Claim No: CFI 070/2022

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF APPEAL

BETWEEN

PARAMJIT KAHLON

Claimant

and

LIBERTY STEEL GROUP LTD

Defendant

ORDER WITH REASONS OF CHIEF JUSTICE ZAKI AZMI

UPON the Order with Reasons of H.E. Deputy Chief Justice Ali Al Madhani dated 24 April 2023 (the "Order")

AND UPON the Defendant's Appeal Notice dated 15 May 2023 seeking permission to appeal against the Order (the "First Application for Permission to Appeal")

AND UPON the Order with Reasons of H.E. Deputy Chief Justice Ali Al Madhani dated 11 July 2023 dismissing the First Application for Permission to Appeal

AND UPON the Defendant's Appeal Notice dated 31 July 2023 seeking a renewed application for permission to appeal against the Order (the "Renewed Application for Permission to Appeal")

AND UPON the Claimant's submissions filed in reply to the Renewed Application for Permission to Appeal dated 21 August 2023

AND UPON reviewing the relevant documents in the case file

IT IS HEREBY ORDERED THAT:

1. The Renewed Application for Permission to Appeal is dismissed.

2. Costs shall be assessed by the Registrar unless agreed by the parties.

Issued by:
Hayley Norton
Assistant Registrar
Date of Issue: 21 September 2023
At: 1pm

SCHEDULE OF REASONS

1. This is a renewed application for permission to appeal by the Defendant (the "Renewed Application for Permission to Appeal"). Its first application before the Trial Judge was dismissed.

2. The Claimant, Paramjit Kahlon filed a Claim for wrongful dismissal against the Defendant, Liberty Steel Group Ltd, who he alleged was his lawful employer. The details of how he came to be employed are all found in the pleadings and the judge's grounds of judgment.

3. The Defendant filed an application under Part 12 of the Rules of the DIFC Courts ("RDC") to dismiss the Claim on the basis that the Court has no jurisdiction to hear the Claim. There was an oral hearing on the 17 of March 2023 on the issue of disputed jurisdiction.

4. It is common ground that the Defendant named in the Claim, Liberty Steel Group is registered and located within the DIFC with its offices at the Central Park Tower, DIFC, Dubai.

5. From my reading of the grounds of reasoning provided by the learned judge, there was a dispute as to whether it is Liberty Steel Group or Liberty Fe Trade DMCC who was the employer of the Claimant. The Defendant denied that it was the Claimant's employer. This is a question of fact to be determined by the Court at trial.

6. In its Renewed Application for Permission to Appeal, the Defendant had contended that the Court had applied the wrong test to establish the jurisdiction under gateway A. In its submission, it contended that it must demonstrate in its pleading that there must be a formulated and discernible civil or commercial course of action against the Defendant. The Defendant relied on the case of *Hardt v Damac (DIFC) Ltd* [2009] DIFC CFI 036 to support its contention. The learned judge in considering this application disagreed with that submission. I agree with the findings of the learned judge. The wordings of the JAL do not go to that extent. That issue that was discussed in *Hardt* was in a different context altogether. The Claimant in this case had clearly pleaded that he was wrongfully terminated by the Defendant. To me for the purpose of determining jurisdiction that is a sufficient allegation. Article 5 (A)(1)(a) provides:

"the Courts of First Instance shall have exclusive jurisdiction to hear and determine a Civil or Commercial claims and actions which the 4 of 5 DIFC or any DIFC body, DIFC Establishment or Licensed DIFC Establishment is a party."

7. Once this is pleaded, the courts must take recognition of the jurisdiction unless of course in this application it was shown that the Defendant does not fall under any of the categories listed in gateway A of the JAL Article 5 (A)(1)(a). But in this case, it is not denied that the Defendant is a DIFC Establishment or licensed DIFC Establishment.

8. The question of whether the Claimant can show or prove its case, will however be decided at the trial. If at trial it is shown that the employer of the Claimant is not the Defendant then the Claim will be dismissed on that ground.

9. The question of jurisdiction becomes irrelevant. In *Hardt,* Justice Sir Anthony Colman decided upon the claimant's failure to make any coherent allegations against a Centre Establishment because in that case all the claimant did was to put the name of the party in the claim form without making any allegations or claims against that party. That is unlike the present case where the Defendant was cited to be the employer against whom the Claimant is suing.

10. The Defendant also raised the issue as to whether the contract was concluded, finalised or performed within or outside the DIFC. This is irrelevant so long as the party is a DIFC establishment then this court has jurisdiction to hear the claim.

11. The Defendant had also raised in its submission many issues which are substantial issues to be decided at trial. Pursuant to RDC 17.41, the Defendant questions whether the pleading had cited in detail the oral agreement statement of case as well as the issue of the contractual words being used or stated by the parties. These are matters to be decided at trial and have nothing to do with jurisdiction. The Defendant seems to confuse itself by combining issues which relate to jurisdiction and substantial issues relating to whether there is a contract of employment or not.

12. I do not need to refer to any case on this well established principle laid out in RDC 44.19 as to when permission to appeal should be granted. Permission will be granted only if there is a real prospect of success if the appeal is granted or if there is some other compelling reason why the appeal should be heard. As to the second reason the Defendant had not suggested any reasons to show that there are compelling reasons to grant this application for permission to appeal.

13. I therefore dismiss the Renewed Application for Permission to Appeal.

14. Costs shall be determined by the Registrar under the normal procedures unless the parties agree to them.