THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL

BEFORE SCT JUDGE NATASHA BAKIRCI

BETWEEN

GIICHI LLC

Claimant

and

GLENYS

Defendant

Hearing: **25 September 2016**

Judgment: **4 October 2016**

JUDGMENT OF SCT JUDGE NATASHA BAKIRCI

UPON hearing the Claimant's representative and the Defendant's representative;

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

IT IS HEREBY ORDERED THAT:

1.The Defendant shall pay the Claimant AED 36,750 as reimbursement for funds erroneously transferred to the Defendant; and

2. The Defendant shall pay the Claimant AED 1,837.50 as reimbursement of the DIFC Courts' fee.

THE REASONS

Parties

3. The Claimant is Giichi LLC, a franchise company doing business in Dubai and elsewhere.

4. The Defendant is Glenys, a Saudi national who was negotiating with the Claimant regarding opening a franchise of the Claimant company in Saudi Arabia.

Background and the Preceding History

5. On 15 December 2015, the Claimant sent the Defendant a "Letter of Intent" setting out the essential terms with respect to the franchise transaction contemplated between the parties. The Letter of Intent outlines the parties' intent to move forward with a subsequent "Franchise Agreement" "as soon as reasonably practicable following the date of this Letter." In consideration of granting a period of exclusivity to the Defendant and pursuant to Clause 6.2 of the Letter of Intent, the Defendant paid the Claimant USD $ 5,000. This payment was refundable in most circumstances if the parties did not end up executing the franchise transaction.

6. The Letter of Intent states in Section 8 that "Each Party will be responsible for payment of its own costs and expenses incurred at any time in connection with the negotiation and consummation of the Franchise Transaction, including legal fees, fees of financial advisors and accounts,

whether or not the Franchise transaction is consummated."

7. The Letter of Intent also includes in the "Schedule of Essential Terms" reference to a "Franchise Fee" of USD $ 10,000 which shall be paid by the Defendant to the Claimant upon execution of the Franchise Agreement.

8. The Letter of Intent was followed by a "Franchise Agreement" executed by the parties on 31 January 2016. The Franchise Agreement is between Giichi LLC and Glenys. The Franchise Agreement states in Clause 4.1.1 that the Defendant will pay to the Claimant a sum of USD $ 10,000 within 10 business days of the commencement date of the Franchise Agreement.

9. On 2 February 2016, the Claimant invoiced the Defendant for the USD $ 10,000 fee. On 10 February 2016 the Defendant sent an email to the Claimant stating that he had transferred "the required amount," detailing the referencing number, and asking for a receipt once the payment is received.

10. The parties then communicated regarding moving forward with the Franchise Agreement, including finding a location suitable to both parties. This discussion proved time consuming and resulted, on 11 February 2016, in an email from the Claimant to the Defendant stating "Please bear with me . . . It's looking very complicated . . . We might have to give you back all the deposits that you have made . . . Give me until next week to figure a way." The email goes on to state that "If that doesn't work we will see what other franchises you might be interested with. Your money will be returned inc [sic] of expenses."

11. The Defendant responded on 12 February 2016 saying "I do not see any reason to cancel the contract unless i [sic] did some major mistake." The Claimant followed up on 17 February 2016 with an email stating "if you want your money back and we try to do another project down the line . . . Let me know how you would like to proceed."

12. The Defendant responded on 18 February 2016 stating that "i've [sic] changed my mind since we talked on the phone last time . . . i [sic] talked with the management in the mall to offer the location to other brands." He continues on to state "Regarding the fees that i [sic] paid and other expenses we will discuss them later." The parties then participated in discussions regarding other franchise opportunities for the Defendant but ultimately were unable to come to an agreement.

13. On 11 April 2016, the Claimant emailed the Defendant stating that they had not received the previous USD $10,000 fee in their bank account, asking for further details concerning the transfer and stating that they had already "reimbursed" the Defendant in the amount of USD $ 15,000 on 20 March 2016. This reimbursement was meant to include the USD $ 5,000 initial fee and the USD $ 10,000 franchise fee which they believed had been transferred to them. The Claimant sent two follow up emails to the Defendant shortly after on 12 April 2016 and 14 April 2016.

14. On 18 April 2016, the Claimant again emailed the Defendant asking for assistance on reimbursing the USD $ 10,000 that had been inadvertently transferred to the Defendant.

15. The Claimant followed up, confirming the termination of the Franchise Agreement and seeking reimbursement of the incorrectly transferred funds via email on both 7 and 8 May 2016 stating that the USD $ 10,000 was "transferred to you in good faith since we had received a confirmation from your side that you had made the transfer." The Defendant responded on 12 May 2016 asserting that he did not know that a termination might happen and that the Claimant's statements about the transferred funds were "incorrect." The Claimant responded the same day seeking reimbursement of all of or at least part of the USD $ 10,000.

16. The Claimant again emailed the Defendant on 18 May 2016 reiterating the need to reimburse the money, adding that it is unethical to keep money that "doesn't belong to you".

17. On 13 June 2016, the Claimant's legal representative sent to the Defendant a "legal notice" regarding reimbursement of the mistaken transfer. When no response was received, the Claimant's legal representative followed up on 29 June 2016 with a "final legal notice" regarding reimbursement of the incorrect transfer.

18. The Claimant then filed a claim with the DIFC Courts Small Claims Tribunal on 7 August 2016 seeking a refund of the USD $ 10,000 transfer. The Defendant responded with intent to defend against the Claim and provided submissions prior to the Consultation.

19. The Claimant's representative and the Defendant's representative attended a Consultation before SCT Officer Ayesha Bin Kalban on 29 August 2016 but were unable to reach a settlement. The Defendant was given time to submit a list of expenses which he was purporting to claim against the USD $ 10,000 for which the Claimant sought reimbursement. The Defendant's final submissions were due in advance of the Hearing on 21 September 2016, buthe Defendant did not take this opportunity to provide further submissions.

20. Thus, a Hearing was scheduled before me on 25 September 2016. The Claimant's representative and the Defendant's representative, accompanied by his translator, attending the Hearing. At the Hearing, the Defendant attempted to submit invoices in support of his defence that the Claimant owed him expenses and damages as a result of the terminated Franchise Agreement (see paragraph 23 below).

21. These invoices were not accepted at the Hearing as they were only submitted after a number of previous deadlines had been missed. The Defendant submitted the invoices along with a summary after the Hearing, seeking to add them to the case file for consideration. The Claimant provided a reply to this submission and the Defendant further responded. I have reviewed these late submissions but as they do not contribute to the below judgment, I have not accepted them into the case file.

Particulars and Defence

22. The Claimant argued in the initial Claim Form that they had mistakenly sent the Defendant USD $ 15,000 as reimbursement for fees that they believed already had been paid to them by the Defendant. Upon realising that USD $ 10,000 of that amount had never been received from the Defendant, the Claimant sought reimbursement of this amount from the Defendant to no avail.

23. The Defendant responded to the claim, indicating his intent to defend against it. In his submission, the Defendant argues that the Claimant sent the USD $ 10,000 payment as "compensation resulting from the damage incurred by me based on the fact that the plaintiff had terminated the franchise contract made between us." Termination of the contract was allegedly effected without the Defendant's consent and thus the Defendant argues he is entitled to damage for "loss and lack of profit", "wasted time", "dealings with various governmental authorities", "negotiations with the owners of the administrative towers," and "travel expenses." Thus, the USD $ 10,000 should not be returned as the Defendant is entitled to retain it as "a temporary compensation for the damage incurred by it due to the unsatisfactory termination." The Defendant requested dismissal of the claim, compensation for abusive litigation, and legal costs.

24. The Claimant responded to the Defendant's submission with further evidence of correspondence between the parties along with a witness statement of ABC, the Claimant's accountant stating that the initial payment of USD $ 10,000 was never received by the Claimant and thus should not have been transferred to the Defendant.

25. The Defendant made an additional submission before the Consultation, arguing that it was the Claimant who had terminated the contract unjustifiably. The Defendant contends that the amount could not have been transferred by the Claimant by mistake and that even if a mistake had been made, "the Defendant shall have the right to withhold this amount until his right in compensation is determined and fulfilled, as agreed upon and applicable in all international laws, regulations and rules."

26. The Defendant did not provide a breakdown of his claimed expenses or a legal justification for his retention of the funds. The Defendant did not file a counterclaim against the Claimant for any damages or breach of contract.

27. At the Hearing, both parties reiterated their arguments. The Claimant reiterated that the payment had been made by mistake and not for expenses, which the Claimant had no obligation to cover. The Defendant argued that the Claimant had agreed to cover expenses via email but was unable to quantify his expenses claimed at the Hearing. The Defendant's representative did bring some claimed invoices to the Hearing but did not provide an explanation or a total claim value. These invoices related to travel expenses, translation expenses and rental expenses and were further submitted with a summary after the Hearing. Such post-Hearing submissions will not be accepted into the case file as there was ample opportunity to present these filings before the Hearing and in any event they are not relevant to the below judgment.

28. I heard the arguments of the parties and render the below judgment in this case.

Finding

29. First and foremost, the relevant Letter of Intent and Franchise Agreement both fall under DIFC Courts' jurisdiction. Clause 12 of the Letter of Intent states "This Letter, to the extent stated to be legally binding, shall be governed by, and construed in accordance with the laws of the Dubai International Financial Center ("DIFC"), and the Parties agree to submit to the exclusive jurisdiction of the DIFC Courts." The relevant Franchise Agreement also states in Clause 21.1 that "This Agreement shall be governed by, and construed in accordance with the laws of the Dubai International Financial Centre ("DIFC"), and the Parties agree to submit to the jurisdiction of the DIFC Courts." Therefore, it is clear and undisputed that the DIFC Courts have jurisdiction to decide this matter and should apply DIFC Law in doing so. As the claim value is less than AED 500,000, this claim is properly before the Small Claims Tribunal of the DIFC Courts.

30. There is just one issue to be decided in this dispute: is the Defendant entitled to keep the USD $ 10,000 transferred to him by the Claimant. This issue is governed by the DIFC Contract Law, DIFC Law No. 6 of 2004 (hereafter the "DIFC Contract Law").

31. While both parties contend that the other terminated the Franchise Agreement, it is not relevant to this dispute as to who initially terminated it. Rather, it is undisputed that the Franchise Agreement was terminated and the Claimant endeavoured to return to the Defendant all previously received payments.

32. The Defendant did not dispute that the initial return of USD $ 10,000 was likely made in error but instead contends that he can keep these funds to cover those expenses and damages incurred as a result of the Claimant terminating the agreement. The Defendant admitted at the Hearing that as of yet, he had not quantified his alleged damages nor had he otherwise brought a claim against the Defendant for damages.

33. I am of the view that the payment of USD $ 10,000 from the Claimant to the Defendant was in fact made in error and should have been returned. If the Defendant had other claims against the Claimant for damages or expenses, he should have made those in a counterclaim or separate dispute. Instead, he has retained funds without proper accounting or documentation of the expenses claimed.

34. Even if the Defendant had brought a counterclaim for expenses, like those he submitted after the Hearing, he would not likely succeed on his claim. The Franchise Agreement contains no responsibility for the Claimant to cover the Defendant's travel, translation or rental expenses if the agreement is terminated. Any offer by the Claimant to cover expenses after termination was made out of good will and not out of contractual obligation. If the Defendant has some contractual claims for damages or breach of contract, he has not made them in this case and thus cannot be reimbursed. I make no comment as to whether such a claim would succeed as it is not relevant to the dispute before me.

35. Instead, it is quite clear that the Defendant must pay the Claimant USD $ 10,000, equivalent to AED 36,750, as reimbursement of the funds mistakenly transferred to him by the Claimant. The Defendant's unquantified request for damages is rejected.

36. The Defendant shall also pay the Claimant AED 1,837.50 as reimbursement of the Claimant's court fee.



Issued by:

Natasha Bakirci

SCT Judge

Date of issue: 4 October 2016

At: 10am