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 MHEIRI

BETWEEN

MINIAN (MIDDLE EAST)

Claimant

and

MIBAD INVESTMENTS

Defendant

Hearing : **1 November 2020**
Further Submissions : 7 January 2021
Judgment : **14 February 2021**

JUDGMENT OF SCT JUDGE MAHA AL MHEIRI

UPON this Claim being filed on 30 September 2020

AND UPON a Consultation being held before SCT Judge Delvin Sumo on 14 October 2020

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

AND UPON a hearing having been listed before SCT Judge Maha AlMehairi on 1 November 2020, with the Claimant's representative and the Defendant's representative attending

AND UPON reading the submissions and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay to the Claimant, from the date of this Order, the judgment sum of **AED 478,031.95** being the principal amount outstanding under the Agreement.

2. The Claimant shall file its submissions in relation to its claim for interest that has accrued until the date of this Judgment by no later than **4pm on Thursday, 18 February 2021**.

3. The Claimant's Claim for costs, fees and expenses in connection with the Claim shall be dismissed.

4. The Defendant shall pay the Claimant the Court fee in the sum of **AED 23,917.86**.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 14 February 2021
At: 1pm

The Parties

1. The Claimant is Menian (Middle East) (the "Claimant"), a law firm registered in the Dubai International Financial Centre (the "DIFC"), Dubai, UAE.

2. The Defendant is Mibad Investments LLC (the "Defendant"), a real estate development company located in Dubai.

Background and the Preceding History

3. The underlying dispute arises over an alleged unpaid invoice for legal services and the scope of work set out in the Engagement Agreement dated 17 December 2017 (the "Agreement") signed between the Claimant and the Defendant.

4. On 30 September 2020, the Claimant filed its Claim seeking the following:

(a) The sum of AED 478,031.95 as payment for outstanding legal fees;

(b) Interest at the rate of 0.88% per annum from the due date of each according to the Law of Damages and Remedies till the date of payment; and

(c) Court fees, and the Claimant's costs, fees and expenses incurred in connection with this Claim.

5. The parties met for a Consultation with SCT Judge Delvin Sumo on 14 October 2020 but were unable to reach a settlement.

6. On 1 November 2020, a hearing was listed before me, at which the Claimant's and Defendant's representatives were in attendance. At the hearing, the Defendant was asked to make submissions in relation to the invoices, to which the Defendant provided submissions and the Claimant was given the opportunity to respond.

7. Further to my review of the submissions after the Hearing, I identified that the Agreement contained a clause pursuant to which the parties set out their intention to effectively `opt-out' of the default jurisdiction of the DIFC Courts set out under Article 5(A)(2) of the Dubai Law No. 12 of 2004, (the "JAL"), and resolve any disputes arising out of the Agreement by way of arbitration.

8. On 25 November 2020 and on my instructions, the SCT Registry emailed the parties requesting confirmation on whether the parties agree to opt-in to the jurisdiction of the DIFC Courts in accordance with the JAL, in light of the arbitration clause contained in the Agreement.

9. On 7 January 2021, the parties submitted a signed jurisdiction agreement (the "Jurisdiction Agreement") confirming their intention to opt-in to the jurisdiction of the DIFC Courts in accordance with the JAL. Upon the receipt of the Jurisdiction Agreement, this matter was reserved for judgment.

The Claim

10. The Claimant was instructed to draft contract documents, provide legal representation and legal advice to the Defendant on various matters. The Claimant was advising the Defendant on a number of matters in relation to the development of the Misar Residences at the Mikar Hotel & Residences in Dubai ("Misar Residences").

11. The Claimant was also representing and advising the Defendant in relation to a dispute arising under an enabling works contract in which it engaged Miuna Contracting LLC to perform enabling works at the Misar Residences. These services included:

(a) Advising the Defendant in relation to proceedings commenced against it in the local courts by Miuna Contracting LLC (the "Enabling Works Contractor"); and

(b) Representing the Defendant in arbitration proceedings filed by the Defendant with the Dubai International Arbitration Centre ("DIAC") against the Enabling Works Contractor.

12. An executed letter of engagement and emails demonstrating the Defendant's instructions to the Claimant were submitted with the supporting documents to the Court. These documents also included emails of assurance from the Defendant confirming that it would make payment in respect of the outstanding invoices for the legal services performed.

13. The Claimant provided the following legal services to the Defendant in the matters it was instructed on, and submits that it is due a total of AED 478,031.95 ("Outstanding Fees"). These include:

Matter	**Amount due (AED)**
General Contract Advice	241,059.00
Enabling Works Dispute	236,972.95
Total	**478,031.95**

14. The Claimant submits that no payment has been received from the Claimant in respect of the outstanding fees, despite the Defendant's assurances of payment. Therefore, the Claimant seeks payment of the Outstanding Fees, interest, and the court fees for the filing of the Claim.

Defence

15. The Defendant alleges that it had some concerns with the Claimant's performance during the period that they worked together.

16. The Defendant makes submissions to the fact that:

(a) The Defendant has been unable to verify the invoices submitted by the Claimant.

(b) The Claimant did not attach proof of payment or receipt that relates to small disbursements and 3rd party costs for services rendered.

(c) The Claimant did not reference the Tax Reference Number ("TRN ") in the invoices presented.

(d) The Claimant was negligent in the legal advice it conducted and sought to over charge the Defendant.

(e) The Claimant's negligent advice caused significant monetary loss and harm to the Defendant.

17. To that end, the Defendant submits that it offered a settlement amount to the Claimant which it thought that reflected the work that has been performed, which the Claimant refused.

Discussion

18. The parties submitted a signed Jurisdiction Agreement confirming their intention to opt-in to the jurisdiction of the DIFC Courts in accordance with Article 5(A)(2) of the Dubai Law No. 12 of 2004, as can be seen in the Jurisdiction Agreement below:

"it is agreed between the Parties that:

1. the Dispute, including any dispute, difference, controversy or claim arising out of or in connection with the Contract, including (but not limited to) any question regarding the existence, validity, interpretation, performance, discharge and applicable remedies of the underlying contract in dispute, shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre ("the DIFC Courts").

2. The governing law of this agreement shall be the law of Dubai (excluding DIFC), United Arab Emirates."

19. I shall set out below each of the Claimant's claims, the Defendant's defence to each Claim, and accordingly, the Court's reasoning and finding.

20. The Claimant filed a claim in the SCT claiming the sum of AED 478,031.95 pursuant to the Agreement signed between the parties, as well as interest in accordance with the Law of Damages and Remedies. It also seeks payment of the court fee charged to the Claimant when filing this Claim.

21. On 17 December 2017, the parties signed the Agreement for provision of legal services. The fee arrangement between the Claimant and Defendant was set out in the Agreement which referred to two emails sent by the Claimant dated 4 December 2017 and 5 December 2017 in which the Claimant had offered to provide the legal opinion to the Defendant at a capped fee, charged at hourly rates. These rates are set out below:

"a. The fees for the legal opinion would be capped at AED 15,000;

b. the applicable hourly rates in respect of this legal opinion would be:

i. Partner: AED 2,000.00

ii. Senior Associate: AED 1,600.00

iii. Associate: AED 1,400.00 (each plus VAT)

iv. If further work was required following the legal opinion, the Parties could agree a revised budget or work in accordance with the agreed hourly rates."

22. The Claimant continued to be instructed by the Defendant on an ongoing `ad hoc' basis to provide advice and draft various documents in respect of the Misar Residences project as necessary between February 2018 and February 2020. The Claimant's fees in respect of its services were invoiced monthly as they arose and were based on the time spent in connection with each matter; save and except where individual capped fee arrangements were agreed in respect of discrete pieces of work.

23. The Claimant commenced arbitration proceedings on behalf of the Defendant and the Request for Arbitration was filed with DIAC on 17 February 2019. The Claimant acted for the Defendant during these proceedings up until August 2020, however the Claimant was not paid for its services during this time. The Claimant requested payment of its outstanding fees on numerous occasions by both telephone and in writing, including on 9 December 2019, 15 December 2019, 19 December 2019 and 6 January 2020.

24. As per the Agreement, under the clause headed `Charges', the parties have agreed on how the Defendant will be charged

"Charges

The firm uses hourly rates to charge for its fee earners. Their time is recorded in 6 minutes units (i.e. 10 units is equal to 1 hour). Paralegal assistance may include the work of experienced support staff who do not have formal legal qualification.

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Billing Arrangements

We shall be entitled to issue invoices for fees and disbursements on a monthly basis, and to issue a final invoice on the conclusion of our work on the matter.

Our invoices, which shall be provided with a record of the work we have carried out and copies of receipts relating to any disbursements incurred by us shall be paid in the currency in which they are submitted either by cheque or bank transfer to the bank account indicated by us (we can provide account details on request) within 30 days of the date of the invoice subject to a seven day grace period"

25. Furthermore, in accordance with the Agreement, the Claimant's invoices are due upon receipt. Pursuant to the same clause above, any issues regarding entries in the invoices, be it in part or in whole, must be raised with the Claimant's within thirty (30) days of receipt of the relevant invoices. In the meantime, the remaining entries on the invoices (meaning, those not raised as issues) are deemed to be confirmed and payable upon receipt.

26. The Agreement also explains the mechanism behind the billing, the legal fees for the services provided on an hourly rate are reflected in the Claimant's monthly invoices. The monthly invoices outline the number of hours spent by the relevant billing practitioner and a brief description of the services performed. Monthly invoices are submitted electronically after the end of the billing cycle.

27. Under the heading of Limitation of Liability in the Agreement it stipulates that as the law and practice of law are inherently uncertain, the

Claimant does not, and cannot, guarantee results. For this reason, all legal fees and costs incurred by the Claimant's client are non-refundable.

28. The Defendant signed the Agreement, thereby acknowledging and agreeing to the terms contained within it. The Defendant should have raised issues in relation to the invoices within 30 days following receipt of the concerned invoice. The Defendant failed to provide any evidence to show that they had raised such concern within the 30 days period. The Defendant failed to show examples where invoices that were not served properly or did not reflect the correct TRN number.

29. In relation to the Defendant's argument that the Claimant is over charging, I find that the Defendant had 30 days to raise any issues in relation to the invoices as per the Agreement. The Defendant failed to provide any evidence that they raised said concerns in relation to the invoice within that specified timeframe, and that the Defendant only raised issues when the Claimant requested payment from the Defendant.

30. With respect to the Defendant's issue in relation to disbursements, these were never raised as an issue. The Defendant has not set out which disbursements it disputes, the amount of the disbursements that it disputes, or the invoices where these disbursements appear. The disbursements invoiced are individual item charges that were added to the invoices as a result of payments made by the Claimant, to others, on the Defendant's behalf.

31. The Court has examined the Defendant's submissions, and I find that all comments could have been raised by the Defendant within 30 days following receipt of the invoices for the work performed. The Defendant could have requested that the Claimant refrain from the continuation of work on the Defendant's behalf in light of its alleged overpriced charges, however, the Defendant did continue working with the Claimant and requested additional works even after receiving the first invoice for the work done.

32. The Court finds that the burden of proof lies upon the Claimant to demonstrate that they completed the work for which they are seeking payment. The Court is of view that each party has an obligation to provide evidence to support their claim, the Claimant presented all the invoices that reflects that the work was performed for the Defendant.

33. Moreover, in relation to the invoices issued to the Defendant, the Claimant argues that the invoices issued set out lower prices than what was agreed in the Agreement under the following hourly rates:

a. Partner: AED1,950

b. Associate: AED 1,500

c. Paralegal/Trainee: AED 1,000

The Claimant has not adjusted the Claim value amount in this claim to reflect the hourly rates agreed in the Agreement, rather the Claimant's total Outstanding Fees are based on the rates applied in the invoices that it has sent to the Defendant.

34. The Court find the Defendant is in breach of its legal and contractual obligations, Article 77 of the DIFC Law No. 6 of 2004, Contract Law defines non-performance as:

> "Non-performance is failure by a party to perform any one or more of its obligations under the contract, including defective performance or late performance."

35. It is the Court's view that these issues were only raised upon the Claimant's request for payment and that the Defendant was already aware of the Claimant's charges following receipt of the first invoice. In addition, the Defendant was provided notice of the Claimant's charges at the point of signing the Agreement. I am of the view that the Defendant choosing to continue to work with the Claimant is an indication that it accepted the Claimant's charges and wished to continue instructing the Claimant. As such, the Defendant is liable to pay the Claimant the outstanding amount of AED 478,031.95.

Interest Calculations

36. Pursuant to Article 17 of DIFC Law No. 7 of 2005, the Law of Damages and Remedies, the Claimant claims interest at the average bank short term lending rate which is 0.88% per annum.

> "(1) if a party does not pay a sum of money when it falls due to the aggrieved party is entitled to interest upon that sum from the time when payment is due to the time of payment whether or not the non-payment is excused.
>
> (2) 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."

37. The Claimant is seeking Interest of 0.88% per annum, on the outstanding amount of AED 478,031.95. Furthermore, the interest is calculated from the due date of the invoices, up until receipt of payment.

38. The Court finds that the Defendant shall pay the Claimant the sum in relation to the unpaid invoices according to Article 17 of DIFC Law No. 7 of 2005. The Claimant shall provide the Court with its submissions in relation to its claim for interest that has accrued until the date of this Judgment.

Costs

39. The Claimant seeks for the Court to order the cost of filing this claim with the SCT, including any fees and the Claimant's costs, fees and expenses, legal or otherwise reasonably incurred in connection with this Claim which states as follows:

40. Pursuant to Rule 38.15 of the Rules of the DIFC Courts, parties are not entitled to claim their costs in the SCT, with only two exceptions,

including instances where a party has acted unreasonably, which is not the situation here. The relevant Rule, is set out below:

> "Costs in The Small Claims Tribunal (`SCT')
>
> 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."

41. The Court agrees that costs under the SCT are only to be awarded in limited circumstances, and I find that no such circumstance applies in this case.

42. The Claimant seeks to recover the fee that they paid to the Court for the filing of this Claim. I am of the view that, as the Claimant has been successful on their claims, they should be entitled to recover the fee in respect of the filing the claims.

Conclusion

43. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 478,031.95 for the unpaid invoice plus interest at the rate of 0.88% per annum from the due date of each invoice until the date of payment.

44. I order that the Claimant files its submissions as to its claim for interest that has accrued until the date of this Judgment by no later than 4pm on Thursday, 18 February 2021.

45. The Defendant shall pay the Claimant the Court fee in the sum of AED 23,917.86.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 14 February 2021
At: 1pm