Claim No. SCT 317/2020 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 COURTSBEFORE SCT JUDGE MAHA AL MEHAIRI BETWEEN LISANA FZ LLE Claimant and LUKNA ADVERTISING LLC Defendant Hearing : 20 October 2020 Judgment :

Claim No. SCT 317/2020

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 MAHA AL MEHAIRI

BETWEEN

LISANA FZ LLE

Claimant

and

LUKNA ADVERTISING LLC

Defendant

Hearing : **20 October 2020**
Judgment : **8 November 2020**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 30 August 2020

AND UPON the Defendant filing a Counterclaim on 14 September 2020

AND UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 13 and 15 October 2020, with the Claimant in attendance and the Defendant's representative failing to attend

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 the sum of AED 8,000.

2. The Defendant shall pay the Claimant the Court fee in the sum of AED 367.25.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 8 November 2020
At: 2pm

THE REASONS

The Parties

1. The Claimant is Lisana ("the "Claimant"), a company registered in Fujairah, UAE.

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

Background and the Preceding History

3. The underlying dispute arises over an agreement with regard to the provision of public relations for the Defendant carried out by the Claimant pursuant to an agreed and signed Public Relations Agreement (the "Agreement"), and the Defendant's failure to pay the Claimant the sums due pursuant to the Agreement.

4. On 13 September 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking payment for unpaid invoices in the amount of AED 8,000 and AED 2,000 for damages incurred as a result of the Defendant's failure to pay the Claimant its owed sums under the Agreement.

5. On 17 September 2020, the Defendant filed an Acknowledgment of Service setting out its intention to defend all of the claim.

6. The parties met for a Consultation before SCT Judge Hayley Norton on 27 September 2020 but the parties failed to settle the Claim.

7. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 20 October 2020 with the Claimant's and the Defendant's representatives in attendance.

The Claim

8. The Claimant's case is that the parties entered into an Agreement in November 2019 with a commencement date on 3 November 2019. The Agreement consisted of a retainer fee of AED 8,000 per month paid by the Defendant to the Claimant, and the payment plan agreed by the parties was for the payment of AED 4,000 to be made at the beginning of the month and the remainder amount AED 4,000 to be settled at the end of each month.

9. The Claimant submits that it has conducted work for the period of two months (end of February and beginning of March) without receiving payment. However, in relation to the month of February, the Defendant refused to pay the Claimant, stating that it had already paid all payments due to the Claimant on time and has provided evidence of receipts paid by the Defendant to the Claimant during the mentioned contract period.

10. The Claimant also alleges that during those dates, it completed a full on 3-day influencer event, dispatched press releases and generated coverage for the Defendant's brand.

11. The Claimant submits that the Defendant has disregarded the hard work the Claimant has put into the Defendant's brand without paying what are due pursuant to the Agreement.

12. Therefore, the Claimant claims the payment of the retainer fee in the amount of AED 8,000 for pending invoices, as well as the amount AED 2,000 for damages it has incurred as a result of the Defendant's failure to make payment to the Claimant, in addition to the court fee applicable to the filing of this Claim.

The Defence

13. The Defendant alleges that the Claimant is not entitled to the claimed amount, and submits that the duration it takes to build a campaign is 2 to 3 weeks, so the Claimant did initiate work from the 3rd of November 2019, but the first work deliverable was only set out to be in December and so on.

14. The Defendant submits that it paid the Claimant the amount of AED 28,840 for the work that was done in November to February, and the total amount of the contract agreed is AED 25,200. The Defendant submits that the additional amount of AED 3,240 is for additional extra work that the Claimant had carried out on behalf of the Defendant. Therefore, the Defendant denies that the Claimant is entitled to seek any further amounts against it.

Discussion

15. The parties are both registered and located outside of the DIFC but have opted in to the DIFC Courts' jurisdiction as can be seen in the Agreement under Clause (i) below:

> "This contract shall be applicable under the rules and jurisdiction of the DIFC Courts (Dubai International Financial Centre). Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, or failure to pay, shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre. This contract shall also be governed by and construed in accordance with the law of Dubai, UAE"

16. The Claimant argues that the Defendant at some point did acknowledge that it owed the Claimant amounts and then denied it by providing documents as a proof of payment for February and March.

17. The Defendant insists that it has paid all payments due and has supported that submission by sending receipts as proof via email. The Claimant submitted evidence that the Defendant never contested owing them the amounts in emails and WhatsApp conversations. Reports showcasing results and emails showcasing work between parties during the months owed were also provided.

18. The Court is satisfied that the Claimant has provided sufficient evidence to support its Claim. The Defendant did not raise any issues with the quality of work or issues with the invoices sent until the Claimant filed a Claim with the Courts. The parties agreed on a mechanism for payment in the Agreement which reads:

> "5. Payments
>
> a. The Client agrees to pay the Firm a 50% advance payment prior to the start of each cycle (month).and 50% at the end of each month. Each end of month payment will be made along with the beginning of the following month."

19. This mechanism for payment contradicts the Defendant's understanding being that it should pay the Claimant ahead of each project. The Defendant is in breach of its obligations with respect to the Agreement. The Claimant to receive payment for the events performed and work completed in the duration mentioned being the last 2 weeks in February and first 2 weeks of March.

Costs

20. At the Hearing, the Claimant pled for its costs, arguing that the matter wasted the Claimant's time and efforts when she could have worked on other projects instead of pursuing the claim. The general rules regarding costs in the SCT reads:

> "Costs in the SCT

53.70

The SCT may not order a party to a small claim to pay a sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, except:

(1) such part of any Court or Tribunal fees paid by that other party as the SCT may consider appropriate;

(2) such further costs as the SCT may assess by the summary procedure and order to be paid by a party who has behaved unreasonably."

21. In this matter, I cannot find that the Defendant has behaved "unreasonably" such to make it appropriate to grant the Claimant its costs in the SCT. The Defendant did not act in a way to prolong the matter or unjustifiably increase the costs related to the matter. The Claimant has not pointed to any other behaviour, other than its potential success of the Claim and that it had to go through the process of filing a claim for an amount that is not disputed, to justify granting costs in this matter. Thus, I cannot grant the Claimant's request for costs in the matter and the parties shall bear their own costs.

Conclusion

22. In light of the aforementioned, I find that the Defendant shall pay the Claimant the total sum of AED 8,000.

23. The Defendant shall pay the Claimant the court fee in the sum of 367.25.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
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