THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURT

IN THE COURT OF FIRST INSTANCE

BETWEEN

JOHNSON ARABIA LLC

Claimant

and

BIC CONTRACTING LCC
(FORMERLY HLG CONTRACTING LLC)

Defendant

JUDGMENT OF JUSTICE ROGER GILES

UPON reviewing the Defendant's Application Notice CFI-075-2020/2 dated 5 November 2020 filed pursuant to Part 12 of the Rules of the DIFC Courts contesting the Courts' jurisdiction (the **"Application"**)

AND UPON considering the Claimant's response filed on 19 November 2020

AND UPON considering the Defendant's reply to the Claimant's response filed on 26 November 2020

AND UPON reading the relevant material in the case file

IT IS HEREBY ORDERED THAT:

1. The Application is dismissed.

2. The Defendant shall pay the Claimant's cost of the Application to be assessed by the Registrar if not agreed.

Issued by:
Nour Hineidi
Registrar
Date of Issue: 14 December 2020
At: 1pm

SCHEDULE OF REASONS

1. This is an application, pursuant to RDC 12.1, for a declaration that the Court does not have jurisdiction to hear parts of the Claimant's claim. The Claimant relies on the opt-in jurisdiction under Article 5(A)(2) of Dubai Law No 12 of 2004, The Law of the Judicial Authority at the Dubai International Financial Centre (the **"JAL"**), by which the Court of First Instance may hear and determine:

> ".. any civil or commercial claims or actions where the parties agree in writing to file such claim or action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

2. While preserving its objection to jurisdiction, the Defendant filed a Defence responding to the Claimant's Particulars of Claim. The Application is best understood with regard to these pleadings.

3. The Claimant commenced the proceedings by a Claim Form filed on 16 September 2020, claiming AED 2,701,719.37 as hire charges for equipment hired out to the Defendant. In the Particulars of Claim it alleged:

> "3. The Defendant had executed a Hire Agreement with the Claimant for hiring heavy equipments for the Defendant's different projects and placed various purchase orders to get the machineries on hire from the Claimant. As per such orders, the claimant had made deliveries of various equipment on hire to the defendant with utmost care and perfection and submitted respective invoices for payment from time to time. Now from various transactions, there is an outstanding amount of AED 2,701,719.37/ - .. is due from Defendant to Claimant. The details of the documents showing the outstanding payments are as follows: .".

4. There were then listed 320 transactions, with invoices over the period 31 March 2018 to 24 October 2019, under the headings and in the form (using the first transaction in the list):

LPO Number	(AED) Agmt No	Invoice No	Invoice Date	Amount in
PP1546/0003	19673	DBAWP45996.	31/03/2018	6,094.04

5. "LPO" stands for Local Purchase Order, being the Defendant's purchase order addressed to the Claimant. In the listing, the same LPO was

commonly repeated for a number of transactions each with a different agreement number, invoice number and invoice amount: for example, the second transaction in the list had the same LPO number but an agreement number 19674, invoice number DBAWP45997 and invoice amount 6,106.15.

6. From the pleading, it was not clear whether the Claimant alleged a master Hire Agreement under which individual hirings were made, as the opening words of paragraph 3 of the Particulars of Claim suggested, or a series of individual hire agreements, as the heading "Agmt No" and series of numbers suggested. From the documents accompanying the Particulars of Claim and the documents put before me in this Application, the latter is the case.

7. The hire agreements are in common form and, so far as relevant to this Application, include a clause:

> "7.1 Any dispute, difference, controversy or claim (**"Dispute"**) arising out of or in connection with this Hire Agreement, including (but not limited to) any question regarding its existence, validity, interpretation, performance, discharge and applicable remedies, shall be referred to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre (**"DIFC Courts"**). In the event a Dispute relates to a claim for an amount of AED 500,000/- or less (or the value of the subject matter of the claim is AED 500,000/- or less), the Hirer and Johnson Arabia LLC agree that such claim shall be brought before the Small Claims Tribunal of the DIFC Courts."

8. I do not think it was disputed that this provision was an opt-in agreement satisfying Article 5(A)(2), although its reach must be addressed (see [19] below).

9. The Defence was filed on 5 November 2020. It included:

> (a) that the hire agreements in its Appendix 3 are "not executed by the Defendant since they do not contain either the Defendant's company stamp or an authorised employee's signature"; and
>
> (b) that the hire agreements in its Appendix 4 "have not been properly executed by the Defendant since they do not contain the Defendant's company stamp".

10. The total of the invoiced amounts corresponding to these hire agreements is AED 718,057.56.

11. The Defendant's submission in support of this Application is brief. It says that the Court does not have jurisdiction in respect of claims under the hire agreements in Appendices 3 and 4 because (as asserted in the Defence) the hire agreements have not been executed or have not been properly executed, so that there is no opt-in agreement as required by Article 5(A)(2) of the JAL. The submission is not further elaborated. It should be noted that, in making this Application, the Defendant invites a decision which may impact on its substantive defence as to the relevant invoiced amounts.

12. The Claimant's response is of three kinds. First, it produces hire agreements which are signed on behalf of the Defendant (by the same person who signed many if not all of the undisputed hire agreements) and bear the Defendant's stamp, being some of the hire agreements in Appendix 3. Secondly, it produces hire agreements which are similarly signed and stamped and associated hire agreements having the same number, the latter being signed but not stamped, and says that the signed but unstamped hire agreements are part of "continuing transactions" and thereby Article 5(A)(2) is satisfied. Thirdly, it says that the remaining hire agreements in Appendix 3 are "continuations" of duly signed and stamped hire agreements, and thereby Article 5(A)(2) is satisfied.

13. The evidence in the Application, by apparent common consent, was not through witness statements, but by collections of LPOs, invoices and hire agreements accompanying the written submissions. No explanation was provided of the course of business in which they were generated. It must be remembered that the claim is to the various invoiced amounts. The question is whether the dispute over liability to pay an invoiced amount in the Appendices corresponding to a hire agreement is a dispute arising out of or in connection with a hire agreement containing the opt-in provision.

14. In the first category, signed and stamped hire agreements 25052, 22369, 22370, 22874, 22875, 24836 and 24837 are produced by the Claimant. The disputes over liability to pay the invoiced amounts corresponding to them are caught by the opt-in provisions. In its submissions in reply, the Defendant says as to these that it makes no admission because "the Claimant has failed to clarify, particularise or explain which Hire Agreements, invoices and claims it is referring to", which is not a meaningful response.

15. The Claimant says that the equipment hired under hire agreement 25052 was delivered for a project in the DIFC. If so, jurisdiction also arises under Article 5(A)(1)(b) of the JAL.

16. Hire agreements 21976, 21981, 21984 and 25046 are in the second category, being all the hire agreements in Appendix 4. The Claimant says that the signed but unstamped hire agreements are continuations of the initial hire and do not need a stamp. The better answer is that, putting aside formal execution under company seal, while it has to an extent become conventional a stamp in addition to signature on behalf of a company is not necessary. The signatory to the unstamped hire agreements is the same person who signed undisputed hire agreements, signing as Chief Operating Officer, and they bind the Defendant as a written agreement. The disputes over liability to pay the invoiced amounts corresponding to them are also caught by the opt-in provisions.

17. Of the remaining hire agreements in Appendix 3, I take hire agreement 22367 as an illustration. The invoice referencing 22367 as the number of the hire agreement is for the hire of a "110T All Terrain Crane" from 1 May to 31 May 2018, check and also references "Order No PP1538/00012/0001". That is an LPO for two cranes, dated 1 January 2018 but from its content revised monthly by the addition of "Hire extension durations" for months subsequent to January 2018, the last revision being for the period from 1 April to 31 May 2018. Plainly, it was the purchase order for the invoiced hiring. It bears the notation, "LPO against Johnson Arabia's Hire Agreement ref 20497 & 20498 dated 30/12/2017".

18. The hire agreements 20497 and 20498, duly signed and stamped, are each for the hire of a 110T All Terrain Crane from 1 January to 31

January 2018. What happened is clear enough. The hire of the cranes was initiated under hire agreements 20497 and 20498. The hiring was then progressively extended, and they were varied by the LPO to include hire for the month of May 2018, by force of the notation if not in any event. The invoiced May 2018 hiring was on the terms of those hire agreements. A new hire agreement could have been created and signed, as seems to have happened in other cases; a form of new hire agreement 22367 was created, but was not signed on behalf of the Defendant. If the new hire agreement 22367 did not come into force because it was not signed on behalf of the Defendant, the terms of the prior hire agreements continued to govern.

19. Those terms included the opt-in provision, agreed in writing in hire agreements 20497 and 20498. It catches any dispute "arising out of or in connection with this Hire Agreement", and dispute over liability to pay the invoiced amount for the May 2018 hiring is such a dispute because "this Hire Agreement" is the hire agreement as varied. It does not matter that the variation is not in writing signed by the Defendant. There can be an agreement in writing, after the dispute arises, to submit to the Court of First Instance a dispute arising under an oral contract - it is only the agreement to opt in that must be in writing.

20. It is not necessary to decide whether or not hire agreement 22367 came into force. If it did, its opt-in provision applies; if it did not, the hire agreement under which the invoiced amount is payable is one or both of hire agreements 20497 and 20498, and the opt-in provision again applies. The opt-in provision in any of those hire agreements founds the Court's jurisdiction to determine the claim to the invoiced amount.

21. In its reply submissions, the Defendant says that the Claimant's "continuation" argument is flawed because hire agreement 22367 makes no reference to hire agreement 20497 and contains no statement of being a continuation, and hire agreement 20497 had already reached its end date; and, it says, the hire agreements have different numbers. The submission is neither well founded in fact nor responsive to the Claimant's argument, and it misses the point. The claim is to the invoiced amount. While the Claimant included the hire agreement number in its listing, properly understood and as explained by the "continuation" argument, it claims under the agreement for the hiring by which the invoiced amount was incurred; 22637 is a reference point from the invoice. Whichever it be, the opt-in provision applies.

22. While the details vary, the position is the same for hire agreements 22368, 22371, 22372, 26569, 27020, and 27021, and for hire agreement 26960 except the LPO is for an original hiring (ie not an extension) on the terms of an earlier signed and stamped hire agreement. Hire agreement 26597 is not entirely in the same position: the invoice is for hire on 24 January 2019 but the LPO in evidence has extensions only to the end of December 2018. Hire agreement 21836 is also not entirely in the same position: the invoices are for hire from 10 - 18 March 2018 but the LPO in evidence is only for the week from 8 March 2018. I have no hesitation in inferring that, in a manner not revealed but consistently with the course of business as shown in the documents, there were agreed extensions for the January hiring and the further March hiring, bringing the same position.

23. The disputes over liability to pay the invoices corresponding to all the hire agreements in the Appendices are caught by the opt-in provision. The Defendant's challenge to jurisdiction is without merit.

24. In its reply submissions, the Defendant says that the Claimant "has failed to explain why" the jurisdiction clause in the hire agreements should apply instead of the jurisdiction clause in the LPOs. The LPOs have a note "terms and conditions attached", and it appears that the terms and conditions include a provision for arbitration. It is not easy to see this as a submission, let alone one going to jurisdiction under Article 5(A)(2): on any view, there is no agreement on the jurisdiction of another court. For completeness, the query should be answered. The hire agreements provide that they "contain the whole and only agreement between us and to the extent that your order or offer to hire incorporates conditions of contract, such conditions shall be deemed to have been renounced by you". By signing the hire agreements, the Defendant has accepted this, and has lost the "battle of the forms".

25. I order that the Application be dismissed, and that the Defendant pay the Claimant's costs, to be assessed by the Registrar, if not agreed.