Claim No. SCT 117/2020

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

LUCIANE

Claimant

and

LEON

Defendant

Hearing	**: 6 May 2020**
Further Submissions	**: 7 May 2020**
Judgment	**: 27 May 2020**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 30 March 2020

AND UPON the Defendant filing an Acknowledgment of Service intending to defend part of this Claim dated 19 April 2020

AND UPON a Consultation being held before SCT Judge Delvin Sumo on 23 April 2020

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

AND UPON a hearing having been listed before SCT Maha Al Mehairi on 6 May 2020, with the Claimant's representative and the Defendant in attendance

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 amount AED 32,549.05 in relation to the service charges for the Defendant's Property.

2. The Defendant shall pay the Claimant the Court filing fee in the sum of AED 1,547.85.

Issued by:
Maha Al Mehairi
SCT Judge
Date of issue: 28 May 2020
At: 12pm

THE REASONS

Parties

1. Luciane (hereafter the "Claimant") is a housing management company with offices located in Dubai.

2. Leon (hereafter the "Defendant") is the owner of Unit 123, DIFC, Dubai.

Background and the Preceding History

3. The underlying dispute arises over alleged unpaid service charges for the property owned by the Defendant.

4. On 30 March 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming unpaid service charges for the past 8 quarters in the amount of AED 30,957.12, in addition to payment for all legal costs associated with filing this claim.

5. On 19 April 2020, the Defendant filed an Acknowledgment of Service intending to defend part of the claim.

6. The parties met for a Consultation with SCT Judge Delvin Sumo on 23 April 2020 but were unable to reach a settlement. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 6 May 2020.

The Claim

7. The Claimant contends that service charges have fallen due for the last 8 quarters, in the sum of AED 30,957.12, as of 2 February 2020.

8. The Claimant argues that, on 7 October 2013, pursuant to Strata Title Law (DIFC Law No. 5 of 2007), Lucianewas established to manage the building in DIFC and this entity is therefore responsible for invoicing all unit owners to pay service charges in order to manage the building.

9. The dispute arising between the parties relates to the Defendant's alleged failure to pay the service charges in relation to residential Unit No. 123DIFC. The Claimant contends that despite a number of follow-ups and letters to the Defendant, he has failed to pay the service charges. It has been suggested that relevant the email address on file for the Defendant is incorrect and therefore the Defendant failed to receive the said invoices, however, the Claimant argues that the invoices were also sent to email addresses of the Defendant's employees that have looked after the property

10. In accordance with the Lucianearrears collection policy ("Arrears Policy"), it is stated as follows:

> "LEVY CONTRIBUTION AND LATE PAYMENT PENALTY
>
> In accordance with Item 23.3(g) of the registered Strata Management Statement all Unit Owners agree to pay in a timely manner all sums due to the Lucianeand understand and acknowledge that it is critical for the Luciane to maintain a cash flow sufficient for it to maintain the LucianeCommon Property to the Operating StandardIf an Owner fails to pay a Levy Contribution when it becomes due, a penalty calculated on a daily basis at the rate of 12% per annum is imposed.
>
> LEVY CONTRIBUTION DUE DATE
>
> A contribution falls due for payment on a quarterly date fixed by way of Ordinary Resolution at its annual general meeting. The due date for payment of the Levy Contribution is 30 days from the date that the Levy Contribution Invoice has been issued, due on the first day of the quarter.
>
> ARREARS
>
> The Lucianeis entitled to place a lien, charge or similar claim on the debtor Unit Owner's title and is entitled to take whatever actions it deems appropriate to enforce payment of any such amounts as a secured debt including, without limitation, instituting an action for the recovery in the DIFC Courts and any other court or tribunal of competent jurisdiction in accordance with Item 23.3(g) of the registered Strata Management Statement.
>
> The body corporate has a comprehensive recovery procedure for late payment including 12% per annum late payment penalty in accordance with Item 23.3(g) of the registered Strata Management Statement (by way of Ordinary Resolution at its first annual general meeting);
>
> Issuance of Arrears Notices:
> First Notice at seven (7) days after due date
> Second Notice at fourteen (14) days after due date
> Third Notice at twenty-one (21) days after due date; and
> Fourth and Final Notice at twenty-eight (28) days after due date"

11. The Claim Form specifies that the amount due is in the sum of AED 30,957.12 which relates to the service charges of the last 8 quarters. Following the hearing before me on 6 May, I requested that the Claimant provide the Court with an email setting out a clear breakdown of the total claimed sum. In its email, the Claimant appears to seek payment for the service charges including the period of 1 June 2020 to 31 August 2020. Therefore, the Claimant is seeking the total payment of the service charges, penalties, SCT representation costs and the filing fee, in the sum of AED 36,196.90.

The Defence

12. The Defendant submits that it has never been his intention to not pay the service charges that have fallen due, however, he advised the Court that the Claimant had been sending the invoices to the Defendant's incorrect email address, therefore, the Defendant never received the relevant invoices. In addition, the Defendant did not receive a call from the Claimant in relation to the unpaid service charges.

13. The Defendant submits that he was unaware of the pending invoices until the legal proceedings were initiated in the DIFC Courts. As shown in the Claim Form, the email address on file for the Defendant was `linda@linda.net' instead of `linda@linda.

14. The Defendant argues that the Claimant should have known that the Defendant's email address was incorrect as they should have received a bounce back email indicating so. The Defendant stated that he is willing to pay the outstanding service charges but without penalties that the Claimant is seeking to impose, as it is not the Defendant's fault that he failed to receive notice of the invoices.

Discussion

15. First and foremost, the relevant property is located in the DIFC, therefore, it is clear and undisputed that the DIFC Courts have jurisdiction to decide this matter. As the claim value is less than AED 500,000, this claim is properly before the SCT of the DIFC Courts.

16. There is no dispute between the parties in relation to the amount of the service charges, the only issue to be considered is whether the Defendant shall be subject to the penalties.

17. Based on the arguments put forward at the Hearing and giving consideration to the Arrears Policy, it is clear that penalties are chargeable. Though the Claimant has erred in using the Defendant's incorrect email address, the Defendant was aware that the service charges were to be paid every quarter. Although it is the Claimant's duty to send out reminders of those payments, that does not mean that if the reminders were not sent

that the amount fails to fall due. The Claimant also fulfilled his duty when it sent out the invoices to a number of different email addresses kept on record for the Defendant.

18. The Defendant stated that perhaps there was an error in the system, or the emails may have been sent to junk mail. However, I do not find that to be a reason for the service charges to be dropped nor for the penalties to be waived.

19. Accordingly, the Court is satisfied that the service charges and the penalties are due and shall be paid by the Defendant.

Further charges

20. In the Claimant's email dated 7 May 2020, the Claimant submitted a breakdown of the claim which is in total sum of AED 36,196.90 and comprised of the following:

(a) Service Charges - AED 29,501.78;

(b) Penalties - AED 3,047.27;

(c) Filing costs - AED 1,547.85; and

(d) SCT representation fees - AED 2,100

21. The Court is of view that the SCT representation costs are not recoverable as the SCT allows for any company representative to appear before the Court and represent itself. As such, the SCT representation fees are dismissed.

Conclusion

22. For the above-mentioned reasons, the Defendant is liable to pay the sum of AED 32,549.05 in addition to AED 1,547.85 as Court fees.

Issued by:
Maha Al Mehairi
SCT Judge
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