposal made by the Claimant on 26 July 2016 and the changes included were amendments agreed by both parties at the meeting held on 28 July 2016.

30. Furthermore, had the Defendant been silent or inactive, his conduct towards the Claimant by arranging meetings and presenting documents to be reviewed would qualify as an acceptance by conduct pursuant to Article 19(1) of the DIFC Contract Law, which states the following:

> *"A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance."*

31. The Defendant argued that the Claimant misrepresented the Defendant's silence as an acceptance to the proposal. However, the Claimant argues that the Defendant accepted in writing, via email, the initial proposal and that he also provided the Claimant with documents related to his dispute, requested meetings, and discussed legal questions with the Claimant.

32. The Defendant was not silent with regards to the initial proposal as he not only indicated his assent to the offer via his conduct, but accepted

the offer in writing via his email sent on 27 July 2016. While the Defendant remained silent once the engagement letter was sent to him, the engagement letter was merely a reflection of what was already agreed upon in the initial offer with some amendments made upon both parties' agreement. In addition, the Defendant's conduct during the period between 26 July 2016 and 28 July 2016 indicates his clear acceptance of the Claimant's offer to provide him with legal services.

33. The Defendant argues that one of the fundamental principles of contract law is that there must be a "common intention" between two parties before the contract is considered valid and enforceable. The Defendant continues that, pursuant to Article 51(a) of the DIFC Contract Law, preliminary negotiation between the parties is a key consideration when ascertaining the content of the common intention between the parties. He also argues that, given the modifications made to the engagement letter, it must be concluded that the common intention between the parties was still under preliminary negotiations and that there was therefore no valid and enforceable contract made between the parties. However, the Claimant responded that clear and valid offer and acceptance had occurred between the parties and the Claimant had performed its obligation in accordance with the agreement. The Claimant argued that the relationship was clearly beyond "preliminary negotiations".

34. I have read the case file, examined the evidence provided and heard the parties at the Hearing and I have concluded that the parties were not in a negotiation stage, but in fact the Claimant had already begun carrying out the scope of work agreed between the parties. The amendments made to the agreement do not suggest that the parties were in negotiation stage; the conduct of both parties was beyond "preliminary negotiations".

35. The Defendant argues that the terms set out in the proposal qualify as "unclear" because they did not mention the standard terms of business, a full description of the scope of work and the modified fee structure. Therefore, pursuant to Article 54 of the DIFC Contract Law, which states that "If contract terms supplied by one party are unclear, an interpretation against that party is preferred," the Defendant argues that the Claimant is not owed payment. However, the Claimant denies that the term of the contract are unclear. Furthermore, the Claimant argues that the Defendant did not request a clarification or any substantive amendments, indicating that the terms were clear.

36. I find that the parties agreed to the proposal and neither raised any concerns that the agreement was unclear. The only comment the Defendant had is the one in relation to the deposit amount on account which was waived by the Claimant and the fee structure was capped. Therefore, I disagree that the contract between the parties was unclear.

37. In conclusion, the parties did enter into an agreement on 27 July 2016 the moment the Defendant responded to the Claimant's offer reflected in the email sent on 26 July 2016. Although there were minor amendments agreed between the parties on 28 July 2016 as mentioned above, those amendments did not significantly affect the substance of the proposal. Even if the Defendant's response was not an acceptance, the conduct of the Defendant amounted to an acceptance of the Claimant's offer as the Defendant's intended acceptance was clear from his requests for legal advice and his scheduling meetings with the Claimant.

38. For the reasons stated above, the Defendant shall pay the Claimant the sum of AED 12,900 pursuant to the Invoice presented by the Claimant for its performance of legal work from 26 July 2016 to 28 July 2016. The Defendant shall also pay interest on the awarded amount at the rate of 1% over the three months Emirates Interbank Offer Rate ("EIBOR") per annum from 31 January 2016 to the date of payment. The Defendant shall also be responsible to reimburse the Claimant for the DIFC Courts' fee in the amount of AED 644.96.

39. There was no evidence that the Claimant suffered loss and damages. Therefore, I dismiss the Claimant's claim for loss and damages.



Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 28 February 2017

At: 12pm