Claim No. SCT 086/2020

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
BEFORE SCT JUDGE NASSIR AL NASSER

BETWEEN

LUDEN COMMERCIAL BANK (PJSC)

Claimant

and

LIEDA

Defendant

Hearing

: 22 April 2020

Judgment

: 30 April 2020

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON this Claim being filed on 3 March 2020

AND UPON the Defendant filing an Acknowledgment of Service with an intention to defend all of this claim dated 4 March 2020

AND UPON a Consultation being held before SCT Judge Delvin Sumo on 12 March 2020 with the Claimant's representative and the Defendant in attendance

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

AND UPON a hearing being held before SCT Judge Nassir Al Nasser on 22 April 2020 with the Claimant's representative 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 131,472.57 in relation to sums owed for the Loan, plus interest at the rate of 9% per annum.

2. The Claimant's claim in relation to the Credit Card shall be dismissed for lack of jurisdiction.

3. The Defendant shall pay the Claimant the Court Fee in the sum of AED 6,573.62.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of issue: 30 April 2020

At: 4pm

THE REASONS

Parties

1. The Claimant is Luden Commercial Bank a bank providing financial services including credit cards and personal loans to customers (the

"Claimant").

2. The Defendant is Lieda, an individual customer of the Claimant Bank (the "Defendant").

Background

3. The parties entered into a written agreement on 23 January 2017, entitled `Luden Lest Personal Loan and Credit Card Application Form' (the "Agreement").

4. On 29 January 2017, following an Application made by the Defendant, the Claimant was approved for the sale of a Lest Personal Loan in the sum of AED 142,000, that was repayable in 48 monthly instalments of AED 3,683 (the "Personal Loan").

5. On 14 June 2017, the Defendant made a Top-Up on the Personal Loan and the Claimant was granted a new loan under number 45467 in the amount of AED 209,000, that was repayable in 48 monthly instalments of AED 5,396 (the "Top-Up Agreement").

6. It is to be noted that the Claimant settled the previous loan (i.e. number 56749) and, as per the Top-Up Agreement, the new loan was credited into his account.

7. The Top-Up personal loan account has been in arrears since 14 June 2017.The outstanding amount allegedly owed by the Defendant to the Claimant in relation to the Personal Loan in AED 131,472.57.

8. The Claimant also alleges that, on 7 November 2016, the Defendant was approved for the sale of a Credit Card (the Lest Cashback Card") with a limit of AED 5,000, and it has been in arrears since 25 July 2019. The current outstanding amount allegedly owed by the Defendant to the Claimant in relation to the Credit Card is in the sum of AED 7,228.52.

9. Following the Defendant's failure to keep up with his repayments, the Claimant filed a claim with the DIFC Courts' Small Claims Tribunal (the "SCT") to recover the amounts on 3 March 2020 (the "Claim").

10. The Defendant responded to the Claim on 4 March 2020 intending to defend all of the claim, but the Defendant failed to file a defence.

Discussion

11. This Claim includes two main elements. First, it must be established that the DIFC Courts have jurisdiction over both of the Claimant's Claims, namely, the Loan Claim and the Credit Card Claim. Second, the two Claims must be assessed based on the documentary evidence provided to adjudicate whether the Defendant is in arrears and, if so, how much remains owing to the Claimant.

12. Due to the important fact that the SCT cannot give judgment on claims falling outside of its jurisdiction, I will address the SCT's jurisdiction over each claim below.

The Loan Claim

13. The Claimant argues that the Agreement between the parties was signed by the Defendant on 23 January 2017 (a copy of the Agreement was attached to the case file). The Defendant then applied for a Top Up of the Loan, following which, on 14 June 2017, the TopUp was completed, and the Defendant received the total sum of AED 209,000 payable in 48 monthly instalments.

14. The Defendant paid 23 out of 48 instalments and the remaining outstanding balance is AED 131,472.57.

15. The Claimant contends that the DIFC Courts and the SCT have jurisdiction over the claim as the Defendant agreed to the terms and conditions set forth in the Top-Up Agreement, as presented on the Luden system, which states at Clause 18, as follows:

> "the Civil Court of the Individual Emirates. The Federal Civil Courts of the United Arab Emirates, and the Courts of the Dubai International Financial Centre (including without limitation the Small Claims Tribunal of the DIFC). Shall have non-exclusive jurisdiction over all matters arising under the products' terms and conditions save that bank shall have the right to file actions in any court with jurisdiction over you or your assets."

16. I find that the parties have opted-in to the jurisdiction of the DIFC Courts pursuant to Clause 18 of the Terms and Conditions.

17. In relation to the Loan Claim, the Defendant failed to provide any defence to the claim. Therefore, based on the documentary evidence before me, I am satisfied that the Defendant has been in arrears since 14 January 2017 and the remaining balance of the Loan is the sum of AED 131,472.57.

18. The Claimant also requested for post judgment interest pursuant to Practice Direction No. 4 of 2017, which I shall award the Claimant.

The Credit Card Claim

19. In respect of the Credit Card Claim, the Claimant included the Credit Card Application form signed by the Defendant.

20. In relation to the jurisdiction, I note that neither of the parties is a DIFC entity nor have the parties validly opted-in to the SCT's jurisdiction by way of written consent, thus, I am of the view that the SCT does not have jurisdiction over this Claim. While this is a valid argument for the Loan Claim, as per Clause 18 of the Terms and Conditions, this argument does not apply for the Credit Card Claim.

21. Therefore, I shall dismiss the Claimant's claim for the sum of AED 7,228.52 in respect of the Credit Card.

22. The Defendant shall pay the Claimant the Court fee in the sum of AED 6,573.62.

Finding

23. The Defendant shall pay the Claimant the amount of AED 131,472.57 in relation to sums owed for the Loan, plus interest at the rate of 9% per annum.

24. The Claimant's claim in relation to the Credit Card shall be dismissed for lack of jurisdiction.

25. The Defendant shall pay the Claimant the Court Fee in the sum of AED 6,573.62.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

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