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 DELVIN SUMO

BETWEEN

(1) LATRISHA AND LEEHI
(2) LAVALI
(3) LEBANA

Claimants

and

(1) LEETOV
(2) LEDELL

Defendants

Hearing : **24 January 2022**
Expert Report : **29 March 2022**
Further Submissions : **1, 6, 14 and 15 April 2022**
Judgment : **18 April 2022**

JUDGMENT OF SCT JUDGE DELVIN SUMO

UPON the Claim Form being filed on 26 December 2021

AND UPON a Hearing having been held before SCT Judge Delvin Sumo on 24 January 2022, with the Claimant's and the Defendant's representatives in attendance

AND UPON reviewing the Expert Report filed on 29 March 2022

AND UPON considering all documents and evidence submitted on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant a total sum of AED 216,482.07 (the "Amount").

2. The Defendant shall pay the Claimant a portion of the DIFC Courts' filing fee in the amount of AED 10,824.10.

3. The parties shall equally bear the costs for the preparation of the Expert Report.

4. In the event that the Defendant fails to comply with Paragraph 1 within 21 days from the date of this Order, interest at the rate of 9% per annum, pursuant to Practice Direction No 4 of 2017 (Interest on Judgments) shall accrue on the Amount from the date of filing this Claim until the date of full payment.

Issued by:
Ayesha Bin Kalban
SCT Judge and Registrar
Date of issue: 18 April 2022
At: 10am

THE REASONS

Parties

1. The First Claimant is Latrisha Leehi Dubai Branch, a company established in Dubai, UAE (the "First Claimant").

2. The Second Claimant is Lavali, a Project Manager of the First Claimant (the "Second Claimant").

3. The Third Claimant is Lebani, a Partner Manager of the First Claimant (the "Third Claimant").

4. The First Defendant is Leetov, a company established in Sharjah, UAE (the "First Defendant").

5. The Second Defendant is Ledell, a Sales Manager of the First Defendant (the "Second Defendant").

Preceding History

6. The underlying dispute arises over the Claimants commissioning the Defendants to carry out eight variation works (the "Variation Work") pursuant to an agreement entered into between the parties dated 14 and 18 July 2021 (the "Agreement").

7. On 26 December 2021, the Claimants filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking payment of fees allegedly owed to the Claimants by the Defendants pursuant to the Variation Work in the sum of AED 308,032.84.

8. The matter was listed for a Consultation before SCT Judge Maitha AlShehhi on 13 January 2022. Although both of the parties were in attendance, they failed to reach a settlement.

9. In accordance with the rules and the procedures of the SCT, the matter was referred to me for determination, pursuant to a hearing held on 24 January 2022 (the "Hearing").

10. The parties submitted a joint expert report on 29 March 2022 (the "Expert Report").

11. After considering all documents and evidence submitted on the Court file, I give my judgment below.

Discussion

12. Firstly, I shall deal with the matter of the Defendant's name and thereafter, I will focus on determining my judgment in this matter.

13. In review of the Claim Form dated 26 December 2021 in this matter and the documents filed in support of it, it appears that the Claimants, upon filing the Claim Form, erroneously named Lavali (the Project Manager) and Lebani (the Partner Manager) also as claimants in this Claim. Moreover, the Claimants have erroneously named Ledell (the Sales Manager) also to be the Defendant in this Claim.

14. The error made by the Claimants within the Claim Form is a common one and can be attributed to the nature of the SCT insofar as litigants are to represent themselves in their personal capacity, with legal representation being permitted on a conditional basis only subject to authorisation being granted by a judge of the SCT. The SCT's practice in these circumstances is for the judge presiding over the Consultation or Hearing to discover an error of incorrectly named litigants and recommend that the parties be correctly identified going forward.

15. Therefore, I have determined that this order be made of my own initiative, and hereby direct that the Claimant's name be amended to reflect only `Latrisha and Leehi. For the purposes of my judgment, hereafter, Latrisha and Leehi will be addressed as the Claimant in this Claim.

16. Furthermore, the Defendant's name is to be amended to reflect only `Leetov Middle East LLC' and for the purposes of my judgment, hereafter, Leetov will be addressed as the Defendant in this Claim.

The Claim

17. The Claimant claims that the Defendant approved the Variation Work and agreed that the payment in the total sum of AED 366,237 would be released within two to three weeks.

18. The Claimant claims that it has completed a certain percentage of the Variation Work and therefore, the amount of AED 308,032.84 is due to be paid by the Defendant to the Claimant (the "Outstanding Amount").

The Defence

19. The Defendant, in short, objects to the Outstanding Amount and contends that the Claimant is therefore not entitled to payment of the Outstanding Amount.

20. The Defendant submits that the Variation Work was to be evaluated by consultants who were appointed by the Defendant (the "Consultant"). The Defendant submits that the Claimant failed to meet various requirements in completing the works for which the Consultant had issued non-conformance reports (the "NCRs"). The Defendant further states that many of these NCRs are still pending for the Claimant to action.

21. The Defendant claims that due to the Claimant's negligence and fault, the Defendant has received various notices and warning letters in relation to the Variation Work performed by the Claimant. Therefore, the Defendant submits that the Claimant failed to meet their obligations which resulted in the Defendant incurring additional costs and damages in completing the Variation Work.

Findings

22. In essence, the disagreement between the parties pertains to whether the Claimant should be compensated for the Variation Work carried out by the Claimant.

23. The parties reiterated their arguments at the Hearing listed before me on 24 January 2022, and I ordered that an expert report be provided to value and assess the Claimant's work in relation to the Variation Work.

24. The Expert Report was made in consideration of the Agreement and the documents and provided by the parties (the "Expert Report"). The Expert included the Claimant's comments on the Expert Report in his final Expert Report provided to the SCT. The Defendant submitted that it accepts the findings of the Expert as stated in the Expert Report, however, the Defendant refutes the Claimant's comments on the findings in the Expert Report.

25. The parties entered into the Agreement whereby the Defendant appointed the Claimant for a project in relation to a civil and MEP work for new stem cell lab project at a hospital in Abu Dhabi (the "Project").

26. Pursuant to the Agreement, the Claimant was appointed to carry out design works for the Project based on the Bill of Quantities (the "BOQ"), the Project schedule and the approved drawings and specifications. It is worth noting that the required specifications were sent to the Claimant by the Defendant on 5 August 2021, therefore, the Claimant became aware of the specifications several weeks after the signing of the Agreement.

27. On 17 August 2021, the Claimant signed an undertaking letter, committing to the Defendant that the Claimant would supply and install the same materials at the existing site (the "Undertaking Letter").

28. Throughout the Agreement, the parties discussed various Variation Work in accordance with Clause 7 of the Agreement, which reads as follows:

> "Variation orders will be issued by the Contractor to the Client, as per the request of the Client. The Variation order or modifications will include the description of the scope of the proposed work, the associated costs and its impact on the time frame on the date of delivery of the project. For the purposes of payment, the variation order notification represents an invoice and is to be paid by the Client either within seven (10) days of issuance or upon notified completion of variation order, whichever comes first".

29. The dispute between the parties pertains to the following Variation Work (eight in total) which I shall discuss in the given order, taking into consideration for each the findings in the Expert Report.

Variation number 1

30. Variation number 1 pertains to the demolition works in the sum of AED 18,165 inclusive of VAT. This Variation is reflected in the Variation Request Form (the "VRF"), dated 14 September 2021, which was submitted by the Claimant to the Defendant for approval and which shows that this Variation has been completed and approved by the Defendant for this mentioned amount.

31. Another similar request with the same date appears to have been submitted in the amount of AED 19,740, which the Claimant claims to be the final approved amount for Variation number 1. The Claimant refers to an email correspondence with the Defendant's account department, however, upon reviewing the relevant email correspondence, I am not satisfied that this was the final approved amount by the Defendant for this Variation.

32. Therefore, I will follow the findings in the Expert report and find that the Claimant is entitled to the amount of AED 18,165 including VAT for Variation number 1.

Variation number 2

33. Variation number 2 pertains to civil works in the sum of AED 39,637.50 inclusive of VAT. This Variation is reflected in the VRF, dated 18 September 2021, which shows that this Variation has been completed. The VRF further states that `Latrishahas noticed that the Plastering & Painting works `*are less quantities than the approved BOQ, hence will be treated as Negative Variation*'. The Expert submitted in its report that this statement in the VRF indicates that the estimated costs of AED 39,637.50 shall be reduced.

34. The parties have submitted a statement wherein the approved amount for Variation number 2 by the Defendant is set to be in the sum of AED 30,712.50 which appears to be in accordance with the statement in the original VRF as mentioned in paragraph 33 hereabove.

35. Therefore, I will follow the findings in the Expert report and find that the Claimant is entitled to the amount of AED 30,712.50 including VAT for Variation number 2.

Variation number 3

36. Variation number 3 pertains to fire sealant work in the sum of AED 56,700 including VAT which is reflected in the VRF, dated 6 October 2021, which was sent to the Defendant for approval. On 11 and 13 October 2021, the Defendant sent an Email to the Claimant approving Variation number 3 for the sum of AED 53,750 excluding VAT.

37. The parties have submitted various email correspondences between the Claimant and the Defendant demonstrating that the Defendant has, on various occasions, approved this Variation, however, on the Variation Work progress sheet (the "Progress Sheet") the Defendant rejects this Variation stating that the fire sealant works fall within the Claimant's agreed scope of work pursuant to the Agreement, and therefore, the Claimant is not entitled to receive any amounts for this Variation.

38. Similarly, the Expert Report concluded that the fire sealant work indeed should not have been indicated as a Variation, and that the related work was part of the Claimant's agreed scope of work pursuant to the Agreement and therefore, the Claimant is not entitled to any compensation for this Variation. The Expert Report further notes that the parties' submissions do not demonstrate that this Variation has been completed successfully.

39. While I agree with the findings in the Expert Report that the Claimant has committed to the Undertaking Letter, I find it also worth noting that approvals for this Variation were provided by the Defendant in various emails dated 11 and 13 October 2021, after the signing of the Undertaking Letter. It could well be that the parties at that point agreed to deviate from the previously agreed terms and conditions.

40. Nevertheless, the Expert Report correctly points out that the Inspection Request Forms (the "IRFs") do not specify or clarify whether the Variation was successfully completed. The IRFs are marked as `revise and resubmit' and it seems that the Consultant allowed the Claimant to proceed with the work, subject to the Defendant's final approval. Furthermore, the Defendant has stated in its submissions that this Variation was conditionally approved upon further revisions.

41. Therefore, I find that the Claimant shall be entitled to the advance payment for this Variation, which is 50% of the agreed amount. Since the Variation is in the sum of AED 56,437.50 including VAT, the Claimant is entitled to the amount of AED 28,218.75 including VAT for Variation

number 3.

Variation number 4

42. Variation number 4 pertains to changes in IT works. On 2 and 6 October 2021, the Claimant submitted various VRF's to the Defendant requesting the approval of Variation number 4. The amounts of the Variation range from AED 74,797.91 and AED 88,298.07. The amount claimed by the Claimant for this Variation appears to be in the sum of AED 74,797.91 including VAT.

43. The Expert Report follows the Defendant's reasoning in reaching its decision for this Variation, namely that the Claimant should have followed existing material in accordance with the Undertaking Letter. The Expert goes on to say that even though the Claimant approved this Variation, it does not change the fact that this work should not have been indicated as a Variation, and the required material was part of the Claimant's scope of work. The Defendant's approval does not alleviate the Claimant's responsibility that the parties had agreed on previously.

44. The Defendant invited the Expert to visit the site, however, I understand from the Expert Report that the Expert did not conduct any site visits and based its findings merely on the documents provided by the parties.

45. While I agree with the findings in the Expert Report that the Claimant has committed to the Undertaking Letter, I find it also worth noting that approvals for this Variation were provided by the Defendant in various emails dated 19 and 20 October 2021, after the signing of the Undertaking Letter. It could well be that the parties at that point agreed to deviate from the previously agreed terms and conditions.

46. Furthermore, the Claimant submits that it has provided the material as per the approved vendor list in accordance with the BOQ. The Claimant further submits that the Defendant required a manufacturer which was more expensive and therefore it required a Variation.

47. Nevertheless, the Expert Report correctly points out that the IRFs do not specify and clarify whether the Variation was successfully completed. The IRFs are marked as `revise and resubmit' and it seems that the Consultant allowed the Claimant to proceed with the work, subject to the Defendant's final approval.

48. Therefore, I find that the Claimant shall be entitled to the advance payment for this Variation, which is 50% of the agreed amount. Since the Variation is in the sum of AED 74,494.91, the Claimant is entitled to the amount of AED 37,398.95 including VAT for Variation number 4.

Variation number 5

49. Variation number 5 pertains to BMS system control works in the sum of AED 79,902.69 including VAT, approved by the parties in accordance with various email correspondences dated 14, 19 and 20 October 2021.

50. The Expert Report rightfully states that the Claimant has not completed this Variation Work. The Defendant informed the Claimant on 13 December 2021 to make certain revisions in the works, to which the Claimant responded that `*it will be discussed and revert back to you as the client has rejected the offer*'. The Expert Report points out that the Claimant did not respond to the requested revisions, and this makes the Claimant `*at fault*'. On 10 January 2022, the Defendant emailed the Claimant with the following:

> "This is to inform you that the work for balance BMS cabling and termination has been stopped by your team which is unacceptable. Please note that if the work will be completed by the contractor today and testing and commissioning by tomorrow then we will pay cash to the contractor and same amount will be deducted by Latrisha's Account".

In reply to the Defendant's email above, the Claimant responded as follows:

> "All the work which is stopped is due to lack of Payment from liut. Please confirm the payment in order to proceed as the situation now is totally not acceptable and out of control".

51. The Defendant estimated, in its submissions, that 75% of this Variation Work is completed. The Defendant's comment on this Variation indicates the following: `*no final inspection & T&C report not submitted*'. The Claimant claims to have completed 85% of this Variation Work prior to halting the work on the site pending payment from the Defendant. The Expert Report finds that since the work was not approved by the Consultant and not handed over properly by the Claimant, the Claimant should be entitled to only 50% of the amount for this Variation which represents the advance payment.

52. I must disagree with the Expert Report, given that the Claimant halted the work due to lack of payment on the Defendant's side despite several requests from the Claimant to the Defendant to complete the payment for this Variation. I also note that the Expert failed to visit the site, despite several requests from the Claimant, which could have given the Expert a different insight into the percentage and quality of the Variation Work that has actually been completed.

53. Therefore, I shall consider the Defendant's submissions that 75% of the Variation Work has been completed, therefore, the Claimant is entitled to the amount of AED 59,927.02 including VAT for Variation number 5.

Variation number 6

54. Variation number 6 pertains to additional seismic system works in the sum of AED 47,806.50 including VAT which is reflected in the VRF, dated 2 October 2021, which was sent to the Defendant for approval. This Variation was approved by the parties in accordance with various email correspondences dated 10 and 11 October 2021.

55. According to the Expert Report, the Defendant rejected this Variation stating that the seismic work was within the Claimant's scope of work pursuant to the Agreement. The Claimant, on the other hand, states that the scope of the Agreement pertains only to seismic work for the foundations and not for the entire site. Therefore, any additional change would require a Variation.

56. The Expert Report finds that the seismic work should not be considered as a Variation, however, this is part of the Claimant's agreed scope of work, and therefore, the Claimant is not entitled to any compensation.

57. The Claimant submits that the seismic work in the BOQ pertains only to the foundation of the site. The BOQ states the following in relation to seismic work: `*Seismic calculation and earthquake protection work*'. It is not clear whether this indeed only pertains to the foundation of the site, nevertheless, the parties did agree to this Variation in accordance with the abovementioned email correspondences.

58. The Defendant, in its submissions, indicate that this Variation has been 100% completed. I do tend to agree with the findings in the Expert Report in relation to the various IRFs submitted by the parties which are marked as `revise and resubmit' for the Claimant to consider and revise. The submissions fail to demonstrate that this Variation was successfully completed.

59. I reiterate my findings above that while I agree with the Expert Report that the Claimant has committed to the Undertaking Letter, the Defendant did approve this Variation in various emails dated 10 and 11 October 2021, after the signing of the Undertaking Letter.

60. Therefore, I find that the Claimant shall be entitled to the advance payment for this Variation, which is 40% of the agreed amount. Since the Variation is in the sum of AED 47,806.50, the Claimant is entitled to the amount of AED 19,122.60 including VAT for Variation number 6.

Variation number 7

61. Variation number 7 pertains to additional electrical installation work in the sum of 33,060.30 including VAT which is reflected in the VRF, dated 16 October 2021, which was sent to the Defendant for approval.

62. According to the Defendant's submissions, this Variation was partially approved by the Defendant for the amount of AED 20,125 as not all works were required, and under the condition that the Claimant shall re-submit the works to the Defendant after it had incorporated the Consultant's comments on the Variation Work. The Claimant rejected these comments and submitted to the Expert that this Variation Work was required by a person named Ledger.

63. I agree with the findings in the Expert Report where it concludes that the Claimant should have complied with the rectifications requested by the Consultant and the Defendant, and it should have re-submitted the final quantities and its related costs to the Defendant. The IRFs submitted by the parties are all marked as `revise and resubmit' which is for the Claimant to consider and revise. The submissions fail to demonstrate that this Variation was successfully completed or that the Defendant had indeed approved this Variation in the amount of AED 33,060.30.

64. Therefore, I find that the Claimant is entitled to the amount of AED 22,181.25 including VAT for Variation number 7.

Variation number 8

65. Variation number 8 pertains to wooden cladding and hoarding works in the sum of 13,545 including VAT which is reflected in the VRF, dated 12 October 2021, which was sent to the Defendant for approval.

66. The Claimant has failed to submit any documents or proof demonstrating that this Variation work has been commenced or completed. The Expert Report finds that the Claimant has completed this Variation partially in accordance with the submissions made by the Defendant, in the amount of AED 720 excluding VAT.

67. Therefore, I shall take into consideration the findings in the Expert Report, and I am satisfied that the Claimant is entitled to the amount of AED 756 including VAT for Variation number 8.

Conclusion

68. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 216,482.07 (the "Amount").

69. The Claim value set out by the Claimant in the Claim Form is AED 308,032.84, pursuant to which the Claimant has paid a fee of AED 15,401.65. 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 10,824.10.

70. The parties shall equally bear the costs for the preparation of the Expert Report.

71. In the event that the Defendant fails to comply with Paragraph 68 within 21 days from the date of this Order, interest at the rate of 9% per annum, pursuant to Practice Direction No 4 of 2017 (Interest on Judgments) shall accrue on the Amount from the date of filing this Claim until the date of full payment.