THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS
BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

MARIA

Claimant

and

MOUNA

Defendant

Hearing : **26 November 2020**
Further Submissions : **17 December 2020**
Judgment : **27 December 2020**

JUDGMENT OF SCT JUDGE MAHA AL MHEIRI

UPON this Claim being filed on 11 October 2020

AND UPON the Defendant filing an Acknowledgment of Service intending to defend all of the Claim dated 18 October 2020

AND UPON a Consultation being held before SCT Judge Hayley Norton on 28 October 2020

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

AND UPON a hearing listed before SCT Judge Maha Al Mheiri on 26 November 2020 with the Claimant and the Defendant's representative in attendance

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

IT IS HEREBY ORDERED THAT:

1. The Claimant's claims are dismissed.

2. Each party shall bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 27 December 2020
At: 1pm

THE REASONS

The Parties

1. The Claimant is Maria (hereafter the "Claimant"), an individual formerly employed as a Relationship Manager at the Defendant.

2. The Defendant is Mouna, a bank located and registered within the DIFC, Dubai (the "Defendant").

Background and the Preceding History

3. The Claimant worked as a Relationship Manager for the Defendant from the period of 29 August 2019 to 27 September 2020. On 27 August 2020, the Claimant was served a notice of termination for the alleged reason of the Claimant's under performance. The Claimant claims compensation for alleged damage to his reputation arising in connection with his unfair dismissal by the Defendant.

4. On 28 October 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT"), claiming compensation and damages for arbitrary dismissal due to the unlawful termination of the Claimant, in addition to damages to his reputation in the banking industry in the amount of AED 475,000.

5. On 18 October 2020, the Defendant filed an Acknowledgment of Service, expressing its intention to defend all of the claim.

6. On 28 October 2020, the parties met for a Consultation with SCT Judge Hayley Norton but were unable to reach a settlement. In line with the rules and procedures of the SCT, this matter was referred to me for determination and a hearing was listed for 26 November 2020.

7. At the hearing, I directed the parties to file their further submissions in relation to the Claimant's claim for damages, which were duly filed on 17 December 2020.

The Claim

8. On 2 January 2019, the Claimant was employed by a group company of the Defendant namely Mouna Representative Office, a company incorporated in the Dubai.

9. On 28 August 2019, the Claimant and the Defendant entered into the new contract with the Defendant's branch in the DIFC. The Claimant was employed by the Defendant under the role of Relationship Manager pursuant to an unlimited term employment contract with a monthly salary of AED 50,000 (the "Employment Contract").Pursuant to the Employment Contract, the Claimant commenced employment with the Defendant on 29 August 2019.

10. By way of a letter dated 27 August 2020, and in accordance with the terms of the Employment Contract, the Defendant served the Claimant with his one months' notice, confirming that the Claimant would be placed on garden leave for the entire notice period (the "Termination Notice"). Accordingly, the Claimant's last working day with the Defendant was 27 September 2020. The Claimant received payment in lieu of his 1 months' notice period in accordance with Clause 14 and 15 of the Employment Contract.

11. Subsequent to the Termination Notice, the Claimant and the Defendant engaged in open correspondence surrounding the terms of the Claimant's employment termination, with the Claimant setting out his grievances against the Defendant.

12. The parties were unable to resolve the Claimant's grievances, and therefore, on 28 October 2020, the Claimant issued these proceedings, seeking 8 months' salary as compensation and damages, in addition to recovery of his legal fees in the total sum of AED 475,000.

Discussion

13. This dispute is governed by DIFC Law No. 2 of 2019, as amended (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

14. Both the Claimant and the Defendant have submitted numerous and detailed submissions. I limit my discussion in this judgment to those submissions which are necessary for my determination of the Claimant's claim and in particular his entitlement or otherwise to the remedies he seeks. Needless to say, consideration has been given to each of the Claimant's claims, factual or legal, as has consideration been given to the Defendant's responses thereto.

Reason for termination

15. As a preliminary point, it is important to establish that, pursuant to Clause 14 of the Employment Contract, both the Claimant and the Defendant were entitled to terminate the Claimant's employment by giving 1 months' notice in writing. Clause 14 of the Employment Contract also reserved the Defendant's right to pay the Claimant in lieu of salary for the notice period. Under the terms of the Employment Contract, no reason or cause was required for such a termination. Under the Employment Law, there is a clear distinction made between termination without cause, and termination for cause, with the latter permitting an employer to terminate an employee with immediate effect and denying the employee a right to wages in lieu of his notice period.

Article 63(3)(a) of the DIFC Employment Law provides that:

> "(3) If an Employer terminates the employment of an Employee for cause pursuant to Article 63(1):
>
> (a) the Employee shall not be entitled to receive any payment of Wages in lieu of their notice period."

16. As such, termination for cause or without cause cannot be found in coexistence with a termination that provides for payment of a notice period. A termination is in one category or the other.

17. I find that, pursuant to the letter dated 27 August 2020, the Claimant was terminated with notice in accordance with Clause 14 of the Employment Contract. It follows that the question of whether the Claimant was terminated for cause or without cause simply does not arise. Having terminated the Claimant with notice, in accordance with Clause 14 of the Employment Contract, the Defendant cannot be deemed to have terminated the Claimant for cause.

18. The Claimant has argued that, despite being given notice of his termination and receiving his end of service entitlements, he was nevertheless terminated for cause, with that cause being "poor performance." He has come to this conclusion as, on 21 August 2020, the Defendant confirmed to the Claimant by way of an email that poor performance was the reason for his termination. As stated above, however, the mere presence of a cause or reason for termination cannot in itself determine that termination for cause under the DIFC employment law has been engaged.

19. Under Article 63(1) of the Employment Law, termination for cause is defined as "termination with immediate effect for cause in circumstances where the conduct of one (1) party warrants termination and where a reasonable Employer or Employee would have terminated the employment as a consequence thereof."

Under Article 63(3), if an employer terminates the employment of an employee:

> "(a) the Employee shall not be entitled to receive any payment of Wages in lieu of their notice period; and

(b) the Employee's Gratuity Payment and outstanding Vacation Leave shall be calculated up to the Termination Date.

A termination without cause, on the other hand, is a termination which was purported to be for cause and pursuant to which Article 63(3) of the Employment Law was applied, but which was subsequently found to not in fact be for cause, thereby rendering the employer liable for payment of the terminated employee's wages in lieu of notice and gratuity payment and outstanding vacation leave calculated up to the end of the notice period rather than the date of termination"

20. It is unclear why the Claimant has pleaded that he was purportedly terminated for cause in as much as he has received any entitlements that he may have been deprived of had the Defendant in fact attempted to terminate him for cause. In any event, the reason of `poor performance' for the Defendant's termination of the Claimant cannot have the effect of rendering the Claimant's termination as being termination for cause for the purposes of Article 63 of the Employment Law. It follows that a relatively large amount of the Claimant's submissions which concern the reasons for his termination fail to support any legal basis for granting him a remedy or are otherwise irrelevant to the remedies that he seeks.

Damage to reputation

21. The Claimant claims compensation against the Defendant for an alleged "tarnished reputation in the market". The Claimant submits that this fact, in and of itself, affects his reputation in the industry as potential employers will enquire as to why his employment was terminated, in addition to his client base. Moreover, the Claimant purports that all of his clients and customers were made aware of the fact that the Claimant is no longer working for the Defendant as of poor performance. The Claimant seeks AED 40,000 by way of compensation for this alleged damage to his reputation.

22. For its part, the Defendant submits that the Claimant's claim for compensation for alleged damage to his reputation is baseless in law. In particular, it says that it has not communicated or attempted to communicate with any third parties with the intention or effecting or damaging the reputation of the Claimant whatsoever in connection with his employment or termination, and that the Claimant has failed to produce any evidence whatsoever that his reputation has been damaged within the industry. Moreover, the Defendant has argued that serving the Claimant with a notice of termination does not, in and of itself, trigger an entitlement to compensation for damage to reputation.

23. The Claimant provided two witness statements from two former clients which suggested that they were informed by the Defendant that the Claimant was terminated due to poor performance. In rebuttal, the Defendant confirmed that the witnesses are no longer clients of the bank, and that these submissions cannot stand as evidence alone for compensation for damage of reputation.

24. As confirmed in the case of Marwan Ahmad Lutfi v The Dubai International Financial Centre Authority [2012] DIFC CFI 003, for a claim of damage to reputation to succeed, there would need to be evidence which proved that a defendant's conduct had damaged a claimant's reputation (see: [45] and [66]). In the instant matter, there can be no such evidence damaged to the employee's reputation. The Claimant's Particulars of Claim do not go so far as to show any tangible evidence that the Defendant's conduct, behaviours or treatment of the Claimant have in fact damaged the Claimant's personal or professional reputation. This claim is, therefore, both speculative and premature and, as such, falls to be dismissed.

Conclusion

25. In light of the aforesaid, I find that the Claimant's claims must be dismissed.

26. The Claimant having been unsuccessful in his claim, and in my judgment he is not entitled to recover the fees in respect of the claims.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 27 December 2020
At: 1pm