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 MAHA AL MEHAIRI

BETWEEN

IGORA FILTERS AND PURIFICATION DEVICES TRADING

Claimant

and

IGAN MIDDLE EAST FZC

Defendant

Hearing:**25 October 2018**

Judgment:**29 November 2018**

ORDER OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 2 September 2018;

UPON the Defendant acknowledging service of the Claim Form and indicating his intent to defend all of the Claim on 10 September and 17 September 2018;

UPON the parties being called on 17 September 2018 for a Consultation before SCT Judge Maha Al Mehairi and the parties not having reached a settlement;

UPON the Defendant filing an Application to Contest Jurisdiction on 20 September 2018 and such Application having been heard at a Jurisdiction Hearing before SCT Judge Maha Al Mehairi on 25 October 2018, with the Claimant's representative, Iser and the Defendant's representative, Irati, in attendance;

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT the claim is dismissed for lack of jurisdiction.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 29 November 2018

At: 1pm

THE REASONS

Parties

1.The Claimant is Igora Filters and Purification Devices Trading, a company operating in Dubai, UAE that develops and sells machines making water out of air humidity (the "Claimant").

2. The Defendant is Igan Middle East FTZ, a company registered in Ajman, UAE (the "Defendant").

Background and Procedural History

3. The parties' entered into an Exclusive Sales Agency Agreement (the "Agreement") around 30 January 2018. After some discussions between the parties, the Defendant served the Claimant with a Termination Notice on 20 March 2018. As a result of this termination and other alleged actions by the Defendant, the Claimant contends that the Defendant has breached the Non-Compete Clause of the Agreement and has otherwise been "deceitful" as regards the business relationship. The Claimant sent the Defendant a Notice to Cease and Desist on 19 April 2018 to which the Defendant replied on 22 April 2018.

4. On 2 September 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal ("SCT"), seeking AED 400,000 in damages among other remedies against the Defendant. The Defendant filed its first Acknowledgment of Service (the "1st AOS") on 10 September 2018, indicating its intent to defend against all of the claim. The SCT Registry then set a Consultation for 17 September 2018. On 17 September 2018, both parties attended and participated in a Consultation before SCT Judge Maha Al Mehairi. The Defendant also filed a second Acknowledgment of Service (the "2nd AOS") on the same day, again indicating its intent to defend against all of the claim.

5. On 20 September 2018, the Defendant filed an Application to Contest Jurisdiction (the "Application") along with another Acknowledgment of Service (the "3rd AOS"), this time indicating its intent to contest the jurisdiction of the DIFC Courts. Following the receipt of this Application, the SCT Registry set a submission schedule with a Jurisdiction Hearing to occur on 9 October 2018.

6. After two postponements, the Jurisdiction Hearing occurred on 25 October 2018. Both parties' representatives were in attendance at the Jurisdiction Hearing, the Claimant was represented by Mr Iser, Advisor to the CEO of the Claimant Company, and the Defendant was represented by Ms Irati, legal representative from KBH Kaanuun. The Defendant had previously obtained permission from the Judge to be represented by legal counsel at the Jurisdiction Hearing.

7. At the Jurisdiction Hearing, both parties reiterated the arguments previously presented in their submissions. I reserved the Application for decision at the close of the Jurisdiction Hearing.

The Parties' Arguments

8. The Defendant has argued that this case is wholly outside of the Jurisdiction of the DIFC Courts and the SCT due to the designated dispute resolution clauses contained within the Agreement, which read:

> "14. DISPUTES
>
> Any dispute arising out of or in connection with this agreement (Dispute), shall be referred by either party first to the representatives nominated by each of the parties for resolution. If the Dispute cannot be resolved by the nominated representatives of the parties within 14 days after the Dispute has been referred to them, either party may give notice to the other party in writing (Dispute Notice) that a Dispute has arisen. Within seven days after the date of the Dispute Notice, the Dispute shall be referred to a senior executive of each of the Principal and the Customer for resolution. If the Dispute is not resolved by agreement in writing between the senior executives within 14 dates after the date of the Dispute Notice, the Dispute shall be resolved in accordance with the provisions of clause 15.2.
>
> 15. GOVERNING LAW AND ARBITRATION
>
> 15.1 This agreement shall be governed by and construed in accordance with the laws of the United Arab Emirates as applied in the Emirate of Dubai.
>
> 15.2 Any Dispute not resolved in accordance with clause 14 shall be finally settled in accordance with the rules promulgated by the DIFC-LCIA (the Rules). It is hereby agreed that the seat of arbitration shall be the city of Dubai, there shall be one arbitrator, the language of the arbitration shall be English, the award shall be in writing and shall set forth in reasonable detail the facts of the Dispute and the reasons for the tribunal's decision; and the award in such arbitration shall be final and binding upon the Parties and judgment thereon may be entered in any court having jurisdiction for its enforcement."

9. The Defendant argues that pursuant to the DIFC Arbitration Law, DIFC Law No. 1 of 2008, Articles 12 and 13, Clause 15 of the Agreement should be accepted as a valid arbitration agreement and therefore the DIFC Courts and the SCT should decline to hear the merits of the underlying case. Instead, this case should be filed according to the provisions of Clause 15, as the parties clearly intended when the Agreement was made.

10. The Defendant points out that the Claimant has not provided any reason why Clause 15 should not be given effect and there is no indication that this claim falls within the exceptions provided in the DIFC Arbitration Law. Thus, pursuant to Article 13 of the DIFC Arbitration Law, the SCT should, upon the Application having been made by the Defendant before any substantive statement was submitted, dismiss the action. There is no reason to suggest that the Arbitration Agreement contained in Clause 15 is null and void, inoperative or incapable of being performed.

11. The Defendant argued at the Jurisdiction Hearing that even if, for some reason, Clause 15 is found to be null and void, the remaining dispute would not fall within any of the gateways of the judicial authority law that would give the DIFC Courts jurisdiction over the matter and thus, the matter would still need to be dismissed for lack of jurisdiction.

12. In response to the Claimant's arguments that the Defendant accepted the jurisdiction of the DIFC Courts and the SCT when filing multiple

Acknowledgments of Service indicating its intent to defend against the claim as well as participating in a Consultation before an SCT Judge, the Defendant argues that these actions do not amount to an election in writing to submit to the jurisdiction of the SCT. The Defendant would need to provide certain and explicit consent to such jurisdiction.

13. Finally, the Defendant claimed their costs on an indemnity basis, acknowledging that the general rule in the SCT is that the parties are to bear their own costs.

14. The Claimant argues instead that the parties have elected in writing to have the claim heard by the SCT. The Claimant did so by filing the claim and the Defendant did so by electing to defend against all of the claim in the 1st and 2nd AOS and by participating in the Consultation held on 17 September 2018. Furthermore, the Defendant did not properly follow the rules required in order to contest jurisdiction by filing the 1st and 2nd AOSs, which amount to substantive submissions. This dispute therefore falls within the gateway of Article 5(A)(2) of the JAL as both parties have agreed in writing after the dispute arose to have the dispute heard by the DIFC Courts and thus the SCT.

Discussion

15. I find that this dispute falls outside of the jurisdiction of the DIFC Courts and must therefore be dismissed in full. I must highlight that any judge of the DIFC Courts must take into account the jurisdiction of the court to adjudicate any claim before it, regardless of the parties' submissions on the issue. In this case, the Defendant did file an Application to Contest Jurisdiction, which was accepted by the SCT Registry. It is not necessary for me to determine whether or not that Application was correctly filed in accordance with the Rules of the DIFC Courts ("RDC") and I make no comment on that issue.

16. Rule 53.2 of the RDC requires that the SCT hear only cases that fall "within the jurisdiction of the DIFC Courts." 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, 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. . .
>
> (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."

17. There is no evidence of any of these gateways having the potential to apply in this case. Neither of the parties are DIFC Bodies or Establishments. The relevant contract was not partly or wholly concluded or performed within the DIFC. In fact, there is no alleged connection to the DIFC. There is no other relevant DIFC Law or Regulation granting jurisdiction in this matter. Finally, the parties have not agreed in writing to file such claim or action within the DIFC Courts. The Claimant has not presented any written contract or agreement including such a jurisdictional clause.

18. While parties were free, pursuant to Article 5(A)(2) of the Judicial Authority Law, to agree in writing to the jurisdiction of the DIFC Courts after this dispute arose, the parties failed to do this. Electing to defend against all of the claim in an Acknowledgment of Service cannot be construed as a specific election, in writing, to submit to the jurisdiction of the DIFC Courts, especially in the context of the SCT where parties are often not able to be represented by legal counsel. While the Defendant in this case did eventually gain permission to be represented by legal counsel, the Defendant was consistent in its contesting jurisdiction from the point of legal representation onwards.

19. Furthermore, participation in a Consultation, which is a voluntary mediation meeting, cannot be construed as submission to the judicial jurisdiction of the DIFC Courts and the SCT. The parties could have come to a settlement and then agreed in writing to adhere to that settlement, however this would not be the same as submitting to the judgment of the DIFC Courts.

20. It is noted that the DIFC Courts are the supervisory courts for DIFC-LCIA arbitrations, and thus, the Claimant may contend that this case is properly within the jurisdiction of the DIFC Courts as the supervisory body. However, the Claimant did not make this argument and as the Defendant rightly argues, the DIFC Arbitration Law requires that the SCT dismiss or stay this case pending the proper arbitration, pursuant to the underlying Arbitration Agreement contained at Clause 15. The relevant portion of the DIFC Arbitration Law reads:

> "12. Definition and form of Arbitration Agreement
>
> (1) An "Arbitration Agreement" is an agreement by the parties to submit to Arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An Arbitration Agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
>
> . . . .
>
> 13. An Arbitration Agreement shall be in writing, in accordance with the provisions of this Article 12.
>
> 13. Arbitration agreement and substantive claim before a Court

(1) If an action is brought before the DIFC Courts in a matter which is the subject of an Arbitration Agreement, the DIFC Courts shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, dismiss or stay such action unless it finds that the Arbitration Agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this Article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the DIFC Courts."

21. Articles 12 and 13 of the DIFC Arbitration Law require this outcome and I can see nothing to push this case into any of the exceptions contained therein. There is no reason to suggest that that Arbitration Agreement is anything but valid and the Claimant makes no such argument. However, certainly the validity of the Arbitration Agreement will be for the arbitral tribunal to assess, upon arguments from the parties, as he or she deems fit and I make no definitive comment other than to assess that the DIFC Courts and the SCT do not have jurisdiction over this matter at this time. Furthermore, I do not find that filing an Acknowledgment of Service, without any further attachments of substance, would disqualify the Defendant from making an Application pursuant to Article 13(1) of the DIFC Arbitration Law.

22. Therefore, as none of the relevant jurisdictional gateways of the Judicial Authority Law apply to this case and there is no reason given to ignore the effect of the Arbitration Agreement contained at Clause 15 of the Agreement, I must conclude that this case falls outside of the jurisdiction of the DIFC Courts and the SCT. While the DIFC Arbitration Law at Article 13(1) gives an option for a stay of the case, I do not find that option appropriate for this case and instead full dismissal is appropriate.

23. At the Jurisdiction Hearing, Defendant pled for its costs on an indemnity basis, acknowledging that typically, costs are not granted in the SCT. The Defendant's Representative did not argue any specific reasons to deviate from the general rules regarding costs in the SCT. The relevant portion of the RDC reads:

"Costs in the SCT

53.70

The SCT may not order a party to a small claim to pay a sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, except:

(1) such part of any Court or Tribunal fees paid by that other party as the SCT may consider appropriate;

(2) such further costs as the SCT may assess by the summary procedure and order to be paid by a party who has behaved unreasonably."

24. In this matter, I cannot find that the Claimant has behaved "unreasonably" such to make it appropriate to grant the Defendant its costs in the SCT. While the Claimant's claim is not within the jurisdiction of the DIFC Courts, the Claimant did not act in a way to prolong the matter or unjustifiably increase the costs related to the matter. The incorrect filing of a case in the DIFC Courts alone, without corresponding behavior to suggest "unreasonable" behavior, is not sufficient to meet the standard required of RDC 53.70(2). The Defendant has not pointed to any other behavior, other than its potential success on this Application, to justify granting costs in this matter. The Defendant's choice to be legally represented and likely take on additional costs is not relevant to this assessment. Thus, I cannot grant the Defendant's request for costs in the matter and the parties shall bear their own costs.

Finding

25. This is a very straightforward matter, the DIFC Courts and the Small Claims Tribunal do not have jurisdiction to hear this Claim at this time and therefore the Claim must be dismissed in full for lack of jurisdiction.

26. Each party shall bear their own costs.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 29 November 2018

At: 1pm