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 DELVIN SUMO

BETWEEN

MAKISA MANAGEMENT

Claimant

and

MAKAN LLC

Defendant

Hearing : **13 December 2020**
Judgment : **21 December 2020**

JUDGMENT OF SCT JUDGE DELVIN SUMO

UPON the Claim Form being filed on 10 November 2020

AND UPON a Consultation being held on 18 November 2020 before SCT Judge Hayley Norton with the Claimant's and the Defendant's representative attending

AND UPON the parties failing to reach a settlement at the Consultation

AND UPON a Hearing having been listed before SCT Judge Delvin Sumo on 13 December 2020 with the Claimant's and the Defendant's representative in attendance

AND UPON reviewing all documents submitted on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the amount of AED 19,000.

2. The Defendant shall pay the Claimant the DIFC Courts' filing fee in the amount AED 997.49.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of Issue: 21 December 2020
At: 12pm

THE REASONS

The Parties

1. The Claimant is Makisa management, a company registered in Dubai, UAE (the "Claimant").

2. The Defendant is Makan LLC, a company registered in Dubai, UAE (the "Defendant").

Background and the Preceding History

1. On 1 May 2020, the parties entered into a written agreement whereby the Defendant appointed the Claimant as its sole consultancy and communication agency for social media management (the "Agreement").

2. On 10 November 2020, the Claimant filed a Claim with the DIFC Courts' Small Claims Tribunal (the "SCT") seeking the payment of sums allegedly owed to the Claimant by the Defendant for an alleged breach of the Agreement in the sum AED 19,000.

3. On 15 November 2020, the Defendant filed an Acknowledgment of Service setting out its intention to defend all of the Claim.

4. The matter was called for a Consultation before SCT Judge Hayley Norton on 18 November 2020. Although both of the parties were in attendance, they failed to reach a settlement.

5. In accordance with the rules and the procedures of the SCT, the matter was referred to me for determination, pursuant to a hearing held on 13

December 2020 (the "Hearing"). After reviewing all documents and evidence submitted on the Court file, I give my judgment below.

The Claim

6. The Claimant submits that the Defendant terminated the Agreement by way of an email dated 18 October 2020, whereby the Defendant also provided the Claimant with two months' notice period pursuant to Clause 3 of the Agreement. The Claimant further submits that the Defendant also terminated the Agreement with immediate effect by way of an email dated 27 October 2020.

7. The Claimant alleges that the Defendant failed to serve the two months' notice period pursuant to the Agreement, which, the Claimant submits constitutes a breach of the Agreement. The Claimant submits that it is therefore entitled to payment from the Defendant in the sum of AED 19,000.

The Defence

8. The Defendant submits that the Agreement was first amicably terminated on 18 October 2020 and the Defendant provided the Claimant more than the two months' notice until 1 January 2021. The Defendant alleges that there have been numerous incidents of incompetence and gross negligence from the Claimant which forced the Defendant to discontinue its relationship with the Claimant under the Agreement with immediate effect.

9. The Defendant submits that it had expected a certain level of service from the Claimant, which, it alleges, the Claimant has failed to provide. Therefore, the Defendant submits that it cannot be forced to continue with the notice period when the agreed standards of service have not been met.

Discussion

Jurisdiction

10. 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 (the "JAL"), which provides a number of limited gateways through which the DIFC Courts may exercise jurisdiction over a claim, which are, as relevant:

> "(a) Civil or commercial or Employment claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;
>
> (b) Civil or commercial or Employment 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 or Employment 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."

11. Pursuant to the JAL, the DIFC Courts can exercise its jurisdiction over a matter that is unrelated to the DIFC, where the parties have agreed in writing that any dispute arising between them would be referred to the DIFC Courts for adjudication. Such a provision would allow the parties to `opt-in' to the DIFC Courts' jurisdiction, provided that it clearly demonstrates the parties' intention to do so.

12. It must be noted that by virtue of an opt-in clause found at Clause 15 of the Agreement, I am of the view that the parties have opted into the DIFC Courts' jurisdiction to hear and determine this matter. The relevant opt-in clause states as follows:

> "This Agreement is covered by and is to be construed in accordance with the Courts of the Dubai International Financial Centre and each party hereby irrevocably agrees to submit to the exclusive jurisdiction of the DIFC Courts in accordance with the law of the United Arab Emirates".

13. As the claim value is less than AED 500,000, this claim is properly before the Small Claims Tribunal of the DIFC Courts.

Findings

14. In essence, the disagreement between the parties pertains to the termination of the Agreement and whether the Claimant should be compensated for the contractual two months' notice period which the Defendant failed to provide.

15. Clause 87.1 of the Contract Law DIFC Law No. 6 of 2004 states that a party may terminate a contract by giving notice to the other party. This reads as follows:

> "The right of a party to terminate the contract is exercised by notice to the other party".

16. Clause 3.1 of the Agreement deals with termination and states the following:

> "This contract may be terminated by the Client or Makisa on a written two-month notice stating the reason for termination. Makisa will charge for any outstanding work or work that was undertaken at the time of termination".

17. On 18 October 2020, the Defendant terminated the Agreement by way of an email stating the following:

> "After careful consideration and many internal discussions, we have decided to move our marketing collateral in-house and terminate the contract between Makan and Makisa. Kindly consider the two-month notice period effective as of November 1st, and the full scope of work

will be carried out until December 31st. In addition, we trust the handover will also be completed smoothly within this two-month time frame with all the necessary requirements and open-files to be shared with us".

18. On 27 October 2020, the Defendant once again emailed the Claimant in relation to the termination of the Agreement stating the following:

"Please consider this email an official termination of our contract effective immediately. We will not be continuing until the end of the year nor will we require any services from your part. Please cancel any and all deliverables still pending from your side".

19. The Defendant contends that, in short, the Claimant failed to perform its obligations under the Agreement due to lack of competence and gross negligence which lead the Defendant to terminate the Agreement with immediate effect.

20. The Defendant's response to the Claim include various submissions which pertain to the relationship between the Claimant and other branches of the Defendant and, therefore, they do not fall within the scope of the Agreement and this Claim. For that reason, I find it irrelevant to take these submissions into consideration for the purposes of my findings in this Claim.

21. The Defendant alleges that the Claimant was incompetent in developing a logo for the Defendant, and submits that the designs provided by the Claimant were not of the quality that the Defendant expected from the Claimant. Consequently, the Defendant engaged the services of another party to develop the logo.

22. The Claimant alleges that the development of the logo did not form part of the deliverables under the Agreement, and submits and that the Defendant was charged separately for this task seeing as it fell outside of the scope of the Agreement. Nonetheless, the Defendant's email dated 20 September 2020 suggests that the Defendant willingly chose not to proceed with the logo designs developed by the Claimant. The Defendant had the option to request that the Claimant provide further designs, however, it decided to proceed with another entity. The email reads as follows:

"we would like to thank you and the team for the logo proposal. We really appreciate the time and effort put into designing these logos, however, after careful consideration and internal discussions we have decided not to proceed with these options. We apologies for any inconvenience and we will keep you posted should there be any changes".

23. The Defendant further alleges that the Claimant has acted with gross negligence due to various reasons. The Defendant claims that the Claimant, on multiple occasions, responded to emails 10 hours later, that the Claimant missed deadlines and / or delayed these deadlines, and that the Claimant expressed aggressive tones in its email communication.

24. In review of the submissions made by both parties, I find that late responses to emails and/or missing and delaying deadlines due to unforeseen personal circumstances do not constitute gross negligence under the Agreement. The Claimant has submitted evidence to demonstrate the Defendant was at all times informed in case of any cancellation of meetings and / or delays in delivering a task under the Agreement.

25. The Claimant has further submitted various email and WhatsApp exchanges between the parties which indicate that the response rate of the Claimant to the Defendant's emails and / or emails was within a reasonable time frame. Furthermore, I note that parties have not agreed on any time frame for email responses between the parties in the Agreement.

26. Moreover, the Defendant alleges that the Claimant acted in bad faith when they signed with a new competing dessert brand. In review of the Agreement, I find that parties have not agreed on exclusivity, and therefore, the Claimant is free to maintain other work arrangements, even with competitors of the Defendant.

27. In light of the above, I am of the view that that the Defendant should have provided the Claimant with the contractual two months' termination notice. Therefore, I find that the Claimant is entitled to be paid the amount of AED 19,000 in lieu of the two months' notice period pursuant to Clause 3 of the Agreement.

Conclusion

28. The Defendant shall pay the Claimant the amount of AED 19,000.

29. The Defendant shall pay the Claimant the DIFC Courts' filing fee in the amount AED 997.49.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of Issue: 21 December 2020
At: 12pm