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 NASSIR AL NASSER

BETWEEN

ITALO LLC

Claimant

and

IDELL CONSTRUCTION LLC

Defendant

Hearing: **20 November 2018**

Judgment: **20 November 2018**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant's representative at the hearing;

AND UPON the Defendant failing to attend the hearing although served notice of the hearing date;

AND PURSUANT TO Rule 53.61 of the DIFC Courts, if a Defendant does not attend the hearing and the Claimant does attend the hearing, the SCT may decide the claim on the basis of the evidence of the Claimant alone;

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 88,385.03 in relation to unpaid invoices.

2. The Defendant shall pay the Claimant the DIFC Courts fee in the sum of AED 4,419.25.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 20 November 2018

At: 3pm

THE REASONS

The Parties

1. The Claimant is Italo LLC (herein "the Claimant"), a company registered in Abu Dhabi located at Abu Dhabi, UAE.

2. The Defendant is Idell Construction LLC (herein "the Defendant"), a company registered in Dubai, located at Dubai, UAE.

Background and the Preceding History

3. The underlying dispute arises over hiring construction machinery by the Claimant to the Defendant pursuant to Hire Agreements (the "Agreements"), and the Defendant's failure to pay the Claimant sums due pursuant to the Agreements.

4. On 19 September 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of AED 88,385.03 due under 11 invoices.

5. On 8 October 2018, the Defendant sent an email to the Courts which was considered as an Acknowledgment of Service.

6. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 1 November 2018 but were unable to reach a settlement.

7. On 20 November 2018, a hearing was listed before me, at which only the Claimant attended in person and the Defendant was absent although served notice of the Hearing.

The Claim

8. The Claimant's case is that they entered into an agreement with the Defendant to supply construction machinery for a certain project with credit terms of 30 days from the date of the invoices, which are as following:

(a) INV No. 10223 dated 31 December 2017 in the sum of AED 7,692.00.

(c) INV No. 10224 dated 31 December 2017 in the sum of AED 8,000.00.

(d) INV No. 10437 dated 31 January 2018 in the sum of AED 8,400.00.

(e) INV No. 10438 dated 31 January 2018 in the sum of AED 8,400.00.

(f) INV No. 10637 dated 28 February 2018 in the sum of AED 8,400.00.

(g) INV No. 10638 dated 28 February 2018 in the sum of AED 8,400.00.

(h) INV No. 10711 dated 31 March 2018 in the sum of AED 6,138.46.

(i) INV No. 10843 dated 31 March 2018 in the sum of AED 8,077.65.

(j) INV No. 11029 dated 30 April 2018 in the sum of AED 8,400.00.

(k) INV No. 11228 dated 31 May 2018 in the sum of AED 8,076.92.

(l) INV No. 11424 dated 30 June 2018 in the sum of AED 8,400.00

The Defence

9. The Defendant failed to file an Acknowledgment of Service but sent an email to the Registry in which they neither admitted nor defended against the Claim. The Defendant's email provided an overview of its financial position.

10. The Defendant failed to attend the hearing although they were notified of the day of the hearing.

Discussion

11. The parties are both registered and located outside of the DIFC but opted-in to the DIFC Courts by a clause in the Agreement which states the following: *"all disputes or differences between parties under or in relation to this agreement shall be referred to DIFC Courts SCT in Dubai, UAE and the language shall be in English."*

12. Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended provides a number of limited gateways through which the DIFC Courts have 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."

13. Therefore, pursuant to Article (5)(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended, the DIFC Courts have the authority to hear and determine this claim.

14. The Claimant filed a claim for outstanding invoices in the sum of AED 88,385.03 and the Court fee in the sum of AED 4,419.25.

15. The Defendant failed to attend the hearing or file a defence.

16. Therefore, I find that the Defendant is liable to pay the Claimant the sum of AED 88,385.03 as per the Agreement and the invoices provided.

Conclusion

17. In light of the aforementioned, I find that the Defendant shall pay the Claimant the total sum of AED 88,385.03 being the payments for the above-mentioned invoices.

18. The Defendant shall pay the Claimant the court fee in the sum of AED 4,419.25.



Issued by:

Nassir Al Nasser

SCT Judge

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