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 H.E. JUSTICE NASSIR AL NASSER**

BETWEEN

NACH

Claimant

and

NADIRA

Defendant

Hearing : **2 April 2024**
Judgment : **4 April 2024**

JUDGMENT OF H.E. JUSTICE NASSIR AL NASSER

UPON a Hearing having been listed before H.E Justice Nassir Al Nasser on 2 April 2024, with the Claimant's representative in attendance and the Defendant absent

AND UPON the Claimant filing a request for default judgment dated 1 April 2024 (the "Default Judgment Request")

AND UPON reading the submissions and evidence filed and recorded on the Court file

AND PURSUANT TO Rule 53.61 of the Rules of the DIFC Courts ("RDC")

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 224,325.10, inclusive of VAT.

2. The Default Judgment Request shall be dismissed.

3. The Defendant shall pay the Claimant the Court fee in the sum of AED 11,216.25.

Issued by:
Hayley Norton
SCT Judge and Assistant Registrar
Date of Issue: 4 April 2024
At: 8am

THE REASONS

Parties

1. The Claimant is Nach (the "Claimant"), a company registered in Abu Dhabi, UAE.

2. The Defendant is Nadira (the "Defendant"), an individual residing in Dubai, UAE.

Background and Procedural History

3. The underlying dispute arises in regard to an alleged breach of a Letter of Engagement dated 27 September 2023 (the "LOE") by the Defendant.

4. On 9 January 2024, the Claimant filed a Claim seeking payment of invoices in the sum of AED 224,325.10.

5. On 12 February 2024, the Defendant filed his Acknowledgement of Service with the intention to defend all of the claim.

6. The parties met for a Consultation with SCT Judge Maitha Al Shehhi on 12 March 2024 but were unable to reach a settlement.

7. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 2 April 2024, at which the Claimant's representative was in attendance and the Defendant absent.

Claim

8. The Claimant submits that on 27 September 2023, it signed the LOE with the Defendant, with the latter agreeing to let the former represent him in legal matters against his business partner in multiple matters.

9. The Claimant adds that the scope of work between both parties would be defined, as well as the payment terms. By virtue of the LOE, the Claimant would become the exclusive legal counsel to the Defendant in all matters contained within the scope of work between both parties.

10. Subsequently, the Claimant issued invoices to the Defendant containing the fee of each service. The Claimant submits that the LOE provides the following:

> "The remaining Professional Fees will be payable within 30 days from: (i) the issuance of the relevant invoice [for the relevant Component] for matters within the scope; and/or (ii) the issuance of the relevant invoice for matters outside the scope if any."

11. The Claimant also adds that clause 5 of the terms of business included in the LOE provides the following:

> "5.5. You will be obligated to pay each proforma invoice (including VAT as defined under 5.6 and as applicable) submitted by us:
>
> 5.5.1. within 30 days of the date of the proforma invoice; and
>
> 5.5.2. in full and in cleared funds to a bank account nominated in writing by us;
>
> 5.5.3. a tax invoice will be issued upon written confirmation from the Client that payment of the proforma invoice will be made within no later 3 working days from the issuance of the tax invoice or simultaneously to its issuance; and
>
> 5.5.4. time for payment will be of the essence of the Mandate."

12. Accordingly, the Claimant sent the Defendant invoices. However, on 1 November 2023, the Defendant ceased payment of any invoices.

13. On 28 November 2023, the Defendant sent the Claimant an email terminating the LOE.

14. Therefore, the Claimant filed its claim claiming payment of the unpaid invoices in the sum of AED 224,325.10.

Defence

15. The Defendant failed to file a defence or attend the hearing listed on 2 April 2024.

Finding

16. Rule 53.61 of the RDC provides the following: "if a Defendant does not attend the hearing and the Claimant does attend the hearing, the SCT may decide the claim on the basis of the evidence of the Claimant alone".

Default Judgment Application

17. On 1 April 2024, the Claimant filed a request for default judgment (the "Default Judgment Request") on the basis that the Defendant has failed to file its defence.

18. Rule 53.7 of the Rules of the DIFC Courts provides that "the following parts of the RDC shall apply to small claims except to the extent that a rule limits such application or the SCT Judge orders otherwise:

> "(1) Parts 1 to 5;
>
> (2) Part 9.6
>
> (3) Rules 29.9 to 29.11
>
> (4) Rules 31.2, 31.3-31.11, 31.12-31.18, 31.29-31.47 and 35.8
>
> (5) Part 36; and
>
> (6) Parts 45 to 52"

19. Therefore, upon review of the above Rule, I find that the Default Judgment Request , which has been filed in accordance with part 13 of the RDC does not apply in the Small Claims Tribunal. As such, the Claimant's Default Judgment Request shall be dismissed.

Jurisdiction

20. Clause 31 of the Terms of Business, provides the following:

> "31. JURISDICTION
>
> 31.1 Each party irrevocably agrees that the Small Claims Tribunal of DIFC Courts will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Mandate or its subject matter or formation, save where the claim exceeds the claim value threshold set by the Small Claims Tribunal, in which case the UAE Courts (excluding DIFC and ADGM courts) will have exclusive jurisdiction."

21. 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 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. . .
>
> . . . 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."

22. The parties have opted to the jurisdiction of the DIFC Courts. Therefore, the DIFC Courts have the jurisdiction to hear and determine the claim.

Payment of invoices

23. Clause 5 of the Terms of Business included in the LOE provides the following:

> "5.5. You will be obligated to pay each proforma invoice (including VAT as defined under 5.6 and as applicable) submitted by us:
>
> 5.5.5. within 30 days of the date of the proforma invoice; and
>
> 5.5.6. in full and in cleared funds to a bank account nominated in writing by us;
>
> 5.5.7. a tax invoice will be issued upon written confirmation from the Client that payment of the proforma invoice will be made within no later 3 working days from the issuance of the tax invoice or simultaneously to its issuance; and
>
> 5.5.4 time for payment will be of the essence of the Mandate."

24. Clause 20 of the Terms of Business also provides the following:

> "We aim to address any complaints that you may have as quickly and efficiently as possible, if you have any queries or concerns regarding the services provided by us or our invoices, please, as a first step, contact the Nach Person handling your matter or the relevant partner, as soon as such concern arises and, in event of any disputes relating to our invoices, strictly within fourteen (14) days from the date such invoices have been received. The Nach Person will exercise their best endeavours to resolve all matters raised by Clients in a timeous and cost-efficient manner."

25. The Courts find that the Defendant has failed to fulfil his payment obligations in accordance with the LOE and the Terms of Business. Therefore, the Defendant shall pay the Claimant the sum of AED 224,325.10, inclusive of VAT.

26. In relation to the claim of 5% interest requested by the Claimant from 1 November 2023 to the date of payment, the Claimant has failed to quantify the interest calculation until the date of filing the claim. However, at the Hearing, the Claimant waived his claim for interest at the rate of 5% from 1 November 2023.

27. The Court finds that the Defendant shall pay the Claimant the Court fee in the sum of AED 11,216.25.