Claim No. SCT 004/2017

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

HAMZA

Claimant

and

HEIDI LAW FIRM

Defendant

Hearing: **7 February 2017**

Judgment: **14 February 2017**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

ORDER

UPON hearing the Claimant and a representative of the Defendant at the Hearing on 7 February 2017

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

IT IS HEREBY ORDERED THAT:

1. The Claimant's Claim is dismissed.
2. No order as to Costs.

Issued by:

Maha AlMehairi

SCT Judge

Date of issue: 14 February 2017

At: 10am

THE REASONS

The Parties

1.The Claimant is a lawyer registered in Dubai.

2. The Defendant is Heidi & Company, a law firm registered in the DIFC located in DIFC, Dubai.

Background and the Preceding History

3. The Claim arises out of an offer of employment (the "Offer") received by the Claimant from the Defendant. The Claimant applied for a job with the Defendant, the Claimant went through the interview process with the Defendant, and on 7 June 2016 the Claimant provided the Defendant with a list of references for them to contact on his behalf.

4. There was no communication after that from the Defendant indicating whether they wished to hire the Claimant even though the Claimant consistently followed up with the Defendant. As such, the Claimant accepted another offer to work at a law firm and his joining date was to be on 20 July 2016. On his first working day, the Claimant received a phone call from the Defendant with an offer for him to join the Defendant law firm. On 21 July 2016, the Claimant received the Offer letter from the Defendant, resigned from his current job, and accepted the Defendant's Offer.

5. The Offer was made subject to the Defendant receiving satisfactory references from the Claimant's former employers. The Offer letter clearly stated "Thank you for your interest in joining Heidi & Company ("Firm"). We are pleased to offer you the following position, subject to reference checks and police clearance certificate, on the terms and conditions below." As such, it was clear that there remained a condition on the Offer before it would be finalised.

6. On 17 August 2016, the Defendant issued the Claimant's visa under the company's sponsorship, and on 18 August 2016 a joining form was sent to the Claimant in order that the Defendant could finalise the Claimant's joining formalities. The Defendant did not confirm an exact joining date for the Claimant to start working. There was numerous correspondence between the parties in regards to the Claimant's joining date and the ongoing delay in the process. At no point did the Claimant receive notice or information that indicated that the Defendant was still going through the reference check process. On 1 September 2016, the Claimant emailed the Defendant's HR representative requesting to be paid his salary as the delay in joining was caused solely by the Defendant.

7. On 5 September 2016, the Defendant's HR representative sent an email to the Claimant including a letter informing him that the Defendant was withdrawing their Offer. After receipt of this letter, the Claimant met with the Defendant's HR representative on 7 September 2016 in order to understand the reasons behind the withdrawal of the Offer, however no satisfactory reasons were disclosed to him during that meeting. Further settlement discussions occurred between the parties but no agreement was reached which resulted in the Claimant filing a case at the DIFC Courts' Small Claims Tribunal ("SCT").

8. On 8 January 2017, the Claimant filed a Claim in the SCT against the Defendant. In his Claim Form the Claimant sought the following entitlements (the "Entitlements"):

(i) declaratory relief that the termination of employment was unfair or wrongful;

(ii) AED 21,333 as payment of one month salary;

(iii) AED 28,800 being the loss of income;

(iv) any Court imposed damages with respect to the Claimant's moral and material damages;

(v) any Court imposed interest;

(vi) the penalty under Article 18 of the DIFC Employment Law;

(vii) AED 1,023.49 as Court fees and legal Costs; and

(viii) any further or alternative relief as the Court sees fit.

The total amount of the Claim was AED 52,197.86 (equivalent to USD 14,203.50).

9. The parties attended a Consultation before SCT Officer Mahika Hart on 24 January 2017, but were unable to reach a settlement. Thus, a Hearing was scheduled before me on 7 February 2017.

Particulars and Defence

10. It is the Claimant's case that the Offer was a valid and binding employment offer, which he relied upon and the Defendant's postponement of the starting date amounted to the Defendant breaching that Offer by preventing the Claimant from starting work at the firm. The Claimant also added that having a valid employment visa under the Defendant's sponsorship, completing the joining form, and having business cards printed indicates that the Defendant had accepted him as an employee of the firm. An employee at the Defendant's firm also sent a picture of the Claimant's name on one of the doors inside the Defendant's offices. As a result, the Claimant had reason to believe that he was accepted as an employee of the Defendant and was only awaiting confirmation of his joining date. He had no reason to know that his Offer remained conditional upon a finalised reference check.

11. In support of the above entitlements, the Claimant makes arguments under DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 (the "DIFC Employment Law"), DIFC Law No. 6 of 2004 (the "DIFC Contract Law"), DIFC Law No. 5 of 2005 (the "DIFC Law of Obligations") and DIFC Law No. 7 of 2005 (the "DIFC Law of Damages and Remedies"). The Claimant relies on an employment relationship having been created between the parties via the Offer letter and visa process, or, in the alternative, misrepresentation on the part of the Defendant in inducing him to accept the Defendant's Offer.

12. On 17 January 2017, the Defendant filed their Acknowledgment of Service intending to defend all of the Claim. The Defendant denied that there was a valid and effective employment contract as the Offer was made conditional on the Claimant providing a reference from his previous employers and this condition had not been satisfied. In support of their argument the Defendant submitted the Witness Statement dated 2 February 2017 a previous employer of the Claimant. In the statement, a previous employer of the Claimant stated that the reference that he gave the Defendant about the Claimant was unfavourable. The Defendant submits that the Offer for employment would have become binding only if the condition precedent of a successful reference check had been completed and as it was not, the Claimant's Offer for employment never became binding. Therefore, the Claimant is not entitled to any rights as an employee of the Defendant company as the Claimant never became an employee.

13. The Defendant also added that alternatively, in the event that there was a valid contract of employment between the parties, the Defendant would have terminated the Claimant for cause, based on the unsatisfactory reference received from a previous employer of the Claimant.

14. At the Hearing, both parties reiterated their arguments. The Claimant argued that he accepted the Defendant's Offer and under that Offer he is owed the Entitlements requested in his Claim Form. The Defendant argued that the Offer was conditional upon meeting the condition set out

therein and the Claimant failed to meet this condition as indicated above.

Findings

15. The DIFC Courts and the Small Claims Tribunal have jurisdiction over this dispute as it concerns an employment claim within the DIFC and the amount in question does not exceed AED 500,000.

16. This dispute is governed by the DIFC Employment Law, which states:

> "Application of the Law
>
> (1) The Law applies to an employee of:
>
> (a) an establishment having a place of business within the DIFC; or
>
> (b) an entity that is created by Law No. 9 of 2004, and the employee is based within, or ordinarily works within or from, the DIFC.
>
> (2) The applicable law to a contract of employment of an employee based within, or who ordinarily works within or from the DIFC, shall be this Law."

17. Therefore, the Claimant has a valid DIFC employment visa and the Defendant is an entity in the DIFC.

18. First, I will address the issue of what obligations are stipulated under the Offer, and then I will address what, if any, Entitlements the Claimant is eligible to receive under the Offer.

19. This Claim hinges upon whether the acceptance of a valid Offer letter results in creating an employer-employee relationship with the required responsibilities that come with that relationship. Therefore, I turn my attention to the terms of the Offer letter provided to the Claimant by the Defendant.

20. The Offer dated 21 July 2016 which was emailed to the Claimant included the following statement:

> "Thank you for your interest in joining Heidi &#65533;& Company ("Firm"). We are pleased to offer you the following position, subject to reference checks and police clearance certificate, on the terms and conditions below."

21. I am satisfied that the Claimant did provide the Defendant with references, however one of the Claimant's references provided an unfavourable report to the Defendant and the Offer was therefore withdrawn.

22. The critical issue in this case is whether the Offer is subject to certain conditions contained therein. The Offer letter represents a conditional contract, considering that there are specific and necessary conditions required before the Claimant can move forward to sign an employment contract. The fact that the Claimant failed to satisfy the conditions would result in the Offer being revoked.

23. While the Claimant contends that the reference check was complete before the Offer was made, there is no evidence of this in the file. While the Claimant was not given indication that the reference check remained ongoing, he was also never given confirmation that it had been completed, contrary to his claims. Therefore, it was unreasonable for the Claimant to rely upon this conditional Offer as if it were a binding contract of employment, considering that the Offer was conditional as per the plain meaning of the text contained therein. The Claimant is a lawyer and reasonably should have sought clarification as to the status of the conditions set out in the Offer letter. As the Claimant failed to meet the conditions set out in the Offer, it follows that there can be no valid and binding contract of employment between the parties and consequently, the Claim must fail.

24. As the parties never entered into an employment relationship, there is no legal basis for the employment Entailments for which the Claimant has claimed as there is no contractually binding employment relationship between the parties. Furthermore, there can be no claim for misrepresentation under the DIFC Law of Obligations or undue influence under Article 11 of the DIFC Employment Law as the Claimant has failed to meet his burden of proof on these claims; I see no evidence of misrepresentation or undue influence and in fact, the conditional nature of the Offer is obvious from the text of the Offer letter itself. Finally, the declarations requested by the Claimant are inappropriate given the circumstances.

25. For the above reasons, the Claimants claims against the Defendant are dismissed in their entirety.

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Issued by:

Maha Al Mehairi

SCT Judge

Date of Issue: 14 February 2017

At: 10am