Claim No. CFI-033-2017

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BEFORE H.E. JUSTICE OMAR AL MUHAIRI

BETWEEN

BANKMED (SAL) TRADING IN THE DIFC UNDER THE TRADE NAME BANKMED (DUBAI)

Claimants/Respondents

and

(1) FAST TELECOM GENERAL TRADING LLC

(2) ALI MOHAMMED SALEM ABU ADAS

(3) MOHAMMED JAWDAT AYESH MUSTAFA AL BARGOUTHI

(4) SAIF SEED SULAIMAN MOHAMED AL MAZROUEI

(5) IBRAHIM SAIF HORMODI

(6) AHMED ABDEL KADER HAMDAN ZAHRAN

Defendants/Applicants

ORDER WITH REASONS OF H.E. JUSTICE OMAR AL MUHAIRI

UPON reviewing the Applicant's ("**Second Defendant**") Application and supporting documents (the "**Application**")

AND UPON reviewing the Respondent's ("**Claimant**") submissions in response

AND UPON hearing the parties' submissions at the oral hearing on 31 October 2018

IT IS HEREBY ORDERED THAT:

1. The Application to set aside the Default Judgment of Judicial Officer Nassir Al Nasser dated 29 October 2017 is granted.

2. The Second Defendant is permitted to file a Statement of Defence within 14 days of this Order.

3. Costs in the case.

Issued by:

Nour Hineidi Kirk

Deputy Registrar

Date of issue: 12 November 2018

Time: 11 am

SCHEDULE OF REASONS

BACKGROUND

1. The Claimant is a Lebanese joint stock company registered as a foreign recognized company in the DIFC.

2. The Second Defendant is Mr Ali Mohammed Salem Abu Adas, a Jordanian National. The Second Defendant is a partner in the First Defendant.

3. The Claimant is claiming for unpaid debts it submits it is owed by the Defendants.

4. This Application is made by the Second Defendant to set aside the Default Judgment entered against it.

PARTIES' SUBMISSIONS

5. The Second Defendant submits that the Claim Form was not served upon him or at all and he only came to be aware of the Claim when he received a copy of an Execution Judgment issued by the Execution Court in Lebanon when it recognized the Default Judgment of the DIFC Courts.

6. The Second Defendant submits that he does not live at the address where the Claimant served the Claim Form, that being an address at Villa 18/2 Al Badia, Dubai, UAE. Furthermore, the Second Defendant submits that he no longer receives e-mails at the e-mail address the Claimants submit they electronically served the Claim Form.

7. The Second Defendant submits that the law firm BSA had no instructions from the Second Defendant to submit an Acknowledgement of Service of the Claim Form.

8. The Second Defendant further submits in the alternative that in any event the Claimant submitted its application for Default Judgment too early in that the requisite time for the Second Defendant to file its Defence had not yet expired when the Claimant submitted an application for Default Judgment against the Second Defendant. The Second Defendant submits that the Judge erred in his decision when he allowed the Default Judgment in October 2017.

9. Furthermore, the Second Defendant requests the Court to exercise its discretion and set aside the Default Judgment pursuant to RDC Rule 14.2.

10. The Second Defendant also submits that it intends to contest the jurisdiction of the DIFC Courts to hear this claim and submits this is another reason to for the DIFC Courts to set aside the Default Judgment.

11. The Claimant submits that the Facility Agreement clearly states the residential address of the Second Defendant as Villa 18/2 Al Badia, Dubai, UAE and specifically states that all parties to the Facility Agreement must notify the Claimant if there is a change of address.

12. The Claimant submits it has not received any such notification and therefore they legitimately served the Claim Form at the address provided in the Facility Agreement. The Claimant relies on evidence in the form of an Aramex delivery note to prove that the Claim Form was delivered and received at the relevant address, although it is noted that the delivery was received by a person other than the Second Defendant or his immediate family.

13. The Claimant submits that it also served the Claim Form electronically to an e-mail address previously used by the Second Defendant.

14. The Claimant submits that the law firm BSA is a reasonable law firm and would not have submitted an Acknowledgement of Service on behalf of the Second Defendant without instruction.

15. The Claimant submits that the Second Defendant was aware of the proceedings against him as he as attended several meetings with the Claimant during and after the time since the Claim Form had been served.

16. The Claimant submits that the Second Defendant's jurisdictional challenge has appeared out of time in that it was not submitted promptly and in accordance to RDC Rule 14.3, furthermore the Claimant submits it would procedurally be unfair to hear the jurisdictional challenge at this stage.

DISCUSSION

1. As to the Second Defendant's brief mention of his Application that the DIFC Courts do not have jurisdiction to hear this Claim, I will note that the Second Defendant has not pursued this argument in further and subsequent submissions. Furthermore, as I have already determined to set aside the Default Judgment Order based upon the above reasoning, it is unnecessary to discuss this argument further at this time. In any event, it is clear to me that the DIFC Courts do have jurisdiction over the matter. However, I am satisfied that the Jurisdictional and Arbitration clauses in the Facility Agreement are for the benefit of the Claimant and accordingly the Claimant is free to choose under which jurisdiction it wishes to bring the claim.

2. Furthermore, I note that the other Defendants have not contested jurisdiction and appear to accept the jurisdiction of the DIFC Courts.

3. I do not accept the Second Defendant's submissions made in relation to RDC Rule 14.1 as I am not satisfied that the Second Defendant was not served with the Claim Form. The address of the Second Defendant is clearly recorded in the Facility Agreement. The Second Defendant has not provided proof that he informed the Claimant of any change of address. Therefore, it is entirely reasonable and proper that the Claimant should attempt to deliver and serve the Claim Form at the address originally provided by the Second Defendant. I have considered the Aramex delivery note and I am satisfied that the Claim Form was delivered and served at the relevant address of the Second Defendant.

4. I note that the law firm BSA have not submitted any evidence to suggest they did not represent the Second Defendant at the time of issuing and Acknowledgement of Service on his behalf, and therefore I do not accept that BSA had not received instructions from the Second Defendant to represent him at the time of the Acknowledgment of Service. I thereby accept that the Acknowledgement of Service by the Second Defendant still stands.

5. However, I must consider RDC Rule 14.2 which allows the Court to set aside a Default Judgment in circumstances where there is a good reason why the Defendant should be allowed to defend the Claim. I find that that the Second Defendant should be allowed to defend the Claim as to do so would be in the interest of justice and in keeping with the overriding objective of this Court. Therefore, permission to set aside the Default Judgment is granted.

Costs

6. At this juncture, it is appropriate to assign costs of this Application to the case, with parties able to make further submissions on costs at the appropriate time.

Conclusion

7. In sum, the Defendant's Application Set Aside the Default Judgment is granted, with costs in the case.