THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

PANTHER REAL ESTATE DEVELOPMENT LLC

Claimant

and

MODERN EXECUTIVE SYSTEMS CONTRACTING LLC

Defendant

RULING OF JUSTICE SIR RICHARD FIELD ON THE DISPUTE AS TO THE TOTAL TO BE AWARDED TO THE CLAIMANT FOR THE COST OF COMPLETION

UPON the Judgment of Justice Sir Richard Field dated 26 September 2022 (the "Judgement")

AND UPON direction No. 1 of the Judgment (the "Direction")

AND UPON the email correspondence and submissions of the parties dated on the week commencing 24 October 2022

IT IS HEREBY ORDERED AS FOLLOWS:

1. At pages 54 and 65 of his Second Report, Mr Allan calculated the sum due from MESC under the heading "Damages for Completion including remedy of defective works" to be AED 1,718,886. As appears from the table set out on page 35 of Mr Allan's First Report, this sum included 5 payments (excluding VAT) of AED 16,800 each made by Panther to a security firm called Excellerate Services ("Excellerate"). These payments were listed in the order of the month when they made. The last payment was given the date "June". It was in fact made on 2 June 2020. Unlike this latter payment, the first 3 of the previous Excellerate payments were consistent with the proposition that they related to services rendered in the month in which the invoices therefor were rendered, or to services rendered in the month previous to the month of payment. In the "Description" column of the table, the fourth payment dated April 2020, appear the words "Excellerate security february ...". The fifth and last Excellerate payment is dated June 2020 and in the Description column appear the words "Excellerate Chq 321."

2. It is and was common ground that following the termination of the Contract with MESC, the Project was completed by the replacement Contractor on 1 May 2020 when the Taking Over Certificate was issued.

3. During the cross-examination of Mr Allan, it was pointed out to him that it appeared that the last payment made to Excellerate was for services rendered after completion of the Project and therefore did not constitute a recoverable item falling under the heading "Cost of Completion". In response, Mr Allan said that that Excellerate invoice "may need further consideration".

4. No further evidence was called by Panther in answer to this point made in the cross-examination of Mr Allan and nothing was said in Panther's first round of Closing Submissions to refute the point put to Mr Allan. Referring to this part of Mr Allan's cross-examination, MESC contended in para 297 (c) of its Closing Submissions that the last net payment to Excellerate of AED 16. 800 should be excluded from Mr Allen's figure for the cost of completion because the Project completed on 1 May 2020. Panther made no attempt to meet the point made by MESC in its Closing Submissions in its (Panther's) Responsive Closing Submissions.

5. In para 249 (c) of the Judgment herein it is noted that MESC, referring to Mr Allan's answer that "the June invoice may need further consideration", submitted that the sum for June 2020 under the heading "Security Items" was not recoverable as the Project completed on 1 May 2020. In para 250 of the Judgment, I acceded to MESC's submission recorded in para 249 (c) and directed that the necessary adjustment be made to Mr Allan's damages assessment.

6. Panther have failed to comply with this Direction. It is submitted on its behalf that the sum paid in June 2020 was in relation to services rendered in March 2020 before completion of the Project. In support of this submission, the Court has been provided with: (i) a copy of Excellerate's Invoice dated 5 May 2020 (No. 3443) that states that it is in reference to " 4 Male Guards for M/o March 2020 (2D/2)"; (ii) a cheque dated 6 May 2020 in the sum of AED 17,640, initialled on 2 June 2020; and (iii) a Receipt Voucher issued by Excellerate in reference to Invoice no. 3433.

7. Unfortunately for Panther, the provision of these documents comes too late. The evidence closed at the end of the trial and the decision that the payment made in June was not a recoverable cost was based on the evidence as it then stood. Mr Allan did not draw to the Court's attention the text of Invoice 3433 in either of his reports; nor was this done before the end of the trial after his cross-examination.

8. It follows that I am bound to find and do find that the deduction I directed to be made from Mr Allan's damages assessment must be made.

9. The consequence of this ruling is that the sum for general damages representing 3% of the damages Panther is going to receive pursuant to para 272 of the Judgment in respect of additional completion costs resulting from the termination of the Contract must reflect my ruling that the sum awarded for the security services provided by Excellerate cannot include the net sum paid by Panther under invoice no. 3433.

10. In conclusion, I direct that within 5 days of the issuance of this Ruling, the Court must be provided with final itemised statements showing the totals of the sums of damages the Court is awarding to each of the parties and the component elements of those totals.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 9 November 2022
At: 3pm