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

BEFORE SCT JUDGE NATASHA BAKIRCI

BETWEEN

IANTHIA CONTRACTING LLC

Claimant

and

IZIAH CONTRACTING LLC

Defendant

Hearing:**29 March 2018**

Judgment:**4 April 2018**

JUDGMENT OF SCT JUDGE NATASHA BAKIRCI

UPON the claim form being filed on 28 February 2018;

AND UPON a Jurisdiction Hearing being held before me SCT Judge Natasha Bakirci, on 29 March 2018, with the Claimant's and the Defendant's representative attending;

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1. The Defendant's application to contest jurisdiction is upheld.

2. The DIFC Courts do not have jurisdiction to hear and determine this claim.

Issued by:

Natasha Bakirci

SCT Judge

Date of Issue: 4 April 2018

At: 4 pm

THE REASONS

Parties

1. The Claimant, Ianthia Contracting LLC is a company licensed by the Department of Economic Development in Abu Dhabi, involved in onshore

and offshore oil and gas fields and facilities services.

2. The Defendant, Iziah Contracting, is a contracting company registered in Dubai.

Background

3. The Claimant claims AED 93,388.40 from the Defendant plus 12 % legal interest from the date of the claim until payment as well as their court fee. This is in relation to a subcontract agreement between the parties for the supply and installation of an "HDPE Liner".

DIFC Courts Jurisdiction

4. The Claimant asserted that the DIFC Courts had jurisdiction over the matter due to a document titled "Subcontractor Final Account Deed of Release" which was signed by both parties and provided the following:

> "11. Any dispute or difference arising under or in relation to this Deed of Release shall be settled under the Dubai - DIFC-LCIA;
>
> 12. The seat of arbitration shall be in Dubai - Dubai International Financial Center, United Arab Emirates;
>
> 13. The language of the arbitration shall be English."

5. The Defendant contested the jurisdiction of the DIFC Courts on the basis that it was the Subcontract Agreement between the parties which governed their relationship, Clause 26 of which was titled "Dispute Resolution" and provided that:

> "b) Any dispute which has not been amicably settled within fifty-six days after the day on which such notice is given shall be finally settled under the UNCITRAL Rules by a single arbitrator nominated by the Main Contractor and agreed by the Subcontractor. The place of Arbitration shall be Dubai, United Arab Emirates.."

6. In a subsequent letter to the DIFC Courts on 29 March 2018 the Claimant appears to suggest that the "Dubai International Arbitration Center is the competent authority to consider this dispute."

Finding

7. Rule 53.2 of the Rules of the DIFC Courts ("RDC") requires that the Small Claims Tribunal ("SCT") hears only cases that fall "within the jurisdiction of the DIFC Courts." The jurisdiction of the DIFC Courts is determined by Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended ("Judicial Authority Law"), which 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."

8. It is not in dispute that the parties in this case have no connection to the DIFC. Rather, the Claimant appears to assert that the DIFC Courts have jurisdiction based on Clauses 11 to 13 of the Subcontractor Final Account Deed of Release cited above. However, reference is made there to a separate entity, namely the DIFC-LCIA Arbitration Centre, not the DIFC Courts. Although both come under the DIFC Dispute Resolution Authority established by Dubai Law No. 7 of 2014, any election of DIFC Courts jurisdiction must be "made pursuant to specific, clear and express provisions" in accordance with Article 5 (a) (2) of the Judicial Authority Law cited above.

9. I do not find any evidence before me that both parties have opted into DIFC Courts jurisdiction, nor have I seen any other jurisdictional gateway which would allow the DIFC Courts to consider this case. It follows that the Claimant's claim must be dismissed as the DIFC Courts do not have jurisdiction.

Issued by:

Natasha Bakirci

SCT Judge

Date of Issue: 4 April 2018

At: 4pm