Claim No: SCT 034/2017

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL

BEFORE SCT JUDGE NASSIR AL NASSER

BETWEEN

HACKETT

Claimant

and

HANIA

Defendant

Hearing: **26 March 2017**

Judgment: **29 March 2017**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

ORDER

UPON a Hearing, having been scheduled before SCT Judge Nassir Al Nasser on 26 March 2017, 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 DIFC Courts have no jurisdiction to hear and determine this claim and the claim is therefore dismissed.

2. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 29 March 2017

At: 9am

REASONS

Parties

1. The Claimant is Hackett (the "Claimant"), the owner of the propertyunit 4JBRin Dubai (the "Property") who is filing a claim against the Defendant regarding the alleged breach of an MOU dated 27 July 2016 (the "Agreement of Sale").

2. The Defendant is Hania, (the "Defendant") an individual who signed the Agreement of Sale to buy the above-mentioned Property from the Claimant.

Background and the Preceding History

3. The underlying dispute arises in relation to an Agreement of Sale for the purchase by the Defendant of the Claimant's Property: unit 4, JBRDubai, UAE. The Agreement of Sale is identified as an "Addendum to Form F".

4. On 15 February 2017, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for damages relating to the Defendant's alleged breach of the Agreement of Sale in the sum of USD $58,503.00, being the penalty fee amount provided for in the Agreement of Sale.

5. The Defendant responded to the claim on 22 February 2017 by filing defence submissions in relation to the claim.

6. On 5 March 2017 and 16 March 2017, the parties attended a First and Second Consultation before an SCT Officer but were unable to reach a settlement. The Claimant was represented by his real estate broker at the First Consultation and by his son at the Second Consultation.

The Hearing

7. On 26 March 2017, both the Claimant's representative and the Defendant attended a Hearing before me. At this time, I asked the parties to make submissions regarding the jurisdiction of the DIFC Courts and the SCT over the claim, especially with regard to real property located in mainland Dubai and not in the DIFC Free Zone.

8.The Defendant made oral submissions contesting the jurisdiction of the DIFC Courts and the SCT over the claim and mentioned that the SCT Officer highlighted the issue at the First Consultation and again at the Second Consultation, at his request, in order to make the potential issue clear to the Claimant's son, who attended the Second Consultation on the Claimant's behalf.

9. At the Hearing, the Claimant submitted that the parties had mutually agreed for the DIFC Courts and the SCT to have jurisdiction in the event of a dispute between them, pursuant to Article 3.1 of the Agreement of Sale which states:

> "This Agreement shall be governed by and construed in accordance with the laws of the Dubai International Financial Centre. In the Emirate of Dubai, UAE."

Finding

10. Based on the arguments put forward at the Hearing and based on consideration of the law applicable to the dispute, I consider this dispute to fall outside of the jurisdiction of the DIFC Courts. Although the Defendant did not formally apply to contest jurisdiction, I have taken into account his oral application to contest jurisdiction and I highlight that any judge of the DIFC Courts must take into account the jurisdiction of the court to adjudicate any claim before, regardless of the parties' submissions on the issue.

11. Rule 53.2 of the Rules of the DIFC Courts ("RDC") requires that the SCT only hear cases that fall "within the jurisdiction of the DIFC Courts."

12. 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."

13. There is no evidence of any of these gateways except Article 5(A)(2) having the potential to apply in the circumstances. I am satisfied that Clause 3.2 of the Agreement of Sale would ordinarily have the effect of the parties `opting in' to the DIFC Courts Jurisdiction, as its provisions are specific, clear and express, as required by Article 5(A)(2) above. However, the implications of the subject matter of the Agreement of Sale being real property and the location of that Property must be considered.

14. Article 8 of DIFC Real Property Law provides:

> "(1) From the date on which this Law comes into force, all real property from time to time within the jurisdiction of the DIFC is governed by this Law.
>
> (2) Real property within the jurisdiction of the DIFC includes:
>
> (a) the real property referred to in Article 4(1); and
>
> (b) any real property later brought within the jurisdiction of the DIFC, by any method."
>
> Thus, it is clear and both parties accept that the Property, located in Jumeirah Beach Residence Dubai, would not be considered to be within the physical jurisdiction of DIFC.

15. Generally, the parties to a dispute may agree on the jurisdiction of a specific court pursuant to Article 31(5) of Federal Law No.11 of 1992 Concerning Civil Procedures (the "CPC"), which states:

> "Save in the cases provided for in article 32 and articles 34-39 it shall be permissible to agree on the jurisdiction of a specified court to determine a dispute and in the event jurisdiction shall be vested in such court or in the court in whose area the defendant has his domicile or place of residence or place of business."

16. Article 32 of the same law provides for the following exception to the above:

> "(1) In actions in rem in respect of real property and actions for possession jurisdiction shall be vested in the court whose area the real property, or a part thereof if it located in the areas or more than one court is located.

(2) In actions in personam in respect of real property, jurisdiction shall be vested in the court whose area the real property is located or the defendant has his domicile."

17. The Claimant's claim concerns real property located within Dubai but outside of the DIFC. As the dispute relates to the Defendant's alleged breach of the Agreement of Sale, I determine this claim to be an `action in personam' in respect of real property and Article 32(2) would apply in the circumstances. Accordingly, `jurisdiction is vested in the court in whose area the real property is located or the defendant has his domicile' would effectively exclude the DIFC Courts from having jurisdiction as neither the Property or the parties are located within the DIFC.

18. Furthermore, Part 5 of DIFC Law No. 10 of 2005 provides that the law governing rights in property, including the validity of transfer of property shall be that of the jurisdiction where the property is physically located. Thus, the DIFC Courts must apply UAE Federal and Dubai laws when determining issues relating to the rights and transfer of property within Dubai. Therefore, DIFC Law No. 10 of 2005 in conjunction with Article 32 of the CPC, mandate that the DIFC Courts cannot have jurisdiction over a claim relating to rights in property or transfer of property which is located outside of the DIFC. This position must be adhered to even where the parties have previously agreed for the DIFC Courts to have jurisdiction, as any attempt to `opt-in' to the jurisdiction of the DIFC Courts would contradict DIFC and UAE law.

19. Accordingly, the Claimant's claim must be dismissed as the DIFC Courts lack jurisdiction over the matter. The Defendants' oral application to contest jurisdiction is therefore granted. I make no comment as to the merits of the dispute.

20. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 29 March 2017

At: 9am