THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

R.E. LEE INTERNATIONAL (MIDDLE EAST) LIMITED

Claimant

and

IMRAN KHAN

Defendant

ORDER WITH REASONS OF JUSTICE SIR JEREMY COOKE

UPON the Part 7 Claim form dated 6 December 2022 and the Particulars of Claim dated 18 January 2022 (the "Claim")

AND UPON the Defence with Counterclaim dated 14 February 2023 (the "Defence and Counterclaim")

AND UPON the Claimant's Application No. CFI-087-2022/1 dated 6 March 2023 seeking for parts of the Defence and Counterclaim to be struck out, and for the proceedings to be made private (the "Privacy Application") (the "Claimant's Application")

AND UPON the Defendant's Application No. CFI-087-2022/2 dated 20 March 2023 seeking immediate judgment and the Defendant's Application No. CFI-087-2022/3 dated 13 April 2023 seeking a strike out of the Claim (together the "Defendant's Applications")

AND UPON hearing counsel for the Claimant and counsel for the Defendant at the hearing held on 27 April 2023 (the "Hearing")

IT IS HEREBY ORDERED THAT:

1. The Privacy Application is refused.

2. On the Claimant's Application:

   (a) The discrimination and victimisation allegations (the "Discrimination and Victimisation Allegations") in paragraph 60f and 61e of the Defence and Counterclaim and d vi of the prayer for relief are struck out as an abuse of the process of the Court.

   (b) The allegations of breach of regulatory duty set out in paragraph 60g and 62 of the Defendant's Defence and Counterclaim and paragraph d v of the prayer for relief are struck out as an abuse of the process of the Court.

   (c) Paragraphs 49b and the references in paragraph 60b of the Defence and Counterclaim relating to the letters of 19, 30 and 31 January 2023 are struck out as an abuse of the process of the Court.

3. The Defendant's Applications are denied.

4. The Claimant shall replead its Claim by 27 May 2023, providing particulars of the alleged wrongdoing by the Defendant and the sums accepted as owing to him in respect of commission and expenses, subject to any set off resulting from its own claims against him.

5. The Claimant shall give disclosure of documents supporting its calculation of the sums referred to in paragraph 4 of this Order at the same time as serving its repleaded Amended Particular of Claim.

6. The Defendant shall serve its Amended Defence and Counterclaim by no later than **4pm on 23 June 2023.**

7. The Claimant shall serve its Amended Reply and Defence to Counterclaim by no later than **4pm on 7 July 2023.**

8. A Case Management Conference shall be fixed for a date in the week commencing 17 July 2023 or for 31 July 2023.

9. Costs shall be reserved.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 28 April 2023
At: 12pm

SCHEDULE OF REASONS

1. These are the reasons for the decision made orally at the Hearing which were briefly expressed at the conclusion of the argument.

2. The Claimant's Application applied for:

2.1. an order that the proceedings be heard in private (the "Privacy Application");

2.2. an order for immediate judgement/strike out of the victimisation/discrimination claims in the Defendant's Defence and Counterclaim on the grounds that they are out of time and/or they have no real prospect of success;

2.3. an order striking out other parts of the Defence and Counterclaim on the ground that they are an abuse of process.

3. The Defendant's Applications applied on 20 March 2023 for immediate judgement in relation to the entirety of the Claimant's Claim and the Defendant's Counterclaim and, on 13 April 2023, applied to strike out the Claimant's claim in the light of the first Witness Statement of Mr Eric Chin of the Claimant dated 10 April 2023.

The Privacy Application

4. I made a temporary order for the applications to be heard in private until I could determine whether significant or disproportionate harm would ensue in the event that they were heard in public in accordance with the general principle of open justice. The question appeared to me to be, in part, dependent upon whether or not various parts of the Defence and Counterclaim were struck out on the ground of abuse of process since these were the parts which said to contain scurrilous accusations against individuals involved in the management of the Claimant in their personal lives and accusations of breach of DFSA rules without any foundation.

5. As appears below, I have struck out various parts of the Defence and Counterclaim which, to my mind, removes the risk of significant or disproportionate harm to the Claimant and its business interests, or to the privacy of individuals, with the result that the principles of open justice should prevail, and the proceedings should be conducted in the ordinary way. In retrospect, the manner in which the arguments were put in relation to such allegations does not require the maintenance of the temporary privacy order in relation to the Hearing.

The Discrimination and Victimisation Allegations

6. These allegations appear in paragraph 60f, 61e and in the prayer for relief at paragraph d vi of the Defence and Counterclaim, in various paragraphs of the Defendant's extensive witness statements and in three letters written by his solicitors dated 19, 30 and 31 January 2023.

7. There are two critical facts pleaded by the Defendant upon which the Claimant relies in seeking the striking out of such allegations.

7.1. The first is that the only potential acts that the Defendant identifies in his pleadings as being potential acts of victimisation are the act of his dismissal on 14 September 2022 and the email sent by the Claimants to its business contacts on the same day, after dismissal, informing them of it.

7.2. The second is that the Defendant's pleaded case is that the reason his employment was terminated and the reason that the 14 September 2022 email was sent was because the Claimant had discovered that the Defendant was about to join a rival firm, where there was personal hostility between the managing directors of both the Claimant and that firm (Defence and counterclaim paragraph 60 (c) - (d)). His witness evidence was to the same effect (paragraph 33 (a) of his third witness statement).

8. Article 60 (2) of the Employment Law provides that victimisation of an Employee occurs where the Employer subjects the Employee to a detriment or dismisses him because the Employee does a "protected act", or the Employer believes that the Employee has done or may do a "protected act". Article 60 (2) then goes on to set out a series of acts which qualify as "protected acts", none of which are pleaded or relied on by the Defendant in his witness statements. In order to succeed in a claim under Article 60, a complainant must demonstrate that he suffered a detriment or dismissal because of his involvement in a "protected act". Contrary to the submission of Counsel for the Defendant, who argued that the causal link was only required in relation to dismissal, victimisation requires any detriment suffered, or any dismissal, to be because of that involvement in a protected act. Without a causal link between any alleged detriment or the dismissal and a "protected act", there is no basis for a claim.

9. Article 59 (1) of the Employment Law provides that an Employer must not discriminate against an Employee regarding employment or any term or condition of employment on the grounds of the Employee's (inter-alia) race, nationality, or religion. Article 59 (2) defines "discrimination" for the purposes of the Article as meaning where: "an Employee is treated less favourably than another is or would be treated in the same circumstances, or put it a disadvantage not faced by others, because of a prohibited ground in Article 59 (1)"; a provision, criterion or practice is applied to an employee which is discriminatory in relation to one such ground; or an Employer engages in unwanted treatment of conduct relating to one of the prohibited grounds which has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive workplace for an Employee or violates an Employee's dignity. Under Article 59 (3), the Employer's actions in dismissing an Employee or subjecting him to a detriment are discriminatory under Article 59 (1) if they contravene Article 59 (2).

10. As already mentioned, the Defendant's case is that he was dismissed not because of his nationality, race, or religious belief but because he was about to join a rival firm. The dismissal could not therefore have been a discriminatory act. On his own pleaded case, therefore the dismissal and the following email could not constitute the "last continuing act" of an extended period of discriminatory conduct.

11. The pleaded facts relied on by the Defendant to support his allegation that the Claimant engaged in racist and Islamophobic conduct consists of incidents on 4 April 2019, 18 May 2020 and April 2022. Unpleaded allegations raised in his witness statements refer to events on 11 November 2040 (four years before he was even employed by the Claimant), on 23 April 2019 and 4 March 2022, a matter of which he appears to have been ignorant).

12. Under Article 61 (2) which relates to proceedings under Part 9 of the Employment Law, a specific time bar appears in relation to such claims for discrimination and victimisation. Under Article 61 (2) (a), "a Court shall not consider a claim" unless it is brought to the court before the end of a period of six months beginning with the date of the act or failure to do something to which the complaint relates, save where a complainant

satisfies the Court that there are circumstances which justified the disapplication of the time bar and applying such other period as the Court considers reasonable.

13. The Discrimination and Victimisation Allegation claims were brought to the court by the Defence and Counterclaim dated 13 February 2023. All the events of which complaint was made allegedly occurred prior to 13 August 2023, apart from the dismissal, which, on the Defendant's case was not an act of victimisation or discrimination because the reason for it was his intention to join a rival firm. No circumstances have been put before the court which would justify the disapplication of the time bar set out in Article 61 (2) (a).

14. In these circumstances, both the Discrimination and Victimisation Allegation claims are doomed to fail and, on the basis of the pleadings alone, paragraph 60 f and 60 1p fall to be struck out as disclosing no reasonable grounds for bringing the claim. Alternatively, the Claimant is entitled to summary judgement on them as they have no realistic prospect of success.

Abuse of Process

15. The claimant submits that it is clear from the Defendant's pleadings and lengthy and repetitive witness evidence that he has adopted a concerted strategy to cause maximum embarrassment to the Claimant, its employees and third parties by putting forward allegations and accusations which have nothing whatsoever to do with the issues in dispute, whether in respect of his causes of action or those of the Claimant. There are two heads to this submission:

15.1. allegations regarding the Claimant's and its business partners' compliance with the DFSA administered rules and regulations;

15.2. accusations relating to the private lives of senior employees of the Claimant and its related companies and sensitive proprietary information relating to their business.

16. At paragraph 49b of the Defence and Counterclaim it is pleaded that "the Defendant's understanding is that" two banks which have referred business to the Claimant in the past do not have the requisite DFSA/DIFC or UAE authorisations or licences to be involved in any way in long-term insurance contracts for any UAE residents through an offshore insurance broker. "In this respect the Defendant repeats its legal representative's letter[s] dated 19 January 2023, 30 January 23 and 31 January 2023".

17. At paragraph 60b of the Defence and Counterclaim, the Defendant alleged that the Claimant had committed a repudiatory breach of the Employment Agreement and, despite typographical errors referring to the Claimant instead of the Defendant, referred once again to the same letters as setting out the Claimant's egregious conduct which led to its repudiatory breach.

18. The letter of 19 January 2023 consists of 30 pages; that of 30 January consists of four pages; and that of 31 January of two pages. There is no particularity in the Defence and Counterclaim as to what is referred to or relied on. The 30-page letter contains paragraph after paragraph of accusations against Mr Calvin Low, Mr Shawn Parker, Mr Eric Chin and Mr Andrew Lee in relation to their private lives, insulting and abusive language, unethical behaviour, including corruption, and unlawful conduct of business contrary to DFSA regulations. The four-page letter likewise makes allegations of corruption and speaks of joining 15 different authorities of one kind or another, including the DFSA and regulatory authorities in other countries to the proceedings, whilst the two-page letter raises questions in relation to the manner in which business was conducted by the Claimant in the DIFC. Counsel for the Defendant told the Court that there would be no such joinder but the reference to these letters which detail all such matters constitutes an abuse of the Court's process and it is likely to obstruct the just disposal of the proceedings because of the lack of relevance to the issues and the nature of the allegations made, whether true or not.

19. The Defendant has no standing to bring any claim for breach of DFSA regulations against his former employer nor does he have any relevant cause of action in relation to them. The only tangential relevance of the private life of Mr Calvin Low relates to the personal animosity which is said to exist between him and his former brother-in-law who is the managing director of a rival firm which is said to have made an offer of employment to the Defendant, which he was contemplating accepting. This cannot justify the salacious allegations made in the pleading which will tend to obstruct the just disposal of the proceedings by diverting attention away from issues which matter.

20. In these circumstances these allegations and the regulatory law allegations which appear in paragraphs 49b, 60g and 62 must be struck out as well as the cross references to the three letters referred to above.

The Defendant's Applications

21. The essence of the Defendant's case on both applications is that, on the Claim Form and Particulars of Claim as framed, the Claimant cannot succeed because:

21.1. its case depends upon the Defendant causing the Claimant to enter into a referral agreement with Kings Barn Consultants FZ - LLC ("KBC"), which the evidence of Mr Chin, the Claimant's managing director, negates. Any such referral agreement was concluded between KBC and the Cayman Islands company in the same group as the Claimant, not the Claimant itself.

21.2. its case depends upon the allegation of "an obvious conflict of interest between the beneficial owner of K BC and her husband" who was a Managing Director with the Dubai Office of a substantial bank, where there was no such obvious conflict.

21.3. There was no data breach by the Defendant as alleged.

21.4. No loss and damage can be established.

22. In my judgement, the Claim Form and Particulars of Claim are deficient in setting out the nature of the claim being made by the Claimant against the Defendant, as appears from Mr Chin's first witness statement which clarifies the position somewhat. Nonetheless, the essence of the case which the Defendant has to meet appears sufficiently from the Claim Form and Particulars of Claim, when examined. There is an obvious inaccuracy in pleading the inducement by misrepresentation by the Defendant of the conclusion of a referral agreement between the Claimant and

K BC but, as appears from Mr Chin's witness statement, the Claimant's case is that the Defendant's misrepresentation induced the Claimant to bring about, through the Hong Kong office of its related company, a referral agreement between the offshore broker (the Cayman Islands Company in the same Group) and KBC. Equally, as explained by Mr Chin, any loss of brokerage business by the Cayman Islands company as a result of loss of referrals from the bank whose managing director's life was to be insured would result (and did result) in loss of these or the services rendered by the Claimant to the Cayman Islands Company in respect of policies brooked by the latter.

23. Whilst not adequately pleaded, the wrongdoing which is alleged against the Defendant is that he dishonestly misled his employers, the Claimant, by misrepresenting that KBC had been recommended by a wealth fund, that KBC had been established in business for five years and failed to disclose that the wife of the bank's managing director was not only a beneficiary under the policy sought, but was the owner and director of KBC, all of which was known to him but not to the Claimant. At paragraph 49 of the Particulars of Claim, it was alleged that the Defendant acted dishonestly in attempting to on-board new clients to his employer through K BC, by misrepresenting the referral source for KBC and omitting to inform his employer about the "macroscopic conflict of interest existing between KBC and the banks managing director". In Mr Chin's first witness statement, it is also made plain that the Claimant's case involved the allegation that, with the knowledge of the Defendant the wife was diverting business from the bank, her husband's employer, with whom the Cayman Islands Company had a referral agreement to her own company, without disclosure to the bank. There are thus potential areas of conflicts of interest which can be expressed in three different ways: first a conflict between the managing director and the bank in diverting referral fees away from the bank to his wife; secondly, the conflict between the wife and the insurer, because, as beneficiary she was obtaining a commission or her company as referral agent; thirdly a conflict as between husband-and-wife in view of their respective positions vis a vis the bank and KBC. If all this was known to the Defendant, as the Claimant says, but not known to others in the management of the Claimant, the actions of the Defendant in putting forward K BC as a referral agent is said to put the Claimant in an invidious position with regard to the bank with whom it had an established relationship as a referral agent and to loss of its business. (The data breach allegations add nothing and appear to have no basis in law or fact).

24. The position with regard to other insureds who switched their introducer from the bank to KBC or used ABC as referral agent, to the knowledge of the Defendant is said to have reinforced the Claimant's perception of the dishonesty of the Defendant and led to his dismissal.

25. It is clear to me on the basis of the pleadings that there are issues of fact which require to be determined which mean that any application to strike out the claim, the Claim Form or the Particulars of Claim cannot succeed. It is clear from the pleadings and the witness statements that issues arise as to the timing of the completion of various forms, some of which are said to be backdated, the knowledge of the Defendant and the other management personnel at the Claimant of some or all of the critical matters referred to and to the loss of business said to be caused by knowledge in the market of the Defendant's actions. Although there is a requirement for the pleading to be put in order, it cannot be said that the statement of case discloses no reasonable grounds for bringing the claim or is an abuse of the court's process.

26. The same applies to the application for summary judgement in favour of the Defendant. It cannot be said that there are no realistic prospects of success on the part of the Claimant whatever the difficulties may be in establishing loss of business from the bank in question as a result of the actions of the Defendant, as opposed to other matters, such as the DFSA decision in relation to the bank's business upon which the Defendant relies. Fact evidence and expert evidence would no doubt be required to make good the loss claimed which falls to be set off against any commission and expenses owing to the Defendant as at the date of the termination of his employment.

Directions

27. The manner in which this litigation has been conducted does no credit to the parties or their legal representatives. I have already commented on the inadequate pleading in the Claim Form and particulars of Claim. The Court is pleased to see that Counsel is now involved. I encouraged restraint on the part of the Claimant in relation to criminal proceedings which have apparently been taken against not only the Defendant but also his lawyers, including local representatives who are not involved in the conduct of the defence or counterclaim at all. The pursuit of criminal proceedings, whilst often thought to exert leverage, does not assist in the resolution of a civil dispute, whether by settlement or by court determination. Similarly, the advancement of accusations of personal misdoings in private life or accusations of regulatory failure which can be publicised, without any proper foundation being put forward, may be designed to embarrass and lower the reputation of the Claimant, but do not carry any weight with the Court which deprecates such actions. Once again, the Court is pleased to see the involvement of leading Counsel now and expresses the hope that the litigation can now proceed with a focus on the real issue which is whether or not the termination of the Defendant's employment was justified, with cause, and what the liability of the parties is, inter se, for commission, expenses and/or damages.

28. In the circumstances I ordered the Claimant to replead its case by 26 May 2023, starting with a clean sheet and setting out the exact nature of the wrongdoing alleged against the Defendant as well as setting out the exact sums it says were owed by way of commission and expenses, subject to the set off of its own claim for damages. Disclosure of the documents relied on in support of the calculation of commission and expenses pleaded is to be given at the same time as service of the amended Claim Form/Particulars of Claim. An amended Defence and Counterclaim is then to be served by 23 June 2023 and an amended Reply and Defence to Counterclaim by 7 July 2023. A CMC is to follow in July, on a date to be fixed before close of business on Monday, 1 May 2023.