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 MAHA AL MEHAIRI

BETWEEN

KAMARI SHIPPING LLC

Claimant

and

KAYLIB LLC

Defendant

Hearing: **23 October 2019**

Judgment:**30 October 2019**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON hearing the Claimant's representative and the Defendant's representative at the hearing

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

IT IS HEREBY ORDERED THAT:

1.The Defendant's application to contest the jurisdiction of the DIFC Courts is dismissed.

2. The DIFC Courts have the authority to hear and determine this claim.

3. The Registry shall list this claim for a Consultation in due course.

Issued by:

Maha AlMehairi

SCT Judge

Date of issue: 30 October 2019

At: 1pm

THE REASONS

The Parties

1.The Claimant is Kamari Shipping LLC (the "Claimant"), a company registered in, Dubai, UAE.

2. The Defendant is Kaylib LLC (the "Defendant"), a company registered in Dubai, UAE.

Background and the Preceding History

3. The underlying dispute arises over unpaid invoices sent to the Defendant by the Claimant, following which the Defendant failed to pay the Claimant the sums due under their agreement.

4. On 10 October 2019, the Claimant filed a claim in the DIFC Courts Small Claims Tribunal (the "SCT") for payment of AED 113,124.41.

5. On 16 October 2019, the Defendant filed an acknowledgement of service with its intention to contest the jurisdiction of the Court.

6. On 23 October 2019, a hearing was listed before me, at which the Claimant's representative and the Defendant's representative attended in person.

The Claim

7. The Claimant's case is that they entered into a verbal agreement with the Defendant to ship goods from Italy to Dubai for use by the Defendant. On the date of the shipment of the goods, the Defendant's client based in Italy, provided the wrong information in relation to the goods size and weight which resulted in the off load of the goods by the freight company. Due to the urgency of the shipment, the Claimant booked the next flight to ship the goods to the Defendant's intended location. After which, the Claimant requested payment of those invoices that reflected the shipping of the goods.

8. The Defendant refused to pay those invoices, stating that the invoices should be paid by the Defendant's client based in Italy.

9. The Defendant also submits that the parties are companies incorporated in Dubai and the matter should be dealt with by the Dubai Courts since there is no official agreement to regulate the parties' relationship.

10. It is the Claimant's position that the invoices sent to the Defendant contain a jurisdiction clause that states that the Dubai International Financial Centre Courts may deal with any issues arising from this business relationship.

11. The invoices in question that were sent to the Defendant, contain the following terms:

> "Please contact us within 7 days should there be any discrepancies. Any dispute, difference, controversy or claim arising out of or in connection with non-payment of invoice, including (but not limited to) any question regarding the existence, validity, interpretation, performance, discharge and applicable remedies of the underlying contract in dispute, shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre ("the DIFC Courts")."

12. The Claimant argues that all of the invoices sent between the parties in respect of shipping of the goods include the DIFC Courts opt in jurisdiction clause and therefore the Defendant should have been aware that any disputes arising out of the invoices would be referred to the DIFC Courts SCT. The Claimant further asserted that the Defendant has, at no point in time, made any objection to the choice of dispute resolution contained within those terms.

13. The Claimant submitted that for the above reasons the DIFC Courts does have jurisdiction to decide this matter pursuant to Article 5A (2) of Dubai Law No 12 of 2004. Therefore, the Claimant filed a claim with the SCT claiming the sum of AED 113,124.41.

The Defence

14. The Defendant contests the jurisdiction of the DIFC Courts and alleges that both parties are not registered in the DIFC and that they have not agreed to the jurisdiction of the DIFC Courts.

15. The Defendant alleges that they are a company situated in Dubai and the matter should be referred to the Dubai jurisdiction. Therefore, at the Hearing, the Defendant continued to allege that the DIFC Courts has no jurisdiction to hear and determine this claim.

Discussion

16. At the Hearing, the Defendant contested the jurisdiction of the DIFC Courts. Therefore, I will determine the jurisdiction application.

17. The parties are both registered and located outside of the DIFC, therefore, the question which arises is whether the parties have successfully opted into the DIFC Courts jurisdiction by way of a contractual relationship.

18. The jurisdiction clause stated in the invoices are as follows:

> "Any dispute, difference, controversy or claim arising out of or in connection with non-payment of invoice, including (but not limited to) any question regarding the existence, validity, interpretation, performance, discharge and applicable remedies of the underlying contract in dispute, shall be subject to the exclusive jurisdiction of the Courts of the Dubai International Financial Centre ("the DIFC Courts")."

19. The relationship between the parties began with the Defendant requesting the shipping of the goods from Italy. The Claimant then acted upon that request in contacting the Defendant's client in Italy in relation to the details of the goods which resulted in the delivery of the goods; this I will

consider as the contract.

20. The invoices were sent as a result of the verbal agreement that the parties agreed upon, which includes the DIFC Courts jurisdiction. Assuming that the terms of the invoice were not acceptable by the Defendant, I note that the Defendant did not, at any stage, either deny the jurisdiction nor the delivery of the goods. Therefore, I am of the view that there was a performance of the contract by both parties.

21. As such, I find that the invoices sent by the Claimant bound the parties and make provision for the DIFC Courts to hear and determine this claim, as per the jurisdiction clause set out in paragraph 18 above.

22. Article 5(2) 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:

> "(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. . .
>
> (f) . . . 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."

23. Therefore, pursuant to Article (5)(2) 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.

Conclusion

24. For the above cited reasons, I find that the Defendant's application to contest the jurisdiction of the DIFC Courts must be dismissed as the DIFC Courts and the Small Claims Tribunal, in particular, clearly have jurisdiction over this matter.

25. Each party shall bear their own costs as to the application to contest the jurisdiction.





Issued by:

Maha AlMehairi

SCT Judge

Date of Issue: 30 October 2019

At: 1pm