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

BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

IHACA

Claimant

and

IRUS

Defendant

Hearing:**22 May 2018**

Judgment:**31 May 2018**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 14 January 2018;

UPON the Defendant contesting jurisdiction in the Consultation before SCT Judge Ayesha Bin Kalban on 8 March 2018;

AND UPON the Defendant failing to attend the Jurisdiction Hearings on 9 April 2018 and 7 May 2018, resulting in a Default Order issued against the Defendant on 8 May 2018;

AND UPON the setting aside of the Default Order of SCT Judge Nassir Al Nasser on 15 May 2018;

AND UPON a final Jurisdiction Hearing having been held before SCT Judge Maha Al Mehairi on 22 May 2018, with the Claimant's representative and the Defendant in attendance;

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT the claim is dismissed for lack of jurisdiction.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 31 May 2018

At: 10am

THE REASONS

Parties

1.The Claimant is Ihaca, a bank providing financial services including credit cards and personal loans to customers (the "Claimant").

2. The Defendant is Irus, an Egyptian National and a customer of the Claimant (the "Defendant").

Background

3.The parties entered into an agreement on 22 August 2007, for a personal loan in the amount of AED 250,000 with an agreed interest rate of 10.24%. The total amount repaid by the Claimant to date is AED 43,619.05, and the last payment was made in 28 December 2015. The Claimant alleges that AED 273,098.01 of this loan remains outstanding to the bank and thus the Defendant is liable for this amount.

4. In addition, the Defendant has availed two credit cards both with outstanding amounts. Following the Defendant's failure to keep up with his repayments, the Claimant filed a claim to recover the amounts on 14 January 2018 (the "Claim") for the amount of AED 284,618.01.

5. In support of its Claim, the Claimant submitted a Personal Loan and Credit Card Application, and Statement of Account relevant to the Defendant's loans to prove the outstanding amounts. These documents reflected a loan of AED 284,618.01 in total, neither of these documents, nor anything else submitted by the Claimant indicated that the parties had agreed to the jurisdiction of the DIFC Courts.

6. In response to the Claim, the Defendant contested the Jurisdiction of the DIFC Courts in the Consultation listed before SCT Judge Ayesha Bin Kalban on 8 March 2018, on the basis that the liability was taken from the Claimant's Ihaca Branch located outside of the DIFC and all transactions were made outside the DIFC, and the Claimant did not specify in the Agreement's terms and conditions that the jurisdiction should be exclusive to the DIFC Courts.

7. The Claimant, in response to the Defendant's submission, alleges that the Claimant lodged a claim in the DIFC Courts Small Claims Tribunal based on the terms and conditions agreed and consented to the Defendant. Furthermore, the Claimant refers to Clause U of the general terms and conditions of the Agreement. The Claimant alleges that the customers have consented to opt-in to any of the UAE Courts in case of a dispute. Clause U of the general terms and conditions state that:

> "U. Governing Law and Jurisdiction:
>
> These terms and conditions shall be construed in accordance with the laws of United Arab Emirates and the rules, regulations and directives of the Central Bank of United Arab Emirates. The law governing the accounts or any banking services or transactions is the law of the Emirate in which the account maintained, in the event of a dispute arising in relation to any account, banking services or transaction the court of such emirates shall have jurisdiction, provided that the bank may, if it deems appropriate, bring proceedings in any other jurisdiction, inside or outside the United Arab Emirates."

8. On 22 May 2018, I heard final oral submissions from the Claimant's representative and the Defendant.

Discussion

9. Having considered the written submissions and the arguments put forward at the jurisdiction hearing, I find that this dispute falls outside the jurisdiction of the DIFC Courts.

10. Rule 53.2 of the Rules of the DIFC Courts ("RDC") require that the SCT hear only cases that fall "within the jurisdiction of the DIFC Courts.". 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, which provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, which are, as relevant:

> "(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;
>
> (b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised 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) Civil or commercial 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; . . .
>
> (e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations. . .
>
> (2)• . . . civil or commercial claims or actions where the parties agree in writing to file such claim or action with [the DIFC Courts] whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

11. There is no evidence of any of these gateways having the potential to apply in this case. Neither of the parties are DIFC Bodies or Establishments. The relevant contracts were not partly or wholly concluded or performed within the DIFC. In fact, there is no alleged connection to the DIFC. There is no other relevant DIFC Law or Regulation granting jurisdiction in this matter. Finally, the parties have not agreed in writing to file such claim or action within the DIFC Courts. The Claimant has not presented any written contract or agreement including such a jurisdictional clause.

12. Pursuant to Article 5(A)(2) of the Judicial Authority Law, it is possible for the parties to agree in writing to the jurisdiction of the DIFC Courts after this dispute arose, however, the parties failed to do this. The Defendant contested jurisdiction of the DIFC Courts and as such this is considered a rejection to an opt-in of the DIFC Courts' jurisdiction.

13. Therefore, as none of the relevant jurisdictional gateways of the Judicial Authority Law apply to this case, I must conclude that this case falls outside of the jurisdiction of the DIFC Courts.

Finding

14. This is a very straightforward matter, the DIFC Courts and the Small Claims Tribunal do not have jurisdiction to hear this Claim and therefore the Claim must be dismissed in full for lack of jurisdiction.

15. Each party shall bear their own costs.



Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 31 May 2018

At: 10am