Claim No. SCT 120/2018

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

IARA & COMPANY LIMITED

Claimant

and

IBEN INDUSTRIES FZE

Defendant

Hearing: **4 June 2018**

Judgment: **13 June 2018**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 19 March 2018;

UPON this Claim having been called for a Consultation before SCT Judge Ayesha Bin Kalban on 25 April 2018;

UPON the parties having not reached settlement at the Consultation;

UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 4 June 2018, with the representatives of the Claimant and the Defendant in attendance;

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the amount of AED 116,272 for pending invoices.

2. The Defendant shall pay the Claimant the Court Filing Fee in the amount of AED 5,813.62.

3. The Defendant shall pay the Claimant interest at the rate of 9% from the period of 13 June 2018.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 13 June 2018

At: 2pm

THE REASONS

The Parties

1. The Claimant is Iara & Company, a law firm registered in the DIFC located, DIFC, Dubai.

2. The Defendant is iben Industries FZE, a specialised engineering and steel fabrication services company catering to the needs of various

industries located in Jebel Ali Free Zone, Dubai.

Background and the Preceding History

3. On 6 October 2016, the parties entered into an Engagement Agreement (the "Engagement Agreement") for the provision of legal services by the Claimant to the Defendant. The Claimant provided legal services to the Defendant on a variety of issues.

4. Starting from January 2017, the Claimant provided various streams of legal advice to the Defendant, primarily relating to a legal due diligence exercise. In addition, at each stage of the work to be carried out the Claimant wrote to the Defendant to set out its estimated costs for carrying out the work, and the Defendant replied back with confirmation and approval of the invoice.

5. On 7 November 2016, the Claimant emailed the Defendant requesting approval on the due diligence investigation and report performed by the Claimant, to which the Defendant provided confirmation by email and approved the fee of AED 50,000.

6. On 23 November 2016, the Claimant also reviewed a share purchase agreement and performed a due diligence investigation of Singaporean documentation for the Defendant for the fee of AED 45,000.

7. Moreover, on 12 January 2017, the Claimant invoiced the Defendant the amount of AED 15,000 for the drafting of purchase price adjustment and completion accounts provisions for a share purchase agreement.

8. All these invoices were sent by email and approved by the Defendant via email each time. The Claimant claims that the Defendant has not objected to the fees charged or the work performed but instead requested for a period of time in which to make payment of the outstanding invoices.

9. The Claimant has performed the work requested by the Defendant in line with the agreed fee estimates. In breach of the Engagement Agreement, the Defendant has failed to pay the invoices. On 12 September 2017, the Claimant emailed the Defendant and reminded them of the three outstanding invoices totaling the amount of AED 116,272. The Defendant failed to pay this amount.

10. On 19 March 2018, the Claimant filed a case against the Defendant in the DIFC Courts Small Claims Tribunal ("SCT") requesting that the Court order that, as per the Engagement Agreement, the Defendant be required to pay the pending invoices for 2016 in the amount of AED 116,272 in addition to interest and court fees.

11. The parties participated in a Consultation on 25 April 2018, before SCT Judge Ayesha Bin Kalban but were unable to reach a settlement. On 4 June 2018 I heard submissions from representatives of the parties in the final hearing.

Submissions and Hearing

12. The Claimant argued in the Claim Form and Particulars of Claim that the Defendant owed the Claimant AED 116,272 plus interest as payment outstanding for legal services provided to the Defendant under the Engagement Agreement between the parties. The Claimant alleges that the Defendant's failure to pay is a breach of that agreement.

13. The Claimant highlights that the three outstanding invoices sent to the Defendant pursuant to the Engagement Agreement remain partially unpaid. The November 2016 Invoice for AED 50,000, the January 2017 Invoice for AED 59,402, and another Invoice dated January 2017 for AED 6,870.

14. The Claimant invoiced the Defendant in accordance with Clause 3 of the Engagement Agreement which provides the procedures for invoicing under the title "Basis of Charges"; this clause explains on what basis charges are made. 3.1 of the Clause states that *"Unless we agree a fixed fee or other fee arrangement ."*, in the Defendant's case they agreed on a fixed fee sum for each scope of work which was approved by the Defendant by email each time an invoice was sent.

15. Clause 11 of the Engagement Agreement under title "Emails" states that:

> "We will use email for the majority of our communication with you. If you prefer another mode of communication please let us know so that suitable arrangements can be made"
>
> As such approval of invoices via emails is a method agreed between the parties and they haven't requested another method of communication.

16. The Defendant did not provide any written acknowledgement of service or defence in their reply to the Claim. In the final hearing, the Defendant provided oral submissions stating that the team who approved the invoices is no longer working with the Defendant and that they were an external consultant team which made a scam over the Defendant, and used the documents provided by the Claimant for their benefit. It is claimed that they also used the Defendant's name to trick the Claimant and approved the invoices on behalf of the Defendant. The Defendant argues that these payments should be invoiced to the consultant team directly as they approved the invoices and used the documents.

17. In the hearing, the Claimant's representative replied to the accusations to say that the team that they dealt with had business cards from the company and were sending emails with the company's signature and from their email server. In addition, no one from the Defendant's company communicated to the Claimant that these individuals no longer worked with the Defendant or that they no longer represent them.

18. The Claimant contends, in the main, that it has performed its obligations under the Engagement Agreement and the amounts claimed should not be dismissed due to the fact that the individuals are not from the company. They also added that the Defendant has not once confirmed that the Claimant did not provide the services.

19. Furthermore, the Defendant's representative confirmed that the invoices that were presented by the Claimant were valid and still pending payment.

Findings

20. First and foremost, the relevant Engagement Agreement falls under the DIFC Courts' jurisdiction as the Engagement Agreement at Clause 14-2, states that:

> "These terms shall be governed by and construed and interpreted in accordance with the laws of the jurisdiction from which we delivered the work to you. In relation to our office in the Dubai International Financial Centre ("DIFC"), however the laws of the Emirate of Dubai and the applicable federal laws of the United Arab Emirates shall apply."
>
> As the claim value is less than AED 500,000, this claim is properly before the Small Claims Tribunal of the DIFC Courts.

21. There is no dispute between the parties as to the existence and applicability of the Engagement Agreement. The Claimant asserts that they are owed the sums claimed under the Engagement Agreement and that they have complied with all obligations required.

22. The Claimant's Claim is accepted on the basis that there is sufficient evidence to support the Claim and the Defendant accepted the invoices in the final hearing. As such it is ordered that the Defendant shall pay the Claimant the amount of AED 116,272 for pending invoices.

23. The Claimant has also claimed interest under Article 118(2) of the DIFC Contract Law, which provides that the *"rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment."*. Pursuant to Practice Direction 4 of 2017, Interest on Judgments, the Claimant is granted interest to accrue on the judgment amount at the rate of 9% from the period of 13 June 2018.

24. The Defendant shall pay the Claimant the Court filing fee in the amount of AED 5,813.62.

25. Therefore, based on the above reasons the Claimants claims against the Defendant are accepted.



Issued by:

Maha Al Mehairi

SCT Judge

Date of Issue: 13 June 2018

At: 2pm