THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE SMALL CLAIMS TRIBUNAL

BETWEEN

LUCIAN

Claimant

and

LATHORE

Defendant

ORDER WITH REASONS OF SCT JUDGE DELVIN SUMO

UPON reviewing the Claim Form submitted by the Claimant dated 17 February 2022 (the "Claim")

AND UPON this Claim having been called for a Jurisdiction Hearing before SCT Judge Delvin Sumo on 14 March 2022.

AND UPON the Claimant's and the Defendant's representatives attending the Jurisdiction Hearing

AND UPON considering the case file and submissions contained therein

IT IS HEREBY ORDERED THAT:

1. The Claim shall be dismissed due to lack of jurisdiction.

2. Each party shall bear their own costs.

Issued by:
Hayley Norton
SCT Judge
Date of issue: 18 March 2022
At: 9am

SCHEDULE OF REASONS

The Parties

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

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

Discussion

3. Rule 53.2 of the Rules of the DIFC Courts (the "RDC") requires that the Small Claims Tribunal (the "SCT") 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:

"(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."

5. Pursuant to Article 5(A)(2) of the JAL, the DIFC Courts can exercise its jurisdiction over a matter that is unrelated to the DIFC, where the parties have agreed in writing that any dispute arising between them would be referred to the DIFC Courts for adjudication. Such a provision would allow the parties to `opt-in' to the DIFC Courts' jurisdiction, provided that it clearly demonstrates the parties' intention to do so.

6. The Claimant filed its Claim with the SCT seeking the payment of sums allegedly owed to the Claimant by the Defendants in relation to two purchase orders dated 19 December 2020 and 21 June 2021 (the "Agreement").

7. Upon reviewing the Agreement, it appears that the terms and conditions set out within the Agreement do not contain an express clause by virtue of which the DIFC Courts would be able to exercise jurisdiction over this Claim in accordance with Article 5(A)(2) of the JAL. Instead, it appears that the Agreement contains an arbitration clause which sets out the parties' intention to refer any disputes relating to the Agreement for arbitration. The relevant wording of the clause is set out below:

"15. If a dispute arises between the parties out of or in connection with this Contract, the disputing Party shall refer the dispute in writing to the other Party not later than 14 days after the disputing Party becomes aware of such dispute. The Parties shall endeavor to settle any dispute including its validity in an amicable manner between the senior representatives of each Party involved with the Project. If an agreement cannot be reached within 14 days of the date of referral then the dispute shall be referred to the Managing Directors of the respective Parties (or their delegated authorized persons who shall have authority to resolve/settle the dispute). If a dispute cannot be settled amicably within 14 days of referral to the Managing Directors of the respective parties or their delegated authorized persons the dispute may be referred by either party to be finally settled by arbitration in accordance with the Rules of Arbitration of the Dubai International Arbitration Centre, Dubai, by one arbitrator appointed by LathoreS. Any such arbitration shall take place in the Dubai International Financial Centre, Dubai, UAE and the proceedings shall be conducted and all documentation shall be in the English Language. The parties agree that the award shall be final and binding on the parties. Performance of his Contract shall not stop during any arbitration proceedings".

8. The Claimant submits that Article 22 of its General Conditions include a clause by virtue of which the DIFC Courts would be able to exercise jurisdiction over this Claim. The Claimant alleges that the General Conditions were attached to the Hire Contract and such a document is normally signed by an on-site engineer of the Defendant upon delivery of the equipment, and, therefore, the Claimant submits that the General Conditions supersede the Agreement and that these are binding upon the Defendant. The relevant wording of the clause is set out below:

"Any dispute that may arise between the parties shall be referred to DIFC court or at any court as applicable at the sole discretion of the Owner".

9. In response, the Defendant submits that the Claimant is seeking to rely upon a clause detailed overleaf from the Hire Contract and submits that even if the parties had intended to `opt-in' the DIFC Courts jurisdiction, the sole intention of the on-site engineer is merely to sign the Hire Contract to recognise the delivery of the equipment. The Defendant further states that the Hire Contract *"was not signed by an authorised signatory such that the signature would be deemed binding on the Defendant as the Claimant is alleging"*.

10. Firstly, it is important to note that, pursuant to Article 5(A)(2) of the JAL, the parties agree in writing that any dispute arising between them would be referred to the DIFC Courts for adjudication. Such provision should also clearly demonstrate the parties' intention to opt-in to the DIFC Courts' jurisdiction.

11. The General Conditions, as submitted by the Claimant, do not appear to be signed by any party nor has the Claimant submitted any evidence or proof that these General Conditions were indeed attached to the Hire Contract which has been signed by an on-site engineer on behalf of the Defendant. Even, for argument's sake, the General Conditions were attached to the Hire Contract, the capacity of the on-site engineer within the Defendant's company is unknown to me.

12. Pursuant to Articles 20 and 21 of Companies Law DIFC Law No. 5 of 2018 (the "Companies Law"), a director of a company shall have the capacity to represent the company and enter into binding contracts. The wording of the relevant Articles is set out below:

"Article 20

.a person acting in good faith when dealing with the Company is not affected by any limitations in its Articles of Association relating to its Directors' powers to bind the Company, or authorize another to bind the Company".

Article 21

A person acting under the express or implied authority of a Company may make, vary, revoke, or discharge a contract or sign an instrument on behalf of that Company in the same manner as if the contract were made, varied, revoked or discharged or the instrument signed by a

natural person".

13. Given the importance of the dispute resolution choice between the parties, it is important to consider the capacity of the individual signing the Hire Contract. As found above, the Claimant has failed to provide any proof or evidence demonstrating the capacity of the concerned individual or to show that he was indeed authorised to accept the General Conditions on behalf of the Defendant.

14. As confirmed by both parties in their written submissions and at the Hearing, the on-site engineer signed the Hire Contract upon delivery of the equipment. It could not be the intention of the parties to introduce new terms and conditions to the Agreement at this stage. It is clear from the above that the parties have different views as to the choice of dispute resolution and, in my view, the evidence submitted fails to demonstrate the parties' intention to opt-in to the DIFC Courts' jurisdiction.

15. In light of the aforementioned, I am of the view that, in absence of a clear written opt-in clause to the DIFC Courts' jurisdiction between the parties, the DIFC Courts cannot adjudicate this Claim. Moreover, the DIFC Courts do not have default jurisdiction over this claim as all parties are based outside of the DIFC and the other gateways of the JAL do not apply.

16. Therefore, I dismiss the Claimant's Claim for AED 97,143.07 on the grounds that the DIFC Courts lacks jurisdiction over this Claim.

Conclusion

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

18. Each party shall bear their own costs.