**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

**MAITHALI**

Claimant

and

**MITHUN**

Defendant

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Hearing : **29 November 2020**
Judgment : **22 December 2020**

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**JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI**

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**UPON** this claim being filed on 24 September 2020

**AND UPON** a Consultation being listed before SCT Judge Hayley Norton on 3 November 2020, the parties failing to reach a settlement at the Consultation

**AND UPON** a Hearing being held before SCT Judge Maha Al Mehairi on 29 November 2020, with the Claimant's and the Defendant's representatives in attendance

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

**IT IS HEREBY ORDERED THAT:**

1. The Claimant's Claim is dismissed.

2. Each party shall bear their own costs.

Issued by:
**Ayesha Bin Kalban**
SCT Judge and Deputy Registrar
Date of issue: 22 December 2020
At: 3pm

**THE REASONS**

**The Parties**

1. The Claimant is Maithali (the "Claimant"), a company that is specialized in restaurant activities, located in DIFC, UAE.

2. The Defendant is Mithun (the "Defendant"), a company that provides events management services located in Dubai, UAE.

**Background and the Preceding History**

3. The underlying dispute arises over the Claimant's request from the Defendant to supply and install a void sound system at Martin , the Claimant's upcoming restaurant, for the amount of AED 223,776. The Claimant paid 75% of that amount being AED 167,832 and the rest of the amount being the 25% was to be paid 30 days after the test and installation of the sound system.

4. The Claimant faced difficulties with the opening of Martin , and requested that the Defendant store the equipment until further notice. The parties faced issues in relation to payment and the Defendant proceeded to file a Claim in Dubai Courts against the Claimant in relation to this matter and other matters faced with the Claimant.

5. On 24 September 2020, the Claimant filed a claim in the DIFC Courts Small Claims Tribunal (the "SCT") in respect of the deposit paid to the Defendant requesting that the Defendant refund the amount of AED 167,832 to the Claimant.

6. A Consultation was then held before SCT Judge Hayley Norton on 3 November 2020, with the parties' representatives in attendance. However, the parties failed to reach a settlement.

7. Pursuant to the Rules of the DIFC Courts a Hearing was then listed before me on 29 November 2020. Both parties' representatives were in attendance. This matter was then reserved for judgment, which I give below.

**Discussion**

8. As part of its submissions, the Defendant provided the Dubai Courts' Judgment in relation to the matter disputed by the Claimant under number Appeal No. 1111 of 2018/commercial and the translation of the Judgment. The Dubai Courts Judgment contains the Claimant's name and the same incidents that the Claimant is requesting for the DIFC Courts to deal with.

9. The Court is of view that a matter that is dealt with in another Court cannot be judicated in another Court. This is an adage recognized since Henderson v Henderson 3 Hare 100.

10. Sir James Wigram VC in Henderson v Henderson 3 Hare 100 stated the rule in its original form at 114-115:

> *"In trying this question, I believe I state the rule of the court correctly, when I say, that where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."*

11. The policy behind this rule was explained by the English Court of Appeal in Barrow v Bankside Agency Ltd [1996] 1 WLR 257 at 260:

> *"The rule in Henderson v Henderson 3 Hare 100 is very well known. It requires the parties, when a matter becomes the subject of litigation between them in a court of competent jurisdiction, to bring their whole case before the court so that all aspects of it may be finally decided (subject, of course, to any appeal) once and for all. In the absence of special circumstances, the parties cannot return to the court to advance arguments, claims or defences which they could have put forward for decision on the first occasion but failed to raise. The rule is not based on the doctrine of res judicata in a narrow sense, nor even on any strict doctrine of issue or cause of action estoppel. It is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on for ever and that a defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed."*

12. The contemporary version of the rule in Henderson v Henderson has been re-cast as a form of abuse of process by the House of Lords in Johnson v Gore Wood & Co [2002] 2 AC 1 ("Johnson"). Lord Bingham opined as follows (at 31):

> *". Henderson v Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in early proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not. . Properly applied, and whatever the legitimacy of its descent, the rule has in my view a valuable part to play in protecting the interests of justice." [Emphasis added]*

13. I also pause to observe that whilst these authorities are not binding upon this Court, they have persuasive value. Be that as it may, whilst I observe that Henderson v Henderson abuse of process (as recast by Johnson) may be triggered on the present facts, I need not go so far as to reach a conclusive finding on that ground.

14. The Claimant's Claim is dismissed in its entirety because I do not find any legitimate reason to permit the case to be judicated in the DIFC Courts, in light of the fact that it has already been adjudicated in the Dubai Courts.

**Findings**

15. This is a very straight forward matter. The Court agrees with the Defendant insofar as this matter was dealt with by Dubai Courts, and the Claimant cannot file a claim against the same party that the Dubai Courts issued a judgment against, especially since the Claimant failed to provide any evidence to support the fact that the Claim before this Court is a completely separate matter than the Claim judicated in Dubai Courts.

16. In light of the aforementioned, I dismiss the Claimant's claims.

17. Each party shall bear their own costs.

Issued by:
**Ayesha Bin Kalban**
SCT Judge and Deputy Registrar
Date of issue: 22 December 2020
At: 3pm