THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE SMALL CLAIMS TRIBUNAL

BETWEEN

LUSTIN

Claimant

and

LEND

Defendant

ORDER WITH REASONS OF SCT JUDGE DELVIN SUMO

UPON reviewing the Claim Form submitted by the Claimant dated 20 July 2022 (the "Claim")

AND UPON this Claim having been called for a Jurisdiction Hearing before SCT Judge Delvin Sumo on 10 August 2022

AND UPON the Claimant's representative attending the Consultation and the Defendant failing to attend although served notice of the claim

AND UPON considering the case file and submissions contained therein

IT IS HEREBY ORDERED THAT:

1. The Claim shall be dismissed.

2. The DIFC Courts do not have jurisdiction over this Claim.

3. Each party shall bear their own costs.



Issued by:
Ayesha Bin Kalban
SCT Judge and Registrar
Date of Issue: 11 August 2022
At: 11am

SCHEDULE OF REASONS

The Parties

1. The Claimant is Lustin, a company registered in Dubai, UAE (the "Claimant").

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

Discussion

3. Rule 53.2 of the Rules of the DIFC Courts (the "RDC") sets out that the Small Claims Tribunal (the "SCT") can only hear cases that fall within the jurisdiction of the DIFC Courts. The relevant wording is set out below:

> "The SCT will hear and determine claims within the jurisdiction of the DIFC Courts:
>
> (1) where the amount of the claim or the value of the subject matter of the claim does not exceed AED 500,000; or
>
> (2) where the claim relates to the employment or former employment of a party; and
>
> all parties elect in writing that it be heard by the SCT (there is no value limit for the SCT's elective jurisdiction in the context of employment claims); or
>
> (3) which do not fall within the provisions of sub-paragraph (1) or (2) above, but in respect of which:
>
> a. the amount of the claim or the value of the subject matter of the claim does not exceed AED 1,000,000; and
>
> b. all parties to the claim elect in writing that it be heard by the SCT, and such election is made in the underlying contract (if any) or subsequent to execution of that contract."

4. The jurisdiction of the DIFC Courts is determined by Article 5(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended (the "JAL"), which provides a number of limited gateways through which the DIFC Courts may exercise jurisdiction over a claim, which are, as relevant:

> "1. The Court of First Instance will have exclusive jurisdiction to hear and determine:
>
> a. The civil, commercial and labour claims and actions to which the DIFC or any DIFC body, DIFC establishment or licensed DIFC establishment is a party.
>
> b. The civil, commercial and labour claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalized or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract.
>
> c. The Court of First Instance shall have exclusive jurisdiction to hear and determine the civil, commercial and labour claims and actions arising out of or relating to any incident or transaction, which has been wholly or partly performed within DIFC and is related to DIFC activities;
>
> d. Appeals against decisions or procedures made by DIFC bodies where DIFC Laws and DIFC Regulations permit such appeals and claim;
>
> e. Action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations.
>
> 2. 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.
>
> 3. The Court of First Instance may hear and determine any civil, commercial and labour claims or actions falling within its jurisdiction if the parties agree in writing to submit to the jurisdiction of another court over the claim or action but such court dismisses such claim or action for lack of jurisdiction. The Court of First Instance may not hear or determine any civil, commercial and labour claim or action in respect of which a final judgment is rendered by another court."

5. The Claimant filed its Claim with the SCT seeking the payment of sums allegedly owed to the Claimant by the Defendant pursuant to an agreement entered into between the parties with the start date of 15 December 2020 (the "Agreement").

6. The Claimant submits that the DIFC Courts would be able to exercise its jurisdiction over this Claim in light of the fact that the Defendant's office is located within the DIFC. In response, the Defendant submits that the Defendant is not a DIFC established company and that the parties have selected to submit all disputes arising out of the Agreement to the Dubai Courts, pursuant to clause 12.12 of the Agreement. The Defendant therefore takes the position that the DIFC Courts cannot exercise jurisdiction over this Claim in light of the abovementioned clause.

7. Given that the Defendant is based within the DIFC, the DIFC Courts would have default jurisdiction over this claim pursuant to Article 5(A)(1) of the JAL. The wording of the relevant Article confirms that civil, commercial, and labour claims which are related to the DIFC fall within the jurisdiction of the DIFC Courts by default. However, upon reviewing the Agreement, it appears that the Agreement contains a clause which sets out the parties' intention to refer any disputes relating to the Agreement to Dubai Courts. The relevant wording of the clause is set out below:

> "12.12 Jurisdiction. Each party irrevocably agrees that the courts of Dubai shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation".

8. In these circumstances, the DIFC Courts may only hear and determine this Claim in the event that the Dubai Courts has dismissed such Claim for lack of jurisdiction in accordance with Article 5(A)(3) of the JAL. To my knowledge, the parties have not made any such submissions confirming that this Claim has been dismissed by the Dubai Courts for lack of jurisdiction.

9. In light of the aforementioned, I am of the view that the parties have `opted-out' of the DIFC Courts jurisdiction, and therefore, the DIFC Courts cannot hear or determine this Claim.

10. Therefore, I dismiss the Claimant's Claim for AED 39,375 on the grounds that the DIFC Courts lacks jurisdiction over this Claim.

Conclusion

11. The Claimant's Claim is dismissed due to the Courts' lack of jurisdiction.

12. Each party shall bear their own costs.