Claim No. SCT 015/2020

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

LENRU

Claimant

and

(1) LELAN RESTAURANT LTD.
(2) LATTEIN

Defendants

Hearing **: 3 May 2020**
Judgment **: 17 May 2020**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 20 January 2020

AND UPON the claim being amended on 8 and 17 March 2020

AND UPON a Consultation being held before SCT Judge Nassir Al Nasser on 8, 13 and 24 April 2020

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

AND UPON a hearing having been listed before SCT Judge Maha Al Mehairi on 3 May 2020, with the Claimant's and Defendants' representatives in attendance

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

IT IS HEREBY ORDERED THAT:

1. The First Defendant shall pay the Claimant the sum of AED 144,600.

2. The First Defendant shall arrange an inspection of the Premises with the Claimant within 7 days from the date of this Order.

3. The security deposit of AED 25,000 shall remain within the possession of the Claimant until the Claimant has completed an inspection of the Premises.

4. In the event that no damage has occurred to the property, the security deposit of AED 25,000 shall be deducted from the Judgment Sum.

5. The First Defendant shall clear all outstanding charges towards DEWA, District Cooling and any other service charges up until 14 May 2020.

6. The First Defendant shall pay the Claimant the Court filing fee in the sum of AED 7,230.

7. Claims against the Second Defendant shall be dismissed for lack of jurisdiction.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 17 May 2020
At: 12pm

THE REASONS

The Parties

1. The Claimant is Lenru, the Landlord of retail unit xxx situated in DIFC (the "Claimant").

2. The Defendant is Lelan Restaurant Ltd., a restaurant located in the DIFC (the "First Defendant").

3. The Second Defendant is Lattein L.L.C, a restaurant located in Dubai (the "Second Defendant").

Background and the Preceding History

4. On 30 May 2019, the Claimant and First Defendant entered into a lease agreement for the rental of the retail unit No. xxx in DIFC (the "Premises"), (the "Lease Agreement"). The underlying dispute relates to alleged unpaid rent by the First Defendant pursuant to the terms of the Lease Agreement.

5. On 20 January 2020, the Claimant filed a claim with the DIFC Courts' Small Claims Tribunal (the "SCT") alleging that the Defendants had breached the terms and conditions of the Lease Agreement, and that the First Defendant had failed to fulfill its obligations under the Lease Agreement by refusing to pay any amount towards the rent of the Premises.

6. On 17 March 2020, the Claimant filed an Amended Claim Form, seeking an order that the First and Second Defendants jointly and severally pay the total amount of AED 183,533.08, as follows (the "Amended Claim"):

(a) AED 126,000 in respect of the remainder of the Lease Agreement until 14 May 2020;

(b) AED 6,000 towards the 3 bounced cheques;

(c) AED 50,000 as liquidated damages as per Clause 35 of the Lease Agreement; and

(d) The First and Second Defendants to clear the amount of AED 1,533.08 for outstanding charges towards DEWA, District Cooling and any other service charges until the date of evacuation.

7. The Claimant also sought an order for the following terms:

(a) The Security Deposit of AED 25,000 shall be forfeited by the tenant in favour of the Landlord as liquidated damages as per the Tenancy Contract;

(b) The First Defendant to vacate the premise immediately, and to hand it over in good condition to the Claimant, and the Claimant to gain access immediately to inspect the leakage in the Premises; and

(c) For the First and Second Defendants to pay all legal costs associated with filing this claim.

8. The parties met for a Consultation with SCT Judge Nassir Al Nasser on 8, 13 and 24 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 3 May 2020.

The Claim

9. The Claimant's case is that they entered into a Lease Agreement with the First Defendant for a 1-year period, from 15 May 2019 to 14 May 2020, for the amount of AED 200,000 to be paid over 5 monthly instalments.

10. The First Defendant paid the first 2 instalments in the total amount of AED 84,000, however, it then failed to pay the remaining 3 instalments. All of the cheques that had been provided by the First Defendant as payment for the remaining rent bounced due to insufficient funds.

11. Thereafter, the First Defendant failed to make any further payments under the Lease Agreement. The Claimant sent several notices to the First Defendant, requesting that they pay all of the outstanding rent. However, no sum payment was received, therefore, the Claimant proceeded to file its Claim with the SCT. I shall elaborate on each of the Claimant's claims in the discussion below.

12. The total sum claimed by the Claimant as set out in the Amended Claim Form is the sum of AED 183,533.08, in addition to legal costs associated with the filing of this Claim. The Claimant also seeks penalties as stated within the Lease Agreement.

The Defence

13. The Defendants failed to file any defence against the Claimant's claims. At the hearing, the First Defendant's representative stated that he is no longer acting as a manager or working for the Second Defendant. In addition, he asserts that there is no connection between the Defendants.

14. The First Defendant also stated that they are willing to pay the outstanding rent in instalments, without the penalties that the Claimant seeks to impose.

Discussion

15. First and foremost, the relevant Lease Agreement is in relation to a retail store located in the DIFC, therefore, by default, any agreement shall be governed by the prevailing law of the DIFC, United Arab Emirates, and that upon failure to resolve any disputes connected to the Lease Agreement, the dispute shall be referred to the DIFC Courts. 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.

16. The Court will first review the calculation of the outstanding rent, and then discuss whether any penalties shall apply, and lastly determine the Defendants' financial obligations towards the Claimant.

Unpaid Rent

17. When calculating the outstanding rent, the court must establish the last day of the lease. The Court is satisfied that, on 14 May 2020, the Lease Agreement between the parties shall expire and the First Defendant has agreed to vacate the Premises, with the expectation of receiving a NOC

from the Claimant to clear their furniture from the Premises. As such, I find that the First Defendant is liable to pay the amount of AED 126,000, as contractually agreed by virtue of the Lease Agreement signed between the parties.

18. In accordance with the terms of the Lease Agreement, the First Defendant is also liable to pay the amount of AED 6,000 as a result of the 3 bounced cheques that were provided by the First Defendant as stated below:

> "54. In the event any cheque is bounced by the bank for any reason whatsoever, the tenant shall be bound to pay AED 2,000 (two thousand dirhams) as mutual agreed fixed compensation."

Penalties

19. The Claimant drew the Courts' attention to a number of clauses within the Lease Agreement, each of which are set out below:

20. Clause 2 reads as follows:

> "2. without prejudice to the rights and remedies of the landlord under this lease or under applicable law if the Tenant fails to make any payments to the landlord of the Rent or any sums whatsoever due to the Landlord under this Lease at the time or times or within the periods specified in this Lease, the Landlord may charge the Tenant a penalty there on in addition to the owed amount calculated at a rate of ten percent (10%) per annuum on which the payment is due in accordance with this lease until the date of full payment as mutual agreed compensation."

21. In review of Clause 2, the Court finds that the Clause is ambiguous as to the application of the 10% penalty. The Court is of view that such a penalty shall apply only on outstanding rent that falls due under the Lease Agreement, as such 10% of AED 126,000 is AED 12,600.

22. Clause 35 of the Lease Agreement reads as follows:

> "35. Consequent to the termination of this lease agreement based on the above clause, the Tenant's right to use the Premises for the rest of the Lease Period shall be ceased and terminated, and the remainder of the rent amount or an amount equal to 3 month rent , whichever is more, shall be paid to landlord in addition, security Deposit as mentioned in clause (j) of above mentioned particular shall be forfeited in favor of the Landlord as liquidated damages."

23. Upon reviewing Clause 35, I am satisfied that the Claimant has failed to submit documentation that serves as an official termination of the Lease Agreement. On review of the court file, no documents were presented before the Court that seek to touch upon this issue.

24. As stated above, I find that the Lease Agreement will expire on 14 May 2020 and neither of the parties requested early termination of the Lease Agreement. As such, the Court is satisfied that Clause 35 does not apply in this case. Accordingly, I dismiss the Claimant's claim for penalties under Clause 35.

Liability of payment

25. To determine whether the Second Defendant is jointly liable for the rent, the Court must examine the Indemnification Letter (the "Letter") as signed by Mr. lisan, the authorized signatory of the First Defendant. The Letter reads as follows:

> "Dear Sirs,
>
> I/we the undersigned, Lisan We do hereby confirm the issuance of the cheques mentioned below in favor of Lenru on behalf of the tenant Lelan RESTAURANT as the rent amount for the above-mentioned tenancy contract.
>
> I/we hereby will remain liable jointly with the tenant/s M/s Lelan RESTAURANT in the event of bouncing any cheque/s or failing to pay any of the liabilities or dues including but not limited to the rent amount that may occur or in relation with the above-mentioned Tenancy contract.
>
> CHEQUE DETAILS;

Cheque Number	Date	Drawn On	Amount (Dhs)
000309	02/06/2019	ENBD	42,402/-
000310	15/07/2019	ENBD	42,000-
000311	15/09/2019	ENBD	42,000-
000312	15/11/2019	ENBD	42,000-
000313	15/01/2020	ENBD	42,000-

26. In review of the Letter, I note that it is signed by Mr. Lisan, the authorized signatory of the First Defendant, and a licensed Partner and Manager of the Second Defendant. Mr. Lisan signed the cheques that were issued by the Second Defendant.

27. 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."

28. There is no evidence of any of these gateways except Article 5(A)(2) having the potential to apply in the circumstances between the Claimant and the Second Defendant.

29. Article 8 of DIFC Law No. 10 of 2018 (the 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."

30. Thus, it is clear that the property located in Dubai would not be considered to be within the physical jurisdiction of DIFC. 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."

31. 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."

32. I find that `jurisdiction is vested in the court in whose area the real property is located, or the defendant has his domicile', therefore, this would effectively exclude the DIFC Courts from having jurisdiction over claims against the Second Defendant as the property of the Second Defendant is located in Dubai.

Furthermore, the Second Defendant failed to acknowledge service or previously agree to `opt-in' to the jurisdiction of the DIFC Courts. It is true that the cheques were issued by the Second Defendant, however, as I have noted above, the Second Defendant, as a party based outside of the DIFC, has not agreed by way of an express written agreement to have this dispute adjudicated by the DIFC Courts. As such, the claims against the Second Defendant shall be dismissed for lack of jurisdiction.

33. The Claimant also seeks to recover the fee that was paid to the Court for the filing of this Claim. I am of the view that, as the Claimant has been unsuccessful on some of their claims, they should only be entitled to recover a portion of the fee in respect of the claims for which they have been successful.

Conclusion

34. In light of the aforementioned, I find that the First Defendant is liable to pay the unpaid rent in addition to penalties, in the amount of AED 144,600.

35. The First Defendant shall arrange an inspection of the Premises with the Claimant within 7 days from the date of this Order.

36. The security deposit of AED 25,000 shall remain within the possession of the Claimant until the Claimant has completed an inspection of the Premises. In the event that no damage has occurred to the property, the security deposit of AED 25,000 shall be deducted from the Judgment Sum.

37. The First Defendant shall clear all outstanding charges towards DEWA, District Cooling and any other service charges up until 14 May 2020.

38. The First Defendant shall pay the Claimant the amount of AED 7,230, being 5% of the judgment sum owed to the Claimant.

39. Claims against the Second Defendant shall be dismissed for lack of jurisdiction.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 17 May 2020
At: 12pm