Claim No. SCT 242/2020 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 SCT JUDGE NASSIR AL NASSER BETWEEN LENA Claimant and (1) LIBBY(2) LYLA(3) LENNON Defendants Hearing : 17 September 2020 Judgment :

**Claim No. SCT 242/2020**

**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 SCT JUDGE NASSIR AL NASSER**

BETWEEN

**LENA**

Claimant

and

**(1) LIBBY**
**(2) LYLA**
**(3) LENNON**

Defendants

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Hearing **: 17 September 2020**
Judgment **: 24 September 2020**

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**JUDGMENT OF SCT JUDGE NASSIR AL NASSER**

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**UPON** this claim being filed on 19 July 2020

**AND UPON** a Hearing being held before SCT Judge Nassir Al Nasser on 17 September 2020, with the Claimant's representative in attendance and the Defendants' were absent although they were served

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

**AND PURSUANT TO** Part 53.61 of the Rules of the DIFC Courts

**IT IS HEREBY ORDERED THAT:**

1. The First and Second Defendants are jointly and severally liable to pay to the Claimant the following:

   (a) The sum of AED 508,256.87 plus interest accruing at the rate of 1% per month from 9 January 2020 to the date of filing this Claim.

   (b) The sum of AED 3,884.40 for the district cooling charges directly to Emirates Financial Towers Office body Corporate.

   (c) Post Judgment interest at the rate of 9% per annum from the date of the Judgment until the date of full payment.

2. The Claims against the Third Defendant shall be dismissed.

3. The First and Second Defendants shall jointly or severally pay the Claimant the Court fees in the sum of AED 25,412.84.

Issued by:
**Nassir Al Nasser**
SCT Judge
Date of issue: 24 September 2020
At: 2pm

**THE REASONS**

**The Parties**

1. The Claimant is **LENA** Limited (the "Claimant"), the Landlord of a number of properties including Emirates Financial Towers **XB LEVEL 0 (XB-0X-0F, XB 0Q-0R, XB-0O-OP, XB-07-08)**, DIFC, Dubai, UAE.

2. The First Defendant is **LIBBY** (the "First Defendant"), a tenant of the Claimant at Emirates Financial Towers, DIFC, Dubai.

3. The Second Defendant is **LYLA** (the "Second Defendant"), a public stock company incorporated in the Emirate of Sharjah, UAE.

4. The Third Defendant is **LENNON** (the "Third Defendant"), a DIFC Registered Company, DIFC, Dubai, UAE.

5. The First, Second and Third Defendants form part of the **LILLIE GROUP** of companies.

**Background and the Preceding History**

6. The Claimant as a landlord, the Third Defendant, as the Tenant, and Second Defendant, as the parent company guarantor, entered into a lease relating to Emirates Financial Towers Office **(XB LEVEL 0 (XB-0X-0F, XB 0Q-0R, XB-0O-OP, XB-07-08)** dated 10 July 2017 (the "Lease").

7. On 28 August 2019, the Claimant and the Second and Third Defendant entered into a Settlement Agreement (the "Settlement Agreement").

8. As per clause 1.1.1 (g)(i) of the Settlement Agreement, the Claimant and the First Defendant signed a Tenancy Agreement (the "Tenancy Agreement") in relation to the rent of units **XB LEVEL 0 (XB-0X-0F, XB 0Q-0R)** 1 year commencing 10 July 2019 to 9 July 2020 in return for AED 961,931.25 plus VAT.

9. The First Defendant failed to pay the Second Lease payment in the sum of AED 480,925.

10. On 19 July 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming non-payment of rent plus interest at the rate of 1% per month as per the Tenancy Agreement in the sum of AED 508,256.87.

11. The Defendants' filed an Acknowledgment of Service with the intention to defend all of the claim.

12. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 18 August 2020 but were unable to reach a settlement.

13. A Hearing before me was scheduled on 17 September 2020. The Claimant's representative attended the hearing and the Defendants were absent although they were served.

**Discussion**

14. The Settlement Agreement provides that: the Claimant (i) agree to the mutual termination of the lease effective from 10 July 2019 (ii) withdraw its payment demand against **LYLA**; and (iii) release, waive and discharge **LENNON** and **LYLA** from their respective obligations arising under the lease, including any right by **LENA** to claim damages for **LYLA** and **LENNON'S** breaches with the exception to a participation to **LENA** lawyer fees of USD 15,000 on certain conditions.

15. Clause 1.1.1 of the Settlement Agreement sets out the Third Defendant's obligations towards the parties, which, the Claimant submits, have been breached by the Third Defendant.

16. Clause 1.1.1 (g) of the Settlement Agreement provides that the Third Defendant must, cause **LIBBY** to:

> (i) "Sign and return to **LENA** the "lease relating to Emirates Financial Towers North Tower Units "**XB LEVEL 0 (XB-0X-0F, XB 0Q-0R)** the Tenancy Agreement (**LIBBY LEASE**) which is attached at Schedule 2 to this Agreement;
>
> (ii) Sign and return to **LENA** the "Instrument for Registration of Lease" which is attached at schedule 3 of this Agreement;
>
> (iii) Provide to **LENA** copies of all documents required to register the **LIBBY LEASE** (the Tenancy Agreement);
>
> (iv) Provide a bank cheque dated as of the date of the execution for this Agreement in the sum of AED 480,966 (UAE Dirhams Four Hundred Eighty Thousand Nine Hundred and sixty-six) representing 50% of the total rent payable under **LIBBY LEASE**; and
>
> (v) Provide payment of the remaining 50%, i.e. AED 480,965.25 (UAE Dirhams Four Hundred Eighty Thousand Nine Hundred and sixty five and fills twenty five), of the total rent payable under **LIBBY LEASE** (the Tenancy Agreement) no later than 30 (thirty) days after the expiry of the First six months of the rent period; and
>
> (vi) Provide a bank cheque dated as of the date of the execution of this Agreement in the sum of AED 48,097 (UAE Dirhams Forty-Eight Thousand and Ninety-Seven) representing the security deposit under the **LIBBY LEASE**."

17. I will only discuss the Third Defendant's obligation to cause the First Defendant to enter into a Tenancy Agreement with the Claimant. The Third Defendant's other obligations pursuant to the Settlement Agreement will not be discussed in this case as I find them irrelevant to the Tenancy Agreement.

18. I find that the Third Defendant has fulfilled its obligation to cause the First Defendant to enter into a Tenancy Agreement. Article 5.1 of the Tenancy Agreement provides that the First Defendant must pay the Annual Rent of AED 961,931.25 plus VAT in advance and based on the provisions of clause 1.1.1(g)(iv) and (v) of the Settlement Agreement, it was agreed that the First Defendant was obliged to pay:

> (a) 50% of the annual rent in advance prior to the end of the date of entering the premises for the period from 10 July 2019 to 9 January 2020; and
>
> (b) 50% of the Annual rent prior to the commencement of second half of the term for the period 10 January 2020 to 9 July 2020 (the "Second Rent Payment").

19. The Second Defendant filed its defence in which it admits that it had signed a Lease Agreement with the First Defendant and the Claimant as a

Guarantor on 10 July 2019 for **XB LEVEL 0 UNIT X (XB-0X-0F, XB 0Q-0R)** in Emirates Financial Towers, DIFC.

20. The Third Defendant filed its defence in which it argues that the Second and Third Defendant signed the Lease dated 10 July 2017.

21. On 28 August 2019, the Lease Agreement was mutually terminated. Thereafter, the Claimant signed a Tenancy Agreement with the First and Second Defendant, whereby the Third Defendant is not a party.

22. The Claimant claims the following from the Defendants:

(a) The First Defendant to pay the sum of AED 508,256.87;

(b) The Second Defendant (as a guarantor) and/or Third Defendant to pay the Claimant the sum of AED 508,256.87;

(c) The First and/or the Second and/or the Third Defendants to pay the Claimant's legal costs and other costs of these proceedings.

(d) The First and/or the Third Defendant to pay the sum of AED 3,884.40 for the cooling charge directly to Emirates Financial Towers Office Body Corporate;

(e) The First and/or the Second and/or the Third Defendants to pay the Claimant interest on the damages and costs awarded to the Claimant at the rate of 1% per month from 9 January 2020 pursuant to clause 16.2 of the Tenancy Agreement or such other rate deemed appropriate by the Court; and

(f) Such further or other relief as the SCT deems appropriate.

**Findings**

23. Rule 53.61 of the Rules of the DIFC Courts provide 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."

24. There is no connection between the Third Defendant and the Claimant in relation to the Tenancy Agreement between the Claimant and the First Defendant, except in relation to the introduction of the First Defendant.

25. The Second Defendant admitted that it is the guarantor in relation to the Tenancy Agreement, therefore, I find that the First and Second Defendant are liable to in respect of the Claimant's claim.

26. Therefore, I find that the First and Second Defendants are jointly and severally liable to pay the Claimant the following:

(a) The sum of AED 508,256.87 being the rent amount plus interest at accruing at a rate of 1% per month from 9 January 2020 to the date of filing the claim.

(b) The sum of AED 25,412.84 being the Court fees applicable to the filing of this Claim.

(c) The sum of AED 3,884.40 for the district cooling charges, to be paid directly to Emirates Financial Towers Office body Corporate.

(d) Post Judgment interest at the rate of 9% per annum from the date of the Judgment until the date of full payment.

27. The Claims against the Third Defendant shall be dismissed.

Issued by:
**Nassir Al Nasser**
SCT Judge
Date of issue: 24 September 2020
At: 2pm