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 H.E. JUSTICE MAHA AL MHEAIRI**

BETWEEN

LANAKILA

Claimant

and

**(1) LANG REPRESENTED BY ITS MANAGER LANCELOT
(2) LANEETEES**

Defendants

Hearing : **6 April 2022**
Judgment : **15 April 2022**
Re-issued : **12 May 2022**

AMENDED JUDGMENT OF H.E. JUSTICE MAHA AL MHEAIRI

UPON this Claim being filed on 14 February 2022

AND UPON the Second Defendant filing an Acknowledgment of Service intending to defend all of this Claim dated 18 February 2022

AND UPON a Consultation being held before SCT Judge Maitha Alshehhi on 16 March 2022

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

AND UPON a Second hearing having been listed before H.E Justice Maha Al Mheiri on 6 April 2022, with the Claimant and the Defendant attending

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

IT IS HEREBY ORDERED THAT:

1. The First Defendant shall pay the Claimant the sum of AED 69,025.

2. The security deposit of AED 6,500 is forfeited to the Claimant as liquidated damages.

3. The Second Defendant shall clear all outstanding charges towards DEWA, District Cooling and any other service charges up until 30 July 2022.

4. The First Defendant shall pay the Claimant the Court filing fee in the sum of AED 3,441.64.

5. The Claimant and the Second Defendant shall comply with the settlement agreement between them as full and final settlement of the claims against the Second Defendant, save Paragraph 3 of this Order.

Issued by:
Ayesha Bin Kalban
SCT Judge and Registrar
Date of re-issue: 12 May 2022
At: 2pm

THE REASONS

The Parties

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

2. The Defendant is LangRepresented by its manager Lancelot., a holiday home company located in the DIFC (the "First Defendant").

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

Background and the Preceding History

4. On 11 November 2021, the Claimant and First Defendant entered into an agreement to lease the Claimant's Premises for one year (the "First Lease Agreement"), starting from19 November 2021 to 18 November 2022, and allowed the First Defendant to sub lease the Premises to other individuals.

5. The rental amount agreed between the Claimant and First Defendant was AED 90,000, to be paid in 4 instalments. The First Defendant promised to pay the Claimant the first installment in the amount of AED 22,500 through wire transfer, and the rest of the payments were provided via postdated cheques to the Claimant.

6. The First Defendant and the Second Defendant entered into a sub-tenancy contract on 26 October 2021 (the "Second Lease Agreement") for the period of 1 year. The Claimant paid the full amount of AED 75,000 for the rent and AED 5,000 as a security deposit for the Premises.

7. The First Defendant failed to wire the first instalment to the Claimant despite the latter having sent various reminders and notices requesting from the First Defendant to settle the amount. On 9 February 2022, the Claimant sent a notice of termination of the First Lease Agreement to the First Defendant

8. On 14 February 2022, the Claimant filed a Claim Form, seeking an order that the First and Second Defendants jointly and severally pay the total amount of AED 68,785.70 plus 10 % legal Interest from due date till full payment of amount as per Clause (12) of First Lease Agreement, as follows:

(a) AED 37,500 in respect of the pending rent amount from 19 November 2021 till 18 April 2022, plus any upcoming amount till date of actual evacuation;

(b) AED 22,500 as liquidated damages as per Clause 11 of the First Lease Agreement; and

(c) The First and Second Defendants to clear the amount of AED 8,785.70 for outstanding charges towards DEWA, District Cooling and any other service charges until the date of evacuation.

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

(a) An order terminating both Lease Agreements

(b) An order that the Security Deposit of AED 6,500 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 Second Defendant vacate the premise immediately, and to hand it over in good condition to the Claimant, and the Claimant to gain access to the Premises; and

(d) For the First and Second Defendants to pay all legal costs associated with filing this claim.

10. The Claimant and Second Defendant met for a Consultation with SCT Judge Maitha Al Shehhi on 16 March 2022 but were unable to reach a settlement.

11. 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 Defendant in attendance. The First Defendant's representative was absent although served with notice of the Claim.

12. At the hearing, I was informed by the Claimant and the Second Defendant that they have reached a settlement and the Second Defendant shall remain in the Premises until 30 July 2022, therefore I shall not address any claims against the Second Defendant in my findings below.

13. RDC 53.61 of the Rules of the DIFC Courts 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"*.

The Claim

14. The Claimant's case is that they entered into the First Lease Agreement with the First Defendant for a 1-year period, from 19 November 2021 to 18 November 2022, for AED 90,000 to be paid over 4 monthly instalments.

15. The Claimant is alleging that the First Defendant had breached the terms and conditions of the First Lease Agreement, and that the First Defendant had failed to fulfill its obligations under the First Lease Agreement by failing to pay any amount towards the rent of the Premises.

16. The First Defendant failed to wire any amount to the Claimant as promised. All the cheques that had been provided by the First Defendant as payment for the remaining rent returned due to insufficient funds.

17. The Claimant sent several notices to the First Defendant, requesting that they pay all outstanding rent. However, no sum payment was received, therefore, the Claimant proceeded to terminate the First Lease Agreement and file its Claim with the SCT. I shall elaborate on each of the Claimant's claims in the discussion below.

18. The total sum claimed by the Claimant as set out in the Claim Form is the sum of AED 68,785.70, in addition to legal costs associated with the filing of this Claim. The Claimant also seeks penalties as stated within the First Lease Agreement.

Discussion

19. 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.

20. The Court will first review the calculation of the outstanding rent, and then discuss whether any penalties shall apply, and lastly determine the First Defendant's financial obligation towards the Claimant.

Unpaid Rent

21. As the Claimant and the Second Defendant reached a settlement agreement, the Claimant will not be evacuating the Premises until 30 July 2022.

22. The Claimant submits that the First Defendant failed to pay any amount towards the First Lease Agreement, as such, I find that the First Defendant is liable to pay the amount of AED 62,750, as calculated until the Third Defendant hands over the Premises.

23. The Agreed rent amount from 19 November 2021 to 18 November 2022 is AED 90,000, and the Third Defendant will hand over the Premises on 30 July 2022.
19 November 2021 to 30 July 2022 is equal to 8 months and 11 days
AED 7,500 rent per month x 8 months = AED 60,000
7,500/ 30 =250 rent per day x 11 days = AED 2,750

Penalties

24. The Claimant drew the Courts' attention to a number of clauses within the Lease Agreement, each of which are set out below:

25. Clause 12 reads as follows:

> "12. 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."

26. In review of Clause 12, the Court finds that the Clause is ambiguous as to the application of the 10% penalty. The Court is of view that such a penalty shall apply on the outstanding rent that falls due under the Lease Agreement, as such 10% of AED 62,750 is AED 6,275.

27. Clause 11 of the Lease Agreement reads as follows:

> "35. 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."

28. Upon reviewing Clause 11, I find that there are two parts. The first deals with the penalty in the form of rent, and the second deals with the security deposit.

29. I note that the Claimant is given two options as penalty and they cannot be used at the same time, hence the word (or) that is used in the clause, set out below:

> "and the remainder of the Rent Amount or an amount equal to (Three) 3 months' rent whichever is more, shall be paid to Landlord"

30. Since the Court has granted the Claimant rent as mentioned above, AED 62,750, an amount which is greater than 3 months of rent, the Court is satisfied that the penalty under Clause 11 has been met. Accordingly, I dismiss the Claimant's claim for the amount of AED 22,500 equal to 3 months of rent as liquidated damage penalties under Clause 11.

31. In relation to the security deposit, I am satisfied that since the Claimant terminated the First Lease Agreement, the security deposit shall be forfeited in favor of the Claimant as liquidated damages. 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 as per Clause 11 of the First Lease Agreement.

Dewa and District cooling bills

32. As the Second Defendant is currently occupying the Premises and will continue to occupy them until 30 July 2022, there are no pending charges as DEWA and the district cooling will be switched off in the situation that the Second Defendant fails to pay. Accordingly, I dismiss the Claimant's claim for the amount of AED 8,785.70.

33. The Claimant also seeks to recover the fee that was paid to the Court for the filing of this Claim. I am of the view that, although the Claimant has been unsuccessful on some of its claims, the Court granted it an amount greater than what it claimed. As such, the Claimant shall recover the fee that it paid in respect of filing the Claim.

Conclusion

34. In light of the aforementioned, I find that the First Defendant is liable to pay the unpaid rent, in the amount of AED 62,750, plus AED 6,275 legal interest.

35. The security deposit of AED 6,500 shall be forfeited to the Claimant.

36. The Second Defendant shall clear all outstanding charges towards DEWA, District Cooling and any other service charges up until 30 July 2022.

37. The First Defendant shall pay the Claimant the amount of AED 3,441.64, being the filing fee to register the Claim.