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 H.E. JUSTICE OMAR AL MUHAIRI

BETWEEN

FATIMA

Claimant

and

FURAHA

Defendant

Hearing:**18 May 2015**

Judgment:**28 May 2015**

JUDGMENT OF H.E. JUSTICE OMAR AL MUHAIRI

Background

1.The Claimant is **Fatima**("the Claimant").

2. The Defendant is **Furaha**("the Defendant").

3. On 16 July 2014, the Claimant and the Defendant signed an agreement that the Claimant would provide the Defendant with Search Engine Optimization Services, and that the Claimant would use specific keywords and/or phrases to improve the search engine ranking of, and/or position the contents of the website XXXX

4. The Search Engine Optimization was priced at AED 11,400 for 6 months and 2 months were free of charge post completion of the first six months. As stated in the contract payment had to be made before the start of the campaign as per the below schedule:

- 1 August 2014 AED 1,900
- 1 September 2014 AED 1,900
- 1 October 2014 AED 1,900
- 1 November 2014 AED 1,900
- 1 December 2014 AED 1,900
- 1 January 2015 AED 1,900
- 1 February 2015 Nil
- 1 March 2015 Nil

5. On 28 July 2014, the Claimant contacted their back end technical team in India to start the work and made an advance payment of USD 1620. The Claimant also provided a customized/exclusive report for XXXX. However, the Defendant failed to perform their obligations under the contract signed on 16 July 2014.

6. On 19 May 2015, the Claimant provided a signed witness statement which states that the Claimant after signing the contract kept following up with the Defendant to send their admin details for their website to proceed with the implementation. But the Defendant kept delaying and requested the project to be put on hold due to different reasons. Moreover, the Defendant never terminated the contract and did not give the Claimant any notice.

The Hearing

7.On 20 May 2015 a hearing was conducted before me, the Claimant attended but the Defendant was absent although he had been notified of

the day of the hearing.

The Contract

8.	The provisions relating to termination of a Contract are set out in Article 86 of the DIFC Contract Law No.(6) 2004 which states the following regarding the Right to Terminate the Contract:

> "(1) A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.
>
> (2) In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether:
>
> (a) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract;
>
> (b) strict compliance with the obligation which has not been performed is of essence under the contract;
>
> (c) the non-performance is intentional or reckless;
>
> (d) the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance.
>
> (3) In the case of delay the aggrieved party may also terminate the contract if the other party fails to perform before the time allowed under Article 81 has expired."

9. Article 90 of the DIFC Contract Law No.(6) 2004 provides that:

> "(1) On termination of contract pursuant to Articles 86 or 88 either party may claim restitution of whatever it has supplied, provided that such party concurrently makes restitution of whatever it has received. If restitution in kind is not possible or appropriate allowance should be made in money whenever reasonable.
>
> (2) However, if performance of the contract has extended over a period of time and the contract is divisible, such restitution can only be claimed for the period after termination has taken effect."

10.	The Claimant provided a witness statement of XXXX which states the following:

> "The Claimant and the Defendant entered into a contract on 16 July 2014. That the Claimant will provide the Defendant with Search Engine Optimization Services for the total amount of AED 11,400 paid in installments for AED1,900 per month for the first six months and the remaining 2 months will be for free. On 28 July 2014, the Claimant contacted their back end technical team in India and made the payment of USD 1,620. The Claimant also tried following up with the Defendant to provide their admin details to proceed with the implementation. However, the Defendant kept delaying and asked for the project to be kept on hold due to different reasons. Furthermore, the Defendant never terminated the contract and did not give the Claimant any notice."
>
> 11. Therefore, based on the above witness statement, the Claimant fulfilled their obligation under the contract but the Defendant failed to do so due to delays and failure to make the payment thereby failing to perform their obligations under the contract. Furthermore, they failed to file any evidence or attend the hearing.
>
> 12 As a result the Claimant is entitled to the payments agreed in the Contract and the Claimant has the right to terminate the contract pursuant to the articles of the DIFC Contract Law cited above.

FOR THE ABOVEMENTIONED REASONS IT IS ORDERED THAT:

11. The Defendant shall pay the Claimant the sum of AED 11,400.

12. Each party pay shall bear their own costs.

Issued by:

Nassir Al Nasser

Judicial Officer

Date of issue: 28 May 2015

At: 9am