THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE SMALL CLAIMS TRIBUNAL

BETWEEN

MACIA BANK

Claimant

and

MABILI

Defendant

ORDER WITH REASONS OF SCT JUDGE DELVIN SUMO

UPON this claim having been called for a Consultation before SCT Judge Delvin Sumo on 28 February 2021

AND UPON the Claimant's representative attending the Consultation and the Defendant failing to appear although served notice of the claim

AND UPON reviewing the Claimant's submissions submitted by way of email dated 28 February 2021

AND UPON reviewing the case file and submissions contained therein

AND UPON reviewing Rule 53.28 of the Rules of the DIFC Courts (the "RDC")

IT IS HEREBY ORDERED THAT:

1. The Claimant's claim for AED 5,963.19 in relation to the outstanding sums owed pursuant to the Credit Card and the Overdraft shall be dismissed.

2. The Defendant shall pay the Claimant the amount of AED 214,941.71 in respect of sums owed under the Meun Agreement for the Loan.

3. The Defendant shall pay the Claimant a portion of the DIFC Courts' filing fee in the amount of AED 10,747.09.

4. The Defendant shall pay the Claimant post judgment interest at the rate of 9% per annum effective from the date of this Order until payment of this Claim.

5. The Claimant shall serve this Order upon the Defendant.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of Issue: 2 March 2021
At: 11am

SCHEDULE OF REASONS

The Parties

1. The Claimant is Macia Bank, a bank providing financial services to customers (the "Claimant").

2. The Defendant is Mr. Mabili, an individual customer of the Claimant (the "Defendant").

Background

3. On 11 January 2021, the Claimant filed a Claim with the DIFC Courts' Small Claims Tribunal (the "SCT") seeking recovery of sums allegedly owed to the Claimant by the Defendant in relation to a personal loan and a credit card.

4. The Claimant is seeking the total sum of AED 220,904.90, together with post-judgment interest on the sums due, as well as the recovery of the fee paid to the Court for the filing of this Claim, in the amount of AED 11,045.26.

5. On 28 February 2021, a Consultation was listed before me at which the Claimant's representative attended, however, the Defendant failed to appear, although served notice of the claim and provided with dial-in details ahead of the Consultation. Furthermore, the Defendant failed to file a response to this claim.

6. In light of the Defendant's failure to attend the Consultation and respond to the Claim, I shall decide this claim against the Defendant based upon the Claimant's submissions before me pursuant to RDC 53.28, which reads as follows:

"If a party fails to attend the consultation, the SCT Judge may:
(1) decide the small claim against that party; or
(2) adjourn the consultation".

The Claim

7. The parties entered into a written agreement on 11 November 2018 entitled `MACIA Personal Loan and Credit Card Application Form' (the "Simply Life Agreement"). Under the terms of the Simply Life Agreement, the Claimant received a loan in the amount of AED 287,000 to be repaid in 48 monthly instalments in the amount of AED 7,012 (the "Loan"). The Claimant alleges that the Defendant fell into arrears and claims that the outstanding sum of the Loan amounts to AED 214,941.71.

8. The Defendant also received a Simply Life Cashback Card on 8 February 2017 with a credit limit of AED 15,000 (the "Credit Card"). The Claimant alleges that the Defendant fell into arrears on 9 July 2020 and claims that the outstanding sum on the Simply Life Card amounts to AED 5,858.27.

9. The Defendant also received an overdraft facility (the "Overdraft"). The Claimant is seeking sums allegedly owed by the Defendant in the sum of AED 104.92.

Discussion

10. Rule 53.2 of the Rules of the DIFC Courts (the "RDC") requires that the SCT only hear cases that fall within the jurisdiction of the DIFC Courts.

11. The jurisdiction of the DIFC Courts is determined by Article 5(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended (the "JAL"), which provides a number of limited gateways through which the DIFC Courts may exercise jurisdiction over a claim, which are, as relevant:

i. "(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;

ii. (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;

iii. (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; . . .

iv. (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."

12. Pursuant to Article 5(A)(2) of the JAL, the DIFC Courts can exercise its jurisdiction over a matter that is unrelated to the DIFC, where the parties have agreed in writing that any dispute arising between them would be referred to the DIFC Courts for adjudication. Such a provision would allow the parties to `opt-in' to the DIFC Courts' jurisdiction, provided that it clearly demonstrates the parties' intention to do so.

13. I note that, in regard to the Simply Life Agreement, Clause 18 sets out a valid opt-in clause, whereby the parties agree to submit to the DIFC Courts' jurisdiction. Based on the submissions, and in the absence of any substantial evidence being put forward by the Defendant in relation to the Loan and Simply Life Card, I am satisfied that the Simply Life Agreement between the parties is valid and binding.

14. Upon reviewing the Claimant's submission, it appears that the Credit Card and Overdraft claims are not supported by any evidence. Following the Consultation held on 28 February 2021, I requested that the Claimant provide submissions to address this point. The Claimant responded as follows:

"The Claimant is writing this email in regard to the Judge request about the Credit Card number 234 we would like to inform the court that the application of the credit card is not available".

15. In light of the Claimant's submissions and the response above, I am of the view that, in the absence of any supporting documents and a clear written opt-in clause to the DIFC Courts' jurisdiction between the parties, the DIFC Courts cannot adjudicate over the Credit Card and Overdraft Claims.

16. Therefore, I dismiss the Claimant's claim for AED 5,963.19 in relation to the outstanding sums owed pursuant to the Credit Card and the Overdraft.

Conclusion

17. In conclusion, the Claimant's claim for AED 5,963.19 in relation to the outstanding sums owed pursuant to the Credit Card and the Overdraft shall be dismissed.

18. I find that the Defendant shall pay the Claimant the amount of AED 214,941.71 for the sums owed to it under the Simply Life Agreement for the Loan.

19. The Claim value set out by the Claimant in the Claim Form is AED 220,904.90, pursuant to which the Claimant has paid a fee of AED

11,045.26. Taking into consideration the Claimant's failure to succeed on all of its claims, I find it appropriate to apply a set-off to the fee that has been paid against the judgment sum awarded. Therefore, it is hereby ordered that the Defendant shall pay the Claimant a portion of the Court fee in the amount AED 10,747.09.

20. The Claimant shall also be entitled to post-judgment interest at a rate of 9% per annum pursuant to the DIFC Courts' Practice Direction No. 4 of 2017.