THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

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

IN THE COURT OF FIRST INSTANCE

BETWEEN

MACEO

Claimant/Respondent

and

MACBETH RESTAURANT AND LOUNGE

Defendant/Appellant

JUDGMENT OF H.E. JUSTICE SHAMLAN Al SAWALEHI

Hearing : **12 October 2021**

Counsel : xx for the Claimant
xx for the Defendant

Judgment : **25 January 2022**

ORDER

UPON the Defendant appealing the judgment of H.E. Justice Nassir Al Nasser dated 17 August 2021

AND UPON hearing the Defendant and the Claimant at the hearing on 12 October 2021

IT IS HEREBY ORDERED THAT:

1. The Appeal is dismissed.

2. Pursuant to Article 57(3) of DIFC Law No. 2 of 2019, being the DIFC employment law, the Defendant and the Claimant must cooperate to ensure the cancellation of the Claimant's UAE residency visa as soon as reasonably practicable.

Issued by:
Nour Hineidi
Registrar
Date of issue: 25 January 2022
Time: 3pm

JUDGMENT

1. This is the Defendant's appeal against the judgment of H.E. Justice Nassir Al Nasser issued on 17 August 2021 by which he ordered the Defendant to pay, the judge found, its former employee, the Claimant, the sum of AED 187,454.54, representing unpaid salary and end of service entitlements, and AED 3,749.09 in Court filing fees.

2. The Defendant's case in the appeal is that the Claimant was not in fact its employee. Notwithstanding the existence of a DIFC employment contract dated 15 November 2018 between the Claimant and the Defendant (the "Contract")-which contains, amongst others, a provision prescribing the Claimant's renumeration-the Defendant says that the obligation to pay the Claimant was actually another company's, Madge Group Investment LLC (**"Madge"**). Indeed, it is undisputed that Madge had paid the Claimant each of her salaries in the entirety relevant period.

3. The Defendant has failed to point out a single provision in the Contract which obliges Madge to pay the Claimant her salary, and how could there be one when Madge was not a party to that agreement? Nor has the Defendant shown the Court a single agreement between it, the Claimant and Madge to the effect that Madge was liable for the Claimant's renumeration, though the fact that Madge had paid the Claimant her wages strongly suggests that there was in existence an agreement which required it to do so. Moreover, clause 20 of the Contract provides that "This Agreement incorporates the entire agreement between the Employee and the Company with respect to the subject matter hereof . This Agreement may only be modified or varied by mutual agreement in writing."

4. Article 18(1) of DIFC Law No. 2 of 2019 (the **"Employment Law"**) provides, as material, that ". an *Employer* shall pay to an *Employee all Renumeration* earned by the Employee." (emphases added).

5. "Employer" is defined in Schedule 1 to the Employment Law as "an establishment or entity referred to in Article 4(1)(a)." Article 4(1)(a) of the Employment Law states: "any person having a place of business in the DIFC . who employs one (1) or more individuals." In my judgment, the Defendant is an employer within this meaning.

6. "Employee" is defined in Schedule 1 as "an individual referred to in Article 4(1)(b) or (c)" which provide:

> (b) any individual employed by way of an Employment Contract by a person referred to in Article 4(1)(a), who either:
>
> (i) is based within, or ordinarily works in or from, the DIFC; or
>
> (ii) agreed in an Employment Contract to be subject to this Law; or
>
> (c) any individual working or employed in the DIFC pursuant to Article 4(2).

Article 4(1)(c) of the Employment Law is not relevant in this case. Regarding Article 4(1)(b), on the other hand, while, as stipulated in the Contract, "The Employee's place of work shall be at Madge Group - Head Office . [outside of the DIFC] or other such premises in the UAE, as the Company shall specify," taking the Claimant outside of the ambit of Article 4(1)(b)(i) of the Employment Law, at the start of the Contract it is stated: "This document details the terms and conditions of the employment contract between the Company and the Employee and sets out the particular employment with the Company pursuant to **The DIFC Law**" (original emphasis). Clause 14 of the Contract provides that "[the Claimant] will be entitled to End of Service indemnity as stipulated by the **DIFC Law**" (original emphasis). I am satisfied that it was agreed in the Contract that the Claimant would be subject to DIFC employment law. This was expressly the case for the Claimant's "end of service indemnity" and, in my judgment, it was impliedly the case for the entirety of the arrangement. In my judgment, therefore, the Claimant is an "employee" for the purposes of Article 18(1) of the Employment Law in accordance with Article 4(1)(b)(ii).

7. "Renumeration" is defined in Schedule 1 as "the aggregate of an Employee's Wages and Additional Payments." As material, "wages" is defined, in turn, as "any payment made to an Employee in return for work done or services provided under an Employment Contract, including any Allowance but excluding any Additional Payment." Clause 1 of the Contract prescribed the Claimant's job title and stipulated that she would be reporting to the Managing Director of the Defendant subject to the terms and conditions of the Contract. Clause 10 stated that the Claimant:

> will faithfully serve the company . [and] not work for any other entity or individual during the court of employment with **Macbeth Restaurant and Lounge, Mithu & Mentha.** In addition, the employee must use his/her best endeavours to promote, develop and extend the business and interests of the company and will devote his/her whole working time and attention to the duties of the assigned employment.

In my judgment, these provisions of the Contract clearly comprise the Claimant's work obligations. In my view, the Claimant's performance of those work obligations is properly to be considered as "work done . under an Employment Contract" for the purposes of the definition of "wages" in the Employment Law.

8. Applying these conclusions, in my judgment Article 18(1) of the Employment Law-". an **Employer** shall pay to an **Employee all Renumeration** earned by the Employee."-in the context of this case requires as follows: the Defendant shall pay the Claimant for work done under the Contract. It follows from this, in my view, that even if there is an agreement between the Claimant, the Defendant and Madge to the effect that Madge would pay the Claimant her wages rather than the Defendant, still, the Employment Law creates a free-standing liability on the part of the Defendant to pay the Claimant for work she has done under the Contract.

9. Madge may of course be liable to reimburse the Defendant for its payment of the Claimant's wages, but that is a separate claim which has not been made in these proceedings. On the evidence before the Court, it is not a far-fetched claim as, again, Madge had previously paid all of the Claimant's wages. But as far as this case is concerned, I agree with the judge below that the Defendant is liable to renumerate the Claimant under the Contract.

10. For these reasons the Appeal is dismissed.