Claim No. SCT 062/2022

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 DELVIN SUMO

BETWEEN

LARUE

Claimant

and

(1) LASHARONREPRESENTED BY ITS MANAGER MR. LATRISH
(2) LAVADA
(3) LAVONTE

Defendants

Hearing : **6 April 2022**
Further submissions : **19 and 20 April 2022**
Judgment : **21 April 2022**

JUDGMENT OF SCT JUDGE DELVIN SUMO

UPON the Claim Form being filed on 17 February 2022

AND UPON a Hearing having been held before SCT Judge Delvin Sumo on 6 April 2022, with the Claimant's representative and the Second and Third Defendants in attendance

AND UPON considering all documents and evidence submitted on the Court file

IT IS HEREBY ORDERED THAT:

1. The First, Second and Third Defendants shall vacate the Premises within 14 days of the date of this Judgment.

2. The possession of the premises is reverted to the Claimant as of the date of this Judgment.

3. The First Defendant shall pay the Claimant the amount of AED 52,111.34 in accordance with the below:

   (a) AED 28,435.61 rent amount in respect of the overstay from 15 December 2021 until 31 March 2022, plus any upcoming rent amount until the date of the evacuation.

   (b) AED 7,108.90 as 25% of rent value for the overstay period from 15 December 2021 until 31 March 2022, plus 25% of any upcoming rent amount until the date of the evacuation

   (c) AED 8,083.33 as compensation for the rent-free period from 15 November 2021 until 14 December 2021.

   (d) AED 8,483.50 for DEWA and District Cooling and any other service charges until the date of evacuation.

4. The First Defendant's security deposit in the amount of AED 6,500 shall be forfeited to the Claimant.

5. The First Defendant shall be liable for the costs for the maintenance and damages on the Premises.

6. The First Defendant shall pay the Claimant the DIFC Courts' filing fee in the sum of AED 2,605.56.

7. The Claimant shall serve this Order upon the First Defendant.

Issued by:
Ayesha Bin Kalban
SCT Judge and Registrar
Date of issue: 21 April 2022
At: 11am

THE REASONS

The Parties

1. The Claimant is Lashron (the "Claimant"), the Landlord of unit 00 (the "Premises").

2. The First Defendant is M/s. Lasharon, represented by its manager, Mr. Latrish, a holiday home company located in the DIFC (the "First Defendant").

3. The Second Defendant is Lavada, an individual leasing the Premises (the "Second Defendant").

4. The Third Defendant is Lanote, an individual leasing the Premises (the "Third Defendant").

Background and the Preceding History

5. On 2 November 2020, the Claimant and the First Defendant entered into an agreement to lease the Claimant's Premises for one year (the "First Lease Agreement"), starting from 15 November 2020 to 14 November 2021 (plus a conditional rent-free period from 15 November 2021 until 14 December 2021). The Claimant allowed the First Defendant to sub lease the Premises to third parties for the period of the First Lease Agreement.

6. The First Defendant and the Second and Third Defendants entered into a sub-tenancy contract on 4 November 2020 (the "Second Lease Agreement") for the period of 1 year starting from 21 November 2020 until 21 November 2021. The Second and Third Defendants paid the full amount of AED 90,000 for the rent and AED 5,000 as a security deposit for the Premises. The Second Lease Agreement was then extended for another year until 21 November 2022, and the Second and Third Defendants paid the full amount of AED 80,000 for the rent.

7. On 17 February 2022, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT"), seeking an order that the Defendants jointly and severally pay the total amount of AED 52,111.34, in addition to 10 % legal Interest from its due date until full payment of the amount as per clause (12) of First Lease Agreement, as follows:

(a) AED 28,435.61 rent amount in respect of the overstay rent amount from 15 December 2021 until 31 March 2022, plus any upcoming rent amount until the date of the evacuation;

(b) AED 7,108.90 as 25% of rent value for the overstay period from 15 December 2021 until 31 March 2022 as compensation for not evacuating the Premises on the expiry date as per clause 14 of the First Lease Agreement, plus 25% of any upcoming rent amount until the date of the evacuation;

(c) AED 8,083.33 as rent for the period of 15 November 2021 until 14 December 2021 which was granted to the First Defendant conditionally as a rent-free period; and

(d) an order that the Defendants clear the amount of AED 8,483.50 for outstanding charges towards DEWA, District Cooling and any other service charges until the date of the evacuation.

8. The Claimant also sought an order for the following terms:

(a) an order that the Defendants pay all the costs for the maintenance on the Premises and rectify any damages upon handover of the Premises;

(b) an order that the Security Deposit of AED 6,850 be forfeited by the First Defendant in favour of the Claimant as liquidated damages as per clause 11 of the First Lease Agreement;

(c) an order that the Defendants vacate the Premises immediately, and to hand it over in good condition to the Claimant, and the Claimant to gain access to the Premises; and

(d) an order that the Defendants pay all legal costs associated with filing this claim.

9. The matter was called for a Consultation before SCT Judge Maitha Al Shehhi on 25 March 2022. Although the Claimant and the Second and Third Defendants were in attendance, they failed to reach a settlement. The First Defendant was absent although served with notice of the Claim.

10. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Second Hearing held on 6 April 2022, with the Claimant and the Second and Third Defendants in attendance. The First Defendant was absent although served with notice of the Claim.

The Claim

11. The Claimant's case is that they entered into the First Lease Agreement with the First Defendant for a period of one year, from 15 November 2020 to 14 November 2021, plus a rent-free period from 15 November 2021 until 14 December 2021, which was granted to the First Defendant conditionally upon the fulfillment of all its obligations pursuant to clause 29 of the First Lease Agreement.

12. The Claimant submits that the First Lease Agreement expired on 14 December 2021, and that the First Defendant failed to renew the First Lease Agreement. Therefore, the Claimant submits that the First Defendant is still occupying the Premises illegally without having entered into a new tenancy contract or paying any amount towards the rent.

13. The Claimant states that it now has come to their notice that the Premises is currently occupied by the Second and Third Defendants, pursuant to an email received from the Second Defendant to the Claimant dated 10 January 2022.

14. The Claimant sent various email correspondences to the First Defendant, informing the First Defendant of the terms of the new tenancy period, however, the First Defendant failed to respond to any such correspondence.

15. The Claimant now seeks an order against all Defendants for the remedies as set out in paragraph 7 and 8 of this Judgment.

The Defence

16. The First Defendant failed to file an acknowledgement of Service nor did the First Defendant appear at the Hearing, although served with notice of the Claim.

17. The Second and Third Defendants are currently occupying the Premises and they submit the following in support of their defence.

18. As stated above, the Second and Third Defendants entered into the Second Lease Agreement with the First Defendant in partnership with Lustiya (the entity responsible for the maintenance of the Premises), with the end date of 21 November 2022. The Second and Third Defendants submit that they have fulfilled their obligations in terms of paying the full rent amount to the First Defendant until 21 November 2022.

19. The Second and Third Defendants further submit that they are victims of the First Defendant, and allege that Lustiya has shown poor property management that lead to the current situation that the Second and Third Defendants are in.

20. The Second and Third Defendants submit that it is the responsibility of the Claimant and the First Defendant that the Claimant initially entered into the First Lease Agreement. It is not the responsibility of the Second and Third Defendants that the First Defendant failed to renew the Lease Agreement with the Claimant.

21. The Second and Third Defendants submit that the Claimant and Lustiya were well aware of the fact that the First Defendant was sub leasing the Premises. In support of this, the Second Defendant has submitted a DTCM permit, which allows the First Defendant to sublease the Premises.

22. Therefore, the Second and Third Defendants claim that they should not be impacted in any way by the fact that the First Defendant has not renewed the First Lease Agreement and/or has not met its obligations towards the Claimant. The Second and Third Defendants also demand a severe judgment against Lustiya for not having made every possible effort to secure their partnership with the First Defendant.

Jurisdiction

23. First and foremost, the relevant Lease Agreements are in relation to a unit in the DIFC, therefore by default, any agreement shall be governed by the prevailing law of the DIFC, United Arab Emirates and that upon failure to resolve any disputes connected to the Lease Agreements, the dispute shall be referred to the DIFC Courts. Therefore, it is clear and undisputed that the DIFC Courts have jurisdiction to decide this matter. As the claim value is less than AED 500,000, this claim is properly before the SCT.

Discussion

24. Firstly, as the First Defendant failed to appear at the Hearing, I note RDC 53.61 of the Rules of the DIFC Courts which stipulates that *"if a defendant does not attend the hearing and the claimant does attend the hearing, the SCT may decide the claim on basis of the evidence of the Claimant only"*.

25. Clause 1 of the First Lease Agreement states the following in relation to the sublease of the Premises:

> "The Tenant undertakes not to transfer this Tenancy Contract or sublet the Premise to anyone else under any circumstances. The Tenant undertakes not to share the Premise with any third party. The Tenant shall use and occupy the Premise solely and exclusively for residential use only.
>
> In case the Tenant is a legal entity, the legal entity shall inform the landlord and gets the landlord's approval of desired occupants and any change to the occupants of the unit and agrees that the occupants of the unit must be on the legal entity's sponsorship."

26. The Claimant and the First Defendant then signed an NOC, dated 2 November 2020, for the sublease of the Premises which states the following (the "NOC"):

> "With reference to tenancy contract dated 2nd November 2020 (Contract) for above-mentioned premise, we, Larue. (Landlord) herby [sic] declare that we have no objection that the tenant sublease the premise to any third party for a period not exceed the term and expiry of the Contract subject that the tenant shall remain responsible for compliance of subtenant and occupants with the Master community and common area use and building Manual, declaration, instructions, policies, and regulation as amended from time to time by the Landlord and/or the building management and relevant authority as case may be.
>
> The above is without prejudice to any obligation of the tenant towards the landlord under the contract which shall remain in full force and effects and also without prejudice to any of landlord's right to claim for any of its legal and contractual rights and outstanding amount from tenant".

27. The wording of the NOC is clear as to the term of the sublease of the Premises, which the Claimant allowed the First Defendant for the period of the First Lease Agreement, dated from 15 November 2020 to 14 December 2021.

28. Despite various email correspondences from the Claimant to the First Defendant, reminding the First Defendant that the First Lease Agreement is due to expire and requesting that the First Defendant to confirm whether they wish to renew the First Lease Agreement, the First Defendant categorically ignored the Claimant's emails. Therefore, on 14 December 2021, the Claimant wrote to the First Defendant the following:

> "With reference to above mentioned subject and notices sent to you, this is to inform you that your tenancy agreement has lapsed since December 14, 2021, and you are still illegally occupying the Unit. You must vacate the Unit within (3) days from the date of this notice."

29. Pursuant to clause 14 of the First Lease Agreement, and as the First Defendant failed to renew the First Lease Agreement, the First Defendant

was obligated to immediately vacate the Premises. The said Clause reads as follows:

> '"At the expiry of this tenancy contract or its termination, the Tenant undertakes to evict the Premise immediately and hand it over to the Landlord in a clean condition as received from Landlord on commencement date of this contract. The Tenant undertakes not to make any holes in the ..."

30. However, as it now appears, the First Defendant has subleased the Premises to the Second and Third Defendants until 21 November 2022. The Second and Third Defendants claim that they entered into the Second Lease Agreement on 21 November 2020 (and consequently renewed it) with the First Defendant in good faith.

31. As unfortunate as it may be for the Second and Third Defendants, the First Defendant had no (contractual) right to sublease the Premises after 14 December 2022, in the absence of a renewed First Lease Agreement and NOC. Therefore, I find that the Defendants shall vacate the Premises immediately and handover the Premises to the Claimant in good condition.

32. Nonetheless, the Second and Third Defendants have met their obligations towards the First Defendant pursuant to the Second Lease Agreement, and the full rent amount has been paid until 21 November 2022. Therefore, I find that the Claimant is not entitled to Claim any amounts from the Second and Third Defendants.

33. It is due to the conduct of the First Defendant that the Premises were subleased in the absence of the relevant agreements and currently are still being occupied. Therefore, I find that the First Defendant shall be held liable for the Claims as filed by the Claimant as set out below in my Judgment.

Overstay Rent

34. Clause 14 of the First Lease Agreement reads as follows:

> ".If the Tenant fails to vacate the premise on expiry date of this contract or its termination, the tenant should pay the rent of overstay plus a penalty equal to 25% of the rent amount for that period."

35. Clause 14 of the First Lease Agreement clearly indicates that in the event that the First Defendant does not evacuate the Premises on the expiry date, it shall pay the Claimant the rent of overstay. Therefore, I find that the Claimant shall be entitled to receive from the First Defendant the amount of AED 28,435.61 in respect of the overstay from 15 December 2021 until 31 March 2022, plus any upcoming rent amount till date of the evacuation.

25% Compensation

36. Furthermore, clause 14 of the First Lease Agreement, as mentioned above in paragraph 34 of this Judgment, is clear as to the penalty that may be imposed in case the First Defendant failed to evacuate the Premises on the expiry date. Therefore, I find that the Claimant shall be entitled to the amount of AED 7,108.90 from the First Defendant as 25% of rent value for the overstay period from 15 December 2021 until 31 March 2022, plus 25% of any upcoming rent amount till date of the evacuation.

Rent-free period

37. Clause 29 of the First Lease Agreement states the following:

> "It is agreed to grant the tenant with free rental period in clause (D) of above Particular at the end of tenancy period provided that the tenant is not in breach of any of his/her obligations as per this contract including having cleared all rental amounts on due date as mentioned in this contract".

38. I find that the First Defendant breached its obligations in accordance with clause 29 of the First Lease Agreement by not informing the Claimant that it will not proceed with the renewal of the First Lease Agreement, and despite that the First Defendant continued to occupy the Premises by sub-leasing it to the Second and Third Defendants. Therefore, I find that the First Defendant shall not be entitled to the rent-free period from 15 November 2021 until 14 December 2021 and that the Claimant shall be entitled to the amount of AED 8,083.33 from the First Defendant.

10% Legal Interest

39. Clause 12 of the First Lease Agreement reads as follows:

> "Without prejudice to the rights and remedies of the Landlord under this Tenancy Contract or under applicable law if the Tenant fails to make any payments to the landlord of the rent or any sums whatsoever due to the Landlord under this Tenancy at the time or times or within the periods specified in this tenancy contract, the Landlord may charge the Tenant a penalty thereon in addition to the owed amount calculated at a rate of ten percent (10%) per annuum on which the payment is due in accordance with this tenancy contract until the date of full payment as mutual agreed compensation."

40. In review of clause 12, I find that this clause relates to cases wherein the First Lease Agreement would have been extended and the First Defendant had failed to pay the required rent amount in accordance with the First Lease Agreement. The Claimant would then have been entitled to rely on this clause and avail of the 10% penalty, in addition to the rent amount. However, I note that the Claimant has also invoked the penalties as stated in clause 14 of the First Lease Agreement, as mentioned in paragraph 36 of this Judgment, which I have subsequently granted. Therefore, I find that the Claimant's claim in relation to the 10% legal Interest from due date till full payment of the amount as per clause 12 of the First Lease Agreement shall be dismissed.

Security Deposit

41. Clause 11 of the First Lease Agreement reads as follows:

> "Consequent to the termination of this Tenancy Contract based on the above-mentioned clause, the Tenant's right to use the premises for the rest of the Tenancy Period shall be ceased and terminated, and the remainder of the Rent Amount or an amount equal to (Three) 3 months' rent , whichever is more, shall be paid to Landlord in addition, the security Deposit as mentioned in clause (G) of above mentioned particular shall be forfeited in favor of the Landlord as liquidated damages."

42. Accordingly, I find that the Security Deposit of AED 6,500 shall be forfeited by the First Defendant in favour of the Claimant as liquidated damages pursuant to Clause 11 of the First Lease Agreement.

Dewa and District Cooling bills

43. Clause 24 and 25 of the First Lease Agreement reads as follows:

> "24. All fixed and consumption charges for Water, Electricity, Telephone, Internet, Air Conditioning and District Cooling (Capacity Consumption) charges and all other utilities' bills and the related third-party billing fees are on the account of the Tenant."

> "25. The Tenant shall pay the District Cooling Bills on time without any delay. The tenant acknowledges and agrees that the district cooling bills will be prepared and collected by a Third-Party Company, and in that regard the tenant undertakes to settle in full charges and fees related to."

44. The Second Lease Agreement states the following in regard to DEWA and chiller:

> "Utility Charges (DEWA & Chiller) related to the apartment are included with the usage limit of AED 1,700 monthly and the exceeded amount shall be chargeable to the tenant on monthly basis in the noted rental amounts, as agreed upon during commercial negotiations and mentioned in this contract"

45. Pursuant to the above, I find that the First Defendant shall pay for any outstanding amounts for the DEWA and District Cooling bills. The First Defendant has not submitted any proof or payment demonstrating that the outstanding amount exceed the amount as mentioned in paragraph 43 above. Therefore, the First Defendant shall pay the Claimant the amount of AED 8,483.50 for DEWA and District Cooling and any other service charges until the date of evacuation.

Conclusion

46. The First, Second and Third Defendants shall vacate the Premises immediately within 14 days of the date of this judgment.

47. The possession of the premises is reverted to the Claimant as of the date of this Judgment.

48. In light of the aforementioned, I find that the First Defendant shall pay the Claimant the amount of AED 52,111.34 in accordance with the below:

> (a) AED 28,435.61 rent amount in respect of the overstay from 15 December 2021 until 31 March 2022, plus any upcoming rent amount until the date of the evacuation.

> (b) AED 7,108.90 as 25% of rent value for the overstay period from 15 December 2021 until 31 March 2022, plus 25% of any upcoming rent amount until the date of the evacuation.

> (c) AED 8,083.33 as compensation for the rent-free period from 15 November 2021 until 14 December 2021.

> (d) AED 8,483.50 for DEWA and District Cooling and any other service charges until the date of evacuation.

49. The First Defendant's security deposit in the amount of AED 6,500 shall be forfeited to the Claimant.

50. The First Defendant shall be liable for the costs for the maintenance and damages on the Premises.

51. The First Defendant shall pay the Claimant the DIFC Courts' filing fee in the sum of AED 2,605.56.

52. The Claimant shall serve this Order upon the First Defendant.