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

GIUSEPPINA LLP

Claimant

and

GJORD GROUP

Defendant

Hearing: **8 August 2016**

Judgment: **19 September 2016**

JUDGMENT OF SCT JUDGE NATASHA BAKIRCI

UPON hearing the Claimant's representative

UPON the Defendant's representative failing to attend despite being served notice of the Hearing

HAVING REGARD TO Rule 53.61 of the Rules of the DIFC Courts (RDC)

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 37,642 as payment of overdue invoices.

2. The Defendant shall pay the Claimant interest at the rate of EIBOR plus 2% per annum to accrue from 1 January 2016 until payment is made.

3. The parties shall bear their own costs.

THE REASONS

Parties

4. The Claimant is Giuseppina LLP, a Dubai-based law firm.

5. The Defendant is Gjord Group Free Zone Establishment, a company registered in the XXXX.

Background

6. On 4 October 2015 the parties entered into an Engagement Agreement for the provision of legal services by the Claimant to the Defendant. The parties do not dispute that from the initial consultation on 30 September 2015 to 2 November 2015 the Claimant provided legal services to the Defendant on a variety of issues regarding real estate units in Dubai.

7. On 28 September 2015 the Claimant invoiced the Defendant in the sum of AED 5,000 for a two-hour consultation. The Claimant issued a receipt for payment of AED 5,000 in clearance of this invoice on that same day.

8. On 30 September 2015 the Claimant invoiced the Defendant in the sum of AED 7,500 for services rendered. The Claimant issued a receipt for payment of AED 7,499 towards this invoice on that same day. It is not clear from the case file as to why there was a AED 1 discrepancy between the amounts. It is undisputed that from this time onwards, no further payment has been made by the Defendant to the Claimant.

9. On 7 October 2015 the Claimant invoiced the Defendant in the amount of AED 6,708.33 for services rendered. On 18 November 2015 the Claimant invoiced the Defendant for AED 38,016.67 for services rendered and AED 17 for expenses. On 28 December 2015 the Claimant invoiced the Defendant for AED 400 for services rendered. These represent the outstanding invoices in this case as it is undisputed that the Defendant did not pay these invoices.

10. On 18 January 2016, the Claimant's accounting team emailed the Defendant with reference to a previous phone call and reminded them of the

three outstanding invoices totalling AED 44,725.33. The Defendant responded the same day stating that two payments had already been made against the invoices and contesting certain charges relating to work on bail applications that did not ultimately result in bail being granted. The Defendant stated that a total of AED 28,675 of the fees relating to the bail applications should be removed from the invoices.

11. On 28 February 2016, the Claimant's accounting team emailed the Defendant reminding them of the three outstanding invoices totalling AED 44,725.33. The Defendant responded the next day referring back to their email of 18 January 2016.

12. On 8 June 2016 the Claimant sent a legal notice to the Defendant regarding the outstanding invoices in a final attempt to collect payment but the Defendant again failed to pay.

Procedural History

13. The Claimant filed a claim with the DIFC Courts Small Claims Tribunal (SCT) on 29 June 2016 seeking payment of AED 39,545.06, as well as interest, legal fees and court fees.

14. The Defendant responded to the Claim on 11 July 2016 and the parties attended a Consultation before SCT Officer Ayesha Bin Kalban on 18 July 2016 but were unable to reach a settlement.

15. On 18 July 2016 the Claimant amended their Claim Form to include quantified interest on the overdue amounts. A hearing was scheduled before me on 28 July 2016.

16. The Defendant did not attend the 18 July hearing apparently due to some confusion about a submitted settlement offer and thus, I adjourned the hearing for further settlement discussions to take place.

17. As the parties did not reach settlement, a second hearing was scheduled before me on 8 August 2016. The Claimant attended the hearing and the Defendant informed the SCT Registry that they would not attend, although they had notice of the hearing.

18. Pursuant to RDC 53.61, I found it appropriate to hear the Claimant's representative at the Hearing.

19. I have decided the case based on the case file, including the Defendant's initial submission, the Claimant's submissions and the Claimant's arguments at the Hearing.

Particulars and Defence

20. The Claimant argued in the Claim Form and Particulars of Claim that the Defendant owed the Claimant AED 39,545.06 plus interest as payment outstanding for legal services provided to the Defendant under the Engagement Agreement between the parties. The Claimant alleges that the Defendant's failure to pay is a breach of that agreement.

21. The Claimant highlights the three outstanding invoices sent to the Defendant pursuant to the Engagement Agreement and alleges that these invoices remain unpaid. The September 2015 Invoice was for AED 6,708.33, the October 2015 Invoice was for AED 38,033.67, and the November 2015 Invoice was for AED 400.

22. The Claimant asserts that the Engagement Agreement at Clause 2 provides for payment of legal services on an hourly basis. The Claimant invoiced the Defendant in accordance with Clause 4 of the Engagement Agreement, which provides the procedures for invoicing. The Claimant then alleges that the Engagement Agreement was "*de facto*" terminated but that this does not change the Defendant's responsibility to pay for the legal services rendered as per Clause 16 of the Engagement Agreement. Thus, the Claimant contends, it was entitled to offset the Defendant's advance deposit of AED 7,500 against the amounts owed and subsequently claim for the remainder.

23. Furthermore, the Claimant argues that the Defendant was in breach of contract for failing to pay as required under Article 77 of the DIFC Contract Law No. 6 of 2004 (hereafter the DIFC Contract Law).

24. On 11 July 2016 the Defendant responded to the Claim by filing a defence. The Defendant stated that the 7 October 2015 invoice is not outstanding as the Defendant did pay AED 5,000 on 28 September 2015 and paid AED 7,500 on 30 September 2015. The Defendant argues that these payments have not been properly deducted against the amounts owed.

25. Furthermore, the Defendant argues that the Claimant failed to complete a certain task related to obtaining bail. The Defendant claims that the Claimant "had limited knowledge of the procedures in United Arab Emirates and this resulted not only in delays and loss of time." The Defendant continued that their newly instructed lawyers obtained bail in the same case within seven days of receiving the application, proving that the Claimant was not providing good service. Thus, the Defendant argues that they are entitled to contest a total of AED 28,675 as charges related to the bail application that should be removed from the invoices.

26. The Defendant expressed further disappointment that their attempts to explain their objections to the invoices were not met with any reply from the Claimant and instead, the Claimant brought a case against them after failing to reply to a number of the Defendant's emails.

27. The Claimant provided an additional submission in advance of the Hearing. The Claimant contends, in the main, that it has performed its obligations under the Engagement Agreement and the amounts claimed should not be adjusted as asserted by the Defendant in its defence. Furthermore, the Claimant argues that as per Article 118 of the DIFC Contract Law, it is owed interest on the outstanding payments. Ultimately, the Claimant quantifies its claim at AED 37,642 in payment for legal services and AED 3,839.95 for interest accruing from 1 January 2016.

28. The Claimant argues that it provided its "best professional judgment" on both the commercial and criminal elements of the legal services rendered. The rejected bail applications were due to prosecutorial discretion. When the Defendant instructed the Claimant to halt services on the bail application, the Claimant immediately ceased billing the Defendant for any work relating to this matter.

29. The Claimant continues that the amount they have claimed against the Defendant is correct and that they have already offset AED 5,000 and AED 7,500 against the amounts due. The AED 5,000 payment was for the initial consultation between the parties and the AED 7,500 has been offset against the invoiced amounts from the deposit paid by the Defendant at the outset.

30. Finally, the Claimant argues that any lack of communication or negotiation from their side is irrelevant to the payment dispute at hand.

31. At the Hearing, the Claimant reiterated its arguments while the Defendant was absent.

Finding

32. First and foremost, the relevant Engagement Agreement falls under the DIFC Courts' jurisdiction as the Engagement Agreement at Clause 19, states that "Any dispute arising out of, or in connection, with this Engagement Agreement . . . including any question regarding its existence, validity or Termination, shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre ("DIFC Courts"). This Engagement Agreement shall be governed by and construed in accordance with the laws of the DIFC." As the claim value is less than AED 500,000, this claim is properly before the Small Claims Tribunal of the DIFC Courts.

33. There is just one issue to be decided in this dispute: is the Claimant entitled, under the Engagement Agreement, to the payment they claim? There is no dispute between the parties as to the existence and applicability of the Engagement Agreement but the Defendant contends that the work provided was not satisfactory and thus some charges should be removed from the invoices. The Claimant asserts that they are owed the sums claimed under the Engagement Agreement and that they have complied with all obligations required.

34. The Engagement Agreement entered into by the parties provides at Clause 1 that the Claimant's "practice is to work closely with clients, with frequent and open communication, keeping clients' best interests in mind at all times." Clause 2 states that "The standard and default structure [for fees] is based on an hourly rate" and goes on to list the various hourly rates applicable to work performed by certain fee earners.

35. Clause 4(a) provides that the Claimant will invoice the Defendant on a monthly basis "submitted electronically at the end of every month. The Monthly Invoices will outline the number of hours spent by the relevant fee earner and a brief description of the Services performed. The Firm expects the Monthly Invoices to be settled within thirty (30) calendar days from submission." Clause 6 outlines that the Claimant may request a deposit payment from the Defendant. It goes on to state that "At the end of the Engagement Agreement and upon written request, the Firm will refund the Deposit, after the relevant offsets for outstanding Legal Fees and/or Costs, as appropriate under the circumstances."

36. Clause 9 of the Agreement states that "As the law and the practice of law are inherently uncertain, the Firm does not, and cannot, guarantee results. For this reason, it is expressly understood that all Legal Fees and Costs incurred by the Client are non-refundable. This applies to Hourly Rate fees . . ."

37. Clause 16 states that either party "will have the right to terminate this Engagement Agreement at any time and for any reason." Clause 16(a) states that if the Defendant terminates the agreement such termination "will not relieve the Client of obligation to pay Legal Fees for all Services already rendered, including work in progress." Clause 16(b) states that "The Firm reserves the right to withdraw from representation, if, among other things, the Client fails to honor the terms of the Engagement Agreement."

38. The Engagement Agreement is quite clear under Clauses 9 and 16(a) that fees incurred at the hourly rate are non-refundable, even in the event of termination. As the contract is worded, the Defendant seems to have little recourse to contest an invoice other than to terminate the contract and pay for the fees or counterclaim against the Claimant in some capacity.

39. The argument that the Claimant was unable to obtain the bail application whilst another law firm was able to do so does not exempt the Defendant from payment for the services rendered under the Engagement Agreement. The Engagement Agreement specifically does not "guarantee results."

40. The Defendant has not claimed that any of the charges made regarding the bail application were false but rather that the Claimant did not provide the best and most efficient service in obtaining bail. The Defendant has failed to show how this would excuse or exempt it from paying the claimed fees under the Engagement Agreement.

41. As for the Claimant's alleged failure to respond to a number of emails and their inability to complete the project to the Defendant's satisfaction, the Defendant exercised their main remedy as per the Engagement Agreement; they put a halt to the Claimant's services in order to stop any additional fees from accruing. Any additional remedy to offset the amounts owed would likely need to be claimed and quantified in damages.

42. The Defendant does appear to have made a good faith effort to settle the dispute but ultimately, as per the Engagement Agreement, the Defendant is responsible to pay for the legal services provided by the Claimant. The Defendant has not articulated any counterclaim or proven any breach of contract and thus cannot offset the fees owed. The Defendant had plenty of opportunity to defend the case more robustly but did not take advantage of the opportunities provided.

43. As for the argument that the Defendant had already made certain payments, this is not contested. It seems clear from the documentation that the Defendant was invoiced AED 5,000 for the consultation and paid for this consultation. The Defendant alleges that this payment should be offset against the remaining invoices and made no response to the Claimant's contention that this payment was for consultation services rendered before the Engagement Agreement was signed. The Claimant's documentation of the consultation invoice and payment is convincing, particularly since no response has been submitted by the Defendant and thus, this previous payment is considered to be fulfilment of the 28 September 2015 Invoice.

44. The payment of AED 7,500 is invoiced separately but the documentation makes clear that this amount was intended to be a deposit payment which was later offset against the amounts claimed. As the total amount invoiced in October, November and December 2015 collectively is AED 45,142, the Claimant's claim for AED 37,642 does reflect the payment of the AED 7,500 made by the Defendant as a deposit.

45. The Claimant's claim for payment of AED 37,642 for legal services provided is granted. This is based on a total invoiced amount of AED

50,142 from 28 September 2015 to 28 December 2015 and a total payment of AED 12,500 from the Defendant during that same period.

46. The Claimant has claimed interest at a rate of 12% and the Defendant has not provided rebuttal or an alternative rate of interest. Article 118(2) of the DIFC Contract Law provides that the "rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment." The Claimant has not provided justification for this claimed rate of interest nor have the parties otherwise elaborated on the rate of interest required by Article 118(2) of the DIFC Contract Law. Therefore, given the requirement of Article 118(2), I find it reasonable to grant the Claimant interest to accrue on the judgment amount at a rate of EIBOR plus 2% per annum from 1 January 2016 until time of payment.

46. The parties shall each bear their own costs.



Issued by:

Natasha Bakirci

SCT Judge

Date of issue: 19 September 2016

At: 4pm