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 OF DIFC COURTS

BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

(1) IZYK

(2) IZZIE

Claimants

and

INEKA

Defendant

Hearing: **11 November 2018**

Judgment: **27 November 2018**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 21 October 2018;

AND UPON the Defendant filing an Acknowledgment of Service on 25 October 2018 intending to contest the jurisdiction;

AND UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 11 November 2018, with the Claimants in attendance and the Defendant absent although served Notice of the Hearing date;

AND PURSUANT to Rule 53.61 of the Rules of the DIFC Courts, which states that: *"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 only."*

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1. The Defendant's application to contest jurisdiction is denied.

2. The DIFC Courts have jurisdiction to hear and determine this claim and the claim will be listed for a further hearing to determine its merits.

3. Each party shall bear their own costs.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 27 November 2018

At: 10am

THE REASONS

Parties

1.The Claimants are Izyk and Izzie (the "Claimants"), owner of Unit located in Dubai International Financial Centre "DIFC".

2. The Defendant is Ineka, (the "Defendant") the individual who is renting out the Claimants' property.

Background and the Preceding History

3. On 1 August 2017, the Claimants and the Defendant entered into a tenancy contract (the "Lease Agreement") for the period of 1 year for the amount of AED 165,000. The Defendant provided to the Claimants several bad cheques and late rent payments which resulted in the Claimants taking legal action against the Defendant in the DIFC Courts.

4. On 21 October 2018, the Claimants filed a claim in the DIFC Courts Small Claims Tribunal (the "SCT") for damages relating to the Defendant's alleged breach of the Tenancy Agreement and late payment fees in the sum of AED 106,220, being the penalty fee amount provided for in the Tenancy Agreement in addition to costs and damages.

5. The Defendant responded to the claim on 25 October 2018 by contesting the jurisdiction of the DIFC Courts and the SCT over the dispute.

6. On 11 November 2018 I heard submissions from the Claimants however, the Defendant was absent from the hearing, and pursuant to Rule 53.61 of the Rules of the DIFC Courts: *"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. As such I will give a ruling depending on the Claimant's submissions in the case."*

Particulars and Defence

7. The Claimants submit that Article 31 of the UAE Civil Procedure Law ("CPL") identifies several factors which need to be considered in determining whether the courts of a particular Emirate will have jurisdiction in relation to a dispute. It is important to note that other than in the circumstances stipulated in Article 32 of the CPL, parties can agree to empower another court to hear their dispute unless public policy considerations prevent this. Moreover, with respect to proceedings relating to real estate (dealt with in Article 32 of the CPL below), parties cannot nominate a court other than the court which has original jurisdiction over the location of the real estate that forms the subject matter of the proceedings. This is a matter of public policy as stated below. Article 32 of the CPL stipulates that:

> "With regard to actions in rem concerning real estate or possession, if the subjects are located within the jurisdiction of various courts, competence lies with a court within the jurisdiction of which the property or some part thereof is located.
>
> In personal real estate actions, competence lies with the court within the jurisdiction of which the real estate or the address of the defendant is located."

8. The Claimants also stated the relevant Articles from the Real Property Law DIFC No. 4 of 2007, and amended thereafter, Amendment Law DIFC Law No. 4 of 2012 which are applicable to the matter at hand.

9. Article 3 specifies this Law applies to real property within the jurisdiction of the DIFC and Article 4 stipulates that on 17 March 2003, His Highness Sheikh Mohamed Bin Rashid Al Maktoum, Vice President and Prime Minister of the United Arab Emirates and Ruler of Dubai, transferred to the DIFC certain real property on which the DIFC was to be situated in accordance with the Federal and Dubai laws to be later enacted to establish the DIFC as a financial free zone within Dubai.

> "Article 8 - Real property governed by this Law
>
> (1) From the date on which this Law comes into force, all real property from time ��to time within the jurisdiction of the DIFC is governed by this Law.
>
> (2) Real property within the jurisdiction of the DIFC includes:
>
> (a) the real property referred to in Article 4(1); and
>
> (b) any real property later brought within the jurisdiction of the DIFC, by any method.
>
> ❖Article 9 Non-applicability of certain other laws
>
> Dubai real property laws do not apply to real property governed by this Law.
>
> .
>
> .
>
> Article 11 - Interpretation
>
> (1) For the purposes of this Law, "real property" includes:

(a) real property, buildings, and items placed in, on or under the soil with the intention that they should remain in position permanently or indefinitely; and

(b) any interest in real property.

(2) Unless the context indicates otherwise, a reference in this Law to real property is a reference to real property for which a folio of the Register has been created under the provisions of this Law.

(3) The Schedule contains:

(a) Rules of Interpretation applying to this Law; and

(b) a list of defined terms used in this Law."

10. Apart from the DIFC free zone, the free zones in Dubai do not have separate jurisdiction and are subject to the jurisdiction of the regular Dubai Courts. However, the DIFC, which was established in 2002 by Dubai Law No. 3 of 2002, has its own separate legal system.

11. In order for a dispute to fall within the DIFC Courts' jurisdiction, there has to be a connection to the DIFC. This connection could relate to the subject matter of the dispute, the location of the parties involved, and/or the transaction concluded by the parties.

12. The Claimants also add that when they approached the Rental Disputes Committee ("RDC") at the Dubai Land Department ("DLD"), it was categorically mentioned that since the property is situated in the DIFC free zone, the RDC does not have jurisdiction for the claim that was filed by the Claimants through the RDC and, therefore, the Small Claims Tribunal Court was approached.

13. The Claimants concluded their submissions by stating that, the Dubai Courts has no jurisdiction since it is against public policy as per Article 32 of CPL and also Article 9 of the Real Property DIFC Law No.4, therefore, RDC, cannot be conferred as a jurisdiction even by way of an Agreement. Also, it is pertinent to note that, the language of the Agreement does not indicate any form of exclusivity, therefore, the Claimants contend that the jurisdiction was intended to be non- exclusive between the parties.

14. The Defendant failed to appear before the Courts for the SCT Hearing and failed to provide any written defence to support his jurisdiction application and only submitted a screenshot of the rental agreement between the parties where it states the following

"The two parties have agreed the rental dispute commetie [sic] in Dubai shall have jurisdiction to examine any dispute which may arise in relation to execution of this contract in accordance with applicable laws. Any changes to the rent subsequent/renewl [sic] tenancy period shall be in accordance with RERA guidelines"

Finding

15. Based on the submissions of the parties and the arguments put forward by the Claimants at the Jurisdiction Hearing and based on consideration of the law applicable to the dispute, I consider this dispute to fall inside the jurisdiction of the DIFC Courts.

16. As Rule 53.2 of the Rules of the DIFC Courts ("RDC") requires that the SCT only hear cases that fall "within the jurisdiction of the DIFC Courts."

17. 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, which provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, which are, as relevant:

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

(b) Civil or commercial 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 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)[illegible] Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations. . .

(2) . . . civil or commercial claims or actions where the parties agree in writing to file such claim or action with [the DIFC Courts] whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

18. There is evidence that these gateways apply to the circumstances before the Court as the location of the property in question is within the DIFC Jurisdiction.

19. Article 8 of DIFC Real Property Law provides:

"(1) [illegible] From the date on which this Law comes into force, all real property from time to time within the jurisdiction of the DIFC is governed by this Law.

(2)[illegible] Real property within the jurisdiction of the DIFC includes:

(a)[illegible] the real property referred to in Article 4(1); and

(b) ������ any real property later brought within the jurisdiction of the DIFC, by any method."

Thus, it is clear, even though the parties have elected in writing to choose RERA to resolve their dispute, the property is located in DIFC jurisdiction, as it is considered to be within the physical jurisdiction of DIFC.

20. Generally, the parties to a dispute may agree on the jurisdiction of a specific court pursuant to Article 31(5) of Federal Law No.11 of 1992 Concerning the CPL which states:

"Save in the cases provided for in article 32 and articles 34-39 it shall be permissible to agree on the jurisdiction of a specified court to determine a dispute and in the event jurisdiction shall be vested in such court or in the court in whose area the defendant has his domicile or place of residence or place of business."

21. Article 32 of the same law provides for the following exception to the above:

"(1) In actions in rem in respect of real property and actions for possession jurisdiction shall be vested in the court whose area the real property, or a part thereof if it located in the areas or more than one court is located.

(2) In actions in personam in respect of real property, jurisdiction shall be vested in the court whose area the real property is located or the defendant has his domicile."

22. The Claimants' claim concerns real property located in the jurisdiction of the DIFC. As the dispute relates to the Defendant's alleged breach of the Rental Agreement, I determine this claim to be an *`action in personam'* in respect of real property and Article 32(2) would apply in the circumstances. Accordingly, *`jurisdiction is vested in the court in whose area the real property is located or the defendant has his domicile'*, as such the law would effect include the DIFC Courts to have jurisdiction as the property is located within the DIFC.

23. Accordingly, the Defendant's application to contest jurisdiction is denied, the Courts have jurisdiction to hear the Claim.

24. Each party shall bear their own costs as to the application to contest jurisdiction.



Issued by:

Maha AlMehairi

SCT Judge

Date of issue: 27 November 2018

At: 10am