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

LODONNA

Claimant

and

LACHIN FITNESS LTD

Defendant

Hearing : **15 September 2020**
Second Hearing : **15 October 2020**
Judgment : **22 October 2020**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 5 August 2020

AND UPON the Defendant filing an Acknowledgment of Service intending to defend all of this Claim dated 12 August 2020

AND UPON a Consultation being held before SCT Judge Nassir Al Nasser on 30 August 2020

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

AND UPON a hearing having been listed before SCT Judge Maha Al Mehairi on 15 September 2020, with the Claimant and the Defendant's representative attending

AND UPON a Second hearing having been listed before SCT Judge Maha Al Mehairi on 15 October 2020, with the Claimant and the Defendant's representative attending

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 8,919.12.

2. The Defendant shall pay the Claimant the Court fee in the sum of AED 367.50.

3. The Claimant shall pay the DIFC Courts the suspended Court filing fee in the sum of AED 1,032.50.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of Issue: 22 October 2020
At: 10am

THE REASONS

The Parties

1. The Claimant is Lodonna (the "Claimant"), an individual filing a claim regarding his employment at the Defendant's company.

2. The Defendant is Lachin Fitness LTD (the "Defendant"), a company registered in the DIFC Dubai, UAE.

Background and the Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an Employment Contract dated 1 December 2019 (the "First Employment Contract"). The duration of the Employment Contract as stated in the First Employment Contract is for 1 year, and the Claimant started working for the Defendant on 1 December 2019.

4. On 1 May 2020, the Claimant received a second employment contract titled "Online Contract" as a result of the circumstances surrounding the

COVID-19 pandemic (the "Pandemic"), which was signed on 30 April 2020 (the "Second Employment Contract").

5. On 1 June 2020, the Claimant received a third Employment Contract ("Third Employment Contract"). The Claimant submits that the Second and Third contracts signed by her are temporary contracts as a result of the change in the nature of her role due to the Pandemic and the restrictions put in place by the Government, and that the First Employment Contract is the contract that regulates the work relationship between her and her employer.

6. During the course of her employment the Claimant received 3 warning letters from the Defendant, the Claimant states that she has acceptance of the first warning letter, and denies the second and third letters. As a result of these warnings, the Defendant terminated the Claimant's employment with the Defendant on 25 June 2020.

7. The Claimant contested these warning letters in an appeal hearing with the Defendant but failed to attend the hearing.

8. On 5 August 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming various sums set out as follows:

a) Salary for the month of June 2020 in the amount of AED 15,000;

b) Payment in lieu of 12.8 days of accrued but untaken annual leave in the amount of AED 6,923;

c) 6 months' remuneration in lieu of her early termination in the amount of AED 90,000;

d) Compensation for the early termination of her lease agreement and moving expenses to the company's accommodation in the amount of AED 4,982;

e) The sum of AED 4,500 for visa expenses; and

f) Payment in lieu of damages suffered by the Claimant at the hands of the Defendant after recording 25 videos in which the Claimant appeared, and said videos having been put on a paid subscription channel without the Claimant's consent and authorisation.

9. On 12 August 2020, the Defendant filed an Acknowledgment of Service and a defence without counterclaim.

10. The parties met for a Consultation with SCT Judge Nassir Al Nasser on 30 August 2020 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, pursuant to a Hearing held on 15 September 2020.

11. On 15 October 2020, I have listed the matter for a Second Hearing with the Claimant and the Defendant's representative in attendance.

The Claim

12. The Claimant's case is that she was employed with the Defendant as a Fitness Instructor from 1 December 2019 until 25 June 2020, as provided above. In the Hearing, the Claimant argued that the employment contracts she signed were considered online temporary contracts put in place in light of the circumstances surrounding the Pandemic and should be considered to be new contracts.

13. The duration of the Claimant's employment was set out in the First Employment Contract to be for one year, but the Claimant was terminated ahead of the expiry of that Contract, on 25 June 2020.

14. The Claimant submits that the reason for her early termination is unjustified as she only accepts the first warning letter the Defendant issued to her, and does accept the second and third letters.

15. The Claimant, pursuant to her early termination, had sought to agree an amount to be paid to her by the Defendant. The amounts proposed by the Claimant were denied by the Defendant and therefore the Claimant proceeded to file her Claim with the SCT. Each of the Claimant's Claims are set out in the Discussion below.

16. The total sum claimed by the Claimant as set out in the Claim Form is AED 140,000. However, during the course of the hearing, I requested a breakdown of the AED 140,000 claim that was brought by the Claimant, seeing as the only breakdown provided amounted to AED 121,405. The Claimant then confirmed that she is only seeking the amount of AED 121,405.

The Defence

17. The Defendant contends that the Claimant's dismissal was carried out due to verbal warnings given to her in addition to the 3 written warnings, as the Defendant finds that the Claimant had committed gross professional misconduct during her employment with the Defendant.

18. Based on this version of events, the Defendant, in response to the Claim, has agreed to settle some of the Claimant's claims being:

(a) A marketing campaign payment in January and February in the amount of AED 625; and

(b) A reimbursement for the deduction of visa expenses in the amount of AED2,625.

Discussion

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

20. I shall set out below each of the Claimant's claims, and the Defendant's defence to each Claim, and accordingly, the Court's reasoning and finding.

21. The Court is satisfied that the 3 Employment Contracts are valid, and that they are not an addendum to the First Employment Contract. The Third Employment Contract will be considered the relevant Contract pursuant to which the Court will determine the Claimant's contractual rights, in accordance with the following clause set out in the Third Employment Contract:

> "1. This agreement will supersede any earlier agreement signed between the parties.
>
> .
>
> 4. for all intents and purposes, all matters of employment between Lachin Fitness Limited and you will be governed by this letter of appointment and Employment Contract. Any subsequent modifications to any of the above will be binding between the company and yourself will be communicated to you by way of letters/ circulars/ email."

Termination on the grounds of misconduct

22. The Defendant submits that the Claimant was terminated due to the following reasons, which was consistent in her 3-warning letters, being:

> (a) "Failure to adhere to Company standard operating procedure regarding required timekeeping protocols.
>
> (b) Repetition of same offence regarding late or no show, despite previous verbal and written warnings, where it was clearly explained that this type of continued behavior could lead termination.
>
> (c) Failure to adhere to Companies standard operating procedure regarding Trainers preparation for a class."

23. In response to these submissions, the Claimant submits that she did not accept the second and third warning letters, as, she submits, she was forced to sign these letters under the pressure of believing she may lose her job if she refused to sign the letters.

24. The Court is of view that the warning letters provided by the Defendant are all signed by the Claimant and there is no evidence to support that the Claimant signed these letters under any threat made to her by the Defendant, seeing as the Defendant's policy in relation to time keeping for fitness classes are very clear and precise, and the Defendant has submitted evidence to demonstrate that the Claimant, on numerous occasion, did not adhere to said policy. As such, the Court finds that the Defendant's termination of the Claimant's employment for cause was carried out on a lawful basis.

6 months' remuneration as a result of early termination

25. The Claimant submits that the Employment Contract is a fixed-term contract, and states that pursuant to the fact that she was terminated before the 1 year term ended as stipulated in the First Employment Contract, she should be entitled to remuneration for the remainder of the months leading up to the date of the expiry of the 1 year contract. She claims that she is entitled for payment of 6 months compensation for early termination.

26. In response to this claim, the Defendant submits that the Third Contract is the contract that is valid between the parties, having had replaced all previous contracts between them. The Defendant also argues that the Claimant was terminated for cause and as a result, no employment obligations are due in accordance with this termination.

27. As set out in paragraph 26 above, the Court is satisfied that the requirements of termination for cause according to the DIFC Employment Law has been met, in accordance with Article 62(2) which reads as follows:

> "Subject to Articles 63(1), 63(3), An Employer or an Employee may terminate an Employee's employment 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.;
>
> (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; and.
>
> (b) the Employee's Gratuity Payment and outstanding Vacation Leave shall be calculated up to the Termination Date."

28. Therefore, I dismiss the Claimant's claim for 6 months' remuneration as a result of early termination.

Payment in lieu of accrued but untaken annual leave

29. The Defendant, in response to the Claimant's claim for payment in lieu 12.8 days of accrued but untaken annual leave, has agreed to the Claimant's calculation of the number of days entitled to her.

30. The Court finds that the parties are mistaken in relation to the number of days accumulated for the duration of the Claimant's employment. The Claimant worked from 1 December 2019 to 25 June 2020 for a duration of 6 months and 25 days. 2.5 days leave for each month, results in 17 days of untaken annual leave.

31. Article 27 of the DIFC Employment Law which sets out that:

> "Vacation Leave
>
> (a) Subject to Article 30, an Employee who has been employed for at least ninety (90) days is entitled to paid Vacation Leave of twenty (20) Work Days in each Vacation Leave Year.

(b) An Employee is entitled to be paid their Daily Wage during Vacation Leave.

.

Compensation in lieu of Vacation Leave

(1) Where an Employee's employment is terminated, the Employer shall pay the Employee an amount in lieu of Vacation Leave accrued but not taken up to and including the Termination Date calculated in accordance with Article 28(3).

(2) .

(3) Compensation in lieu of Vacation Leave, or any amount owed by the Employee in respect of excess Vacation Leave taken, shall be calculated using the Employee's Daily Wage at the Termination Date."

32. I agree with the Defendant's submissions in relation to the Claimant's basic salary, in accordance with the Claimant's Third Employment Contract under Remuneration and Benefits, set out below:

"The terms & conditions of employment applicable to this appointment are as follows:

A) Renumeration

Basic Salary AED 2,500/- Per Month (Minimum of 11 classes to be complete)

We agree to commit to giving you a minimum of 48 classes per week, this will be non negotiable (+ - 12 classes per week)

As part of your contract you will commit to sub a min of 2 classes per week, this will be non negotiable and take precedent over any other commitments you may have.

Class rate

200AED

If you are not able to take the full amount of 48 classes you will only be paid for the classes which you have taken.

You will be paid the above rates for any additional classes taken."

33. As such, the Claimant is entitled to payment in lieu of 17 days for the year 2020, therefore, I find that the Claimant shall be paid the amount of AED 1,961.46 (AED 2500 x 12/260 = 115.38 x 17 = AED 1,961.46).

Remuneration for the month of June and 7 days of sick leave

34. The Claimant submits that she is entitled to AED 15,000 for the month of June 2020 as remuneration.

35. According to the Defendant's records, the Claimant completed 11 classes, and participated in 2 additional classes for the month of June.

36. As per her Third Employment Contract, stated above, she is entitled to AED 2,500 for completing the 11 classes and AED 400 for the 2 additional classes, a total of AED 2,900.

37. The Defendant also confirmed that they will pay the Claimant for her 7 days of sick leave in the amount of AED 807.66 (AED 2500 x 12/260 = 115.38 x 7 = AED 807.66).

Compensation for the early termination of lease agreement

38. The Claimant seeks compensation for the early termination of her lease agreement having moved into the Defendant's company accommodation, stating that the Defendant promised her free rent up to the month of August at which point the Claimant would then start paying rent. The Claimant also makes submissions to the fact that she would not have terminated her lease should she have known that the accommodation will not be available after August.

39. The Defendant responds to the Claimant's allegations by stating that the Claimant was aware that she would have to start paying rent from August and that she was not forced to move into the company's accommodation. The Claimant elected to move into the company's accommodation due to the fact that that it is walking distance from the Defendant's fitness studio and that she would not have to pay rent for two months. As a result of the termination, the Claimant was requested to vacate the accommodation as she is no longer under the Defendant's employment.

40. The circumstances that have fallen upon the Claimant, while unfortunate, do not meet the burden that the Claimant would have to prove in order to demonstrate that she has suffered undue damage at the hands of the Defendant. An employment relationship can be terminated at any stage during the course of an employment, and, should that occur, the employee should expect some form of inconvenience. I do not find it appropriate to order any compensation to be paid to the Claimant as it is my view that the Claimant failed to provide evidence to demonstrate that she was forced to break her lease or move into the company's accommodation that she has been subjected to by the Defendant.

41. Accordingly, I dismiss the Claimant's claim for compensation for the early termination of the lease.

Damages

42. The Claimant asserts that during the emergency period she was told to record zoom classes for her fitness classes but was then surprised that these classes were put on a paid subscription channel that the Defendant benefited from until August 2020, when they were removed from the online channel.

43. Furthermore, the Claimant submits that she was not comfortable filming the videos in order to be put on an online subscription channel and that should she have been aware of this she would have refused to film any sessions. She also adds that when she discovered she expressed her anxiety and unease in relation to this to the Defendant.

44. The Claimant submitted WhatsApp conversations between her and the Defendant's management as evidence and is seeking compensation of AED 10,000 for each month the fitness sessions were available on the paid channel.

45. The event that the Claimant refers to and which she alleges constituted a sustained and destructive attack on her and management of the Defendant are duly covered by article 43(1) and (2) of the Employment Law which provides that:

> "43. General duties of Employers
>
> (1) An Employer has a duty to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all its Employees.
>
> (2) An Employer shall provide and maintain a workplace that..."

46. After review of the Claimant's evidence, the Court does not find any evidence supporting the Claimant's claim that she had refused the idea of having videos of her uploaded onto a paid subscription channel, and the Claimant's lack of knowledge in relation to the matter cannot constitute an attack against the Claimant. The Claimant alleges that the Defendant threatened to terminate the Claimant, an allegation that the Claimant makes without providing supporting evidence. Should the Claimant have felt that she was not comfortable to continue working in that area or that workplace the Claimant was free to seek employment elsewhere. The Claimant was an employee of the Defendant and requiring the Claimant to record classes or zoom classes to generate income during the emergency period is something understandable. There is no evidence provided that the Claimant refused to be part of those fitness classes as she willingly appeared at the studio, selected her outfit and was filmed by the Defendant

47. The Court dismisses the Claimant's Claim for damages, as the Claimant has failed to discharge her burden of proof in demonstrating it. I am unable to make a finding based on the thin evidence that the Claimant has submitted and, accordingly, this part of the Claimant's claim falls to be dismissed.

Conclusion

48. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 8,919.12.

49. The Defendant shall pay the Claimant the Court fee in the amount of AED 367.50.

50. The Claimant shall pay the DIFC Courts the suspended Court filing fee in the sum of AED 1,032.50.

Issued by:
Ayesha Bin Kalban
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