Claim No: SCT 139/2020 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 LUDIALA Claimant and LUCAAN LIMITED Defendant Hearing : 18 June 2020 Judgment : 9 July

Claim No: SCT 139/2020

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

LUDIALA

Claimant

and

LUCAAN LIMITED

Defendant

Hearing **: 18 June 2020**
Judgment **: 9 July 2020**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 23 April 2020

AND UPON the Defendant filing an Acknowledgment of Service intending to defend all of the Claim dated 30 April 2020

AND UPON a Consultation being held before SCT Judge Nassir Al Nasser on 10 May 2020

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

AND UPON a hearing listed before SCT Judge Maha Al Mehairi on 18 June 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 AND DECLARED THAT:

1. The restrictive covenants at clause 31 of the Claimant's employment contract with the Defendant dated 8 February 2019 are void.

2. The Claimant's other claims are dismissed.

3. Each party shall bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 13 July 2020
At: 12pm

THE REASONS

The Parties

1. The Claimant is Ludiala (hereafter the "Claimant"), an individual formerly employed as a broker at Lucaan (hereafter the "Defendant").

2. The Defendant is a company within the internationally renowned group of brokerage companies held by Lucaanand is located, operates and registered within the Dubai International Financial Centre (the "DIFC") under a financial brokerage license with the registration number 122.

Background and the Preceding History

3. The Claimant is a highly experienced foreign exchange ("FX") and financial derivatives dealer and broker. When, on 28 February 2020, he was given notice of termination by his then employer, the Defendant, the division he was hired to lead was performing badly. None of the aforesaid is in dispute. Disagreement between the Claimant and the Defendant pertains instead to false representations allegedly made to the Claimant before he

entered into an employment contract with the Defendant (the "Contract") and which, he says, induced him to enter into it; the conditions of the Claimant's employment during its currency; and post-termination restraints placed on the Claimant which he contends are unlawful.

4. On 23 April 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT"), claiming compensation for various losses he submits he has suffered due to the Defendant as well as a declaration that the post-termination restraints are unlawful and void.

5. On 30 April 2020, the Defendant filed an Acknowledgment of Service, expressing its intention to defend all of the claim.

6. On 10 May 2020, the parties met for a Consultation with SCT Judge Nassir Al Nasser 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 18 June 2020.

The Claim

7. On 10 February 2019, the Claimant and the Defendant entered into the Contract. The Contract was for an unlimited term with an initial minimum term of 12 months, effective from the employment start date of 11 March 2019.

8. By way of letter dated 28 February 2020, the Defendant served the Claimant with termination notice confirming, inter alia, a termination date of 10 March 2020, a payment in lieu of the Claimant's 3 months' notice period in accordance with clause 28 of the Contract and the placement of the Claimant on garden leave for the period between 28 February 2020 and 10 March 2020 (the "Termination Letter").

9. Subsequent to the Termination Letter, the Claimant and the Defendant engaged in open correspondence surrounding the terms of the Claimant's employment termination. As material, the following two terms were agreed between the parties. Firstly, the Claimant's employment would terminate on 28 May 2020 (the "Termination Date"). Secondly, the Claimant would, in accordance with clause 29 of the Employment Contract, remain on garden for the entire period of notice ending on the Termination Date (the "Garden Leave").

10. Despite coming to agreement on several matters, the Claimant still had grievances against the Defendant. The Contract and the Claimant's relationship with the Defendant was governed by the DIFC Law No. 2 of 2019 as amended (the "Employment Law"). Accordingly, on 24 April 2020, the Claimant issued these proceedings, seeking USD 131,717.02 in damages as well as the aforementioned declaration.

Discussion

11. 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

12. As a preliminary point, it is important to establish that, pursuant to clause 28 of the Contract, both the Claimant and the Defendant were entitled to terminate the Claimant's employment by giving 3 months' notice in writing, so long as such notice did not expire prior to the end of the minimum term of 12 months. Clause 28 of the Contract also reserved the Defendant's right to pay the Claimant in lieu of salary for any unexpired part of the notice period. No reason or cause was required by the Contract for such a termination and the mere presence of a reason or cause could not, as a matter of law, cause the regime in DIFC employment law which concerns termination for cause to be engaged. Termination for cause or termination without cause concern the termination of an employment that takes immediate effect. As such, termination for or without cause cannot be found in coexistence with termination with notice. A termination is in one category or the other.

13. By the letter dated 28 February 2020, the Claimant was terminated with notice in accordance with clause 28 of the Contract. It follows that the question of whether the Claimant was terminated for or without cause simply does not arise. Having terminated the Claimant with notice in accordance with clause 28 of the Contract, the Defendant was not required to have done so for cause or with reason in order to avoid possible liability under the termination for cause regime of DIFC employment law: the Defendant was entitled to terminate the Claimant's employment for any reason or no reason at all.

14. 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, that cause being "poor performance." He has come to this conclusion as, on 3 April 2020, the Defendant confirmed to the Claimant by letter that poor performance was the reason for his termination. As stated above, however, the mere presence of a cause or reason for termination cannot cause the termination for cause regime in the DIFC employment law to be engaged.

15. Under Article 63(1) of the Employment Law, termination for cause is a 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"

16. 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, that in itself was a reason for the Defendant's termination of the Claimant cannot, again, have the effect of rendering the Claimant's termination with notice and in accordance with clause 28 of the Contract as being for cause or without cause for the purposes of Article 63 of the Employment Law. It follows that a relatively large amount of the Claimant's submissions in his claim - those which concern the reasons for his termination - cannot be bases for granting him a remedy or are otherwise irrelevant to the remedies he seeks.

Pre-contractual representations

17. In December 2018, that is, before the Contract had been concluded, the Claimant and the then Director of the Defendant, Listan, entered into negotiations about the prospect of the Claimant joining the Defendant as head of Lucial Sales in its Dubai office. The Claimant alleges that during these negotiations, Mr Listan made various representations to him which were intended to be and were in fact relied upon by him in accepting the job finally offered. The Claimant submits that the Defendant's website also made representations which he had relied upon. Some of these representations, he says, proved to be false.

18. These alleged false representations included a claim that the Defendant was capable of providing services and trading opportunities as well as transacting business via itself and by using its existing relationship with other companies within the group at all times of the day and on all days where relevant markets were operational at any time of the year. Another alleged false representation concerned the Defendant being both capable and willing to provide the aforementioned services for very high value transactions. Another was that the Defendant or its parent company were capable of offering and would offer a full and complete Lucial trading and brokerage service for clients introduced by the Claimant's team. A final alleged false representation concerned an expectation that the Claimant would earn substantial sums above his salary by way of discretionary bonuses. This final alleged false representation is particularly important as it is the only one under which the Claimant seeks a remedy, namely USD 36,230 in damages, being his "very conservative estimate of the sum which should. have been paid by way of bonus. in respect of the actual and probable clients."

19. The Claimant submits that the Defendant failed to live up to any of these representations and that they were false for the purposes of the Employment Law. In particular, the Claimant submits that by making these alleged false representations, the Defendant breached Article 12 of the Employment Law which provides:

> "An Employer shall not induce, influence or persuade a person to become an Employee, or to work or to be available for work, by misrepresenting any of the following:
>
> (a) the availability of a position;
>
> (b) the job description and title;
>
> (c) the type of work;
>
> (d) the Remuneration or any benefits; or
>
> (e) the conditions of work or employment."

For the purpose of this decision, I will proceed on the basis that the representations alleged by the Claimant were made and that, moreover, they were, in fact, false.

20. The Defendant's defence against this aspect of the claim is straightforward. On the first page of the Contract between it and the Claimant an "entire agreement" provision provided as follows:

> "This document together with any documents referred to in this document sets out the whole agreement between you and the Company relating to your appointment and cancels all previous agreements, representations and arrangements in connection with your employment."

The Defendant submits that by this entire agreement provision, any pre-contractual negotiations were overridden and cannot, therefore, be bases of any claims.

21. In this regard, the Defendant relies on the case of Nida Fatima Raza v Millenium Finance Corporation Ltd [2009] DIFC CFI 027 in which it was held that the claimant employee could not rely on the summary terms and conditions of employment she had signed at any earlier date for the reason that the employment contract issued at a later date represented the entire agreement between parties and superseded "any and all prior or contemporaneous oral or written representations or communications." In accordance with the legal principle expressed in Nida, the Defendant argues the entire agreement clause in the Contract supersedes any and all pre-employment discussions between the Claimant and the Defendant, rendering them of no possible avail to the Claimant.

22. In my judgment, the Defendant is incorrect to rely on Nida as Article 11(1) of the Employment Law provides:

> "the requirements of this Law are minimum requirements and a provision in an agreement to waive any of those requirements, except where expressly permitted under this Law, is void in all circumstances."

As such, while otherwise effective, the entire agreement provision in the Contract was incapable of excluding any requirement established by the Employment Law, including those in Article 12. Liability for any false representations could, therefore, and as a matter of law, survive the entire agreement provision of the Contract.

23. With that said, I still find myself unable to award the Claimant damages on account of any of the false representations made (which, again, I have assumed the existence of for the purpose of this decision). Even when the Claimant's case is taken at its highest, I do not think that any of the

representations made to the Claimant were so significant as to warrant compensation. The Claimant has relied on Article 12(b), (c) and (e) of the Employment Law in particular. I think the first two subparagraphs can be regarded at once as irrelevant. In my view, the Claimant was not misled regarding his job description and title (Article 12(b)) and nor about the type of work he was required to do (Article 12(c)). A claim that the Claimant was misled in either respect appears to me to be at odds with his central claim, to be discussed below, that he was not provided with the infrastructure to properly perform the job he believed he was hired to do. The Claimant was employed as commercial broker with a focus on the Lucial Division and for marketing purposes presented himself as Head of Lucial, MENA. In my view, the Claimant performed duties consistent with this role.

24. It seems that, bar the bonus claim, the Claimant's claims with respect to the pre-contractual negotiations would fall under the rubric of "conditions of work or employment" and therefore engage Article 12(b)) of the Employment Law. Presumably, it would have become apparent to the Claimant immediately that the Defendant was unable or unwilling to provide the services in question. Yet no evidence has been shown to the SCT that the Claimant had taken any steps - within the Defendant by way of a complaint nor without it by way of legal action - to seek recourse against the Defendant for the false representations, until, that is, he had been given notice of his termination. To the extent that the Claimant was misled as to the conditions of his work or employment with the Defendant, in my judgment, he acquiesced in this situation and, to borrow a term from contract law, is properly to be regarded as having affirmed any defaults on the part of the Defendant.

25. Regarding the issue of bonuses, as mentioned above, the Claimant submits that there was a mutual expectation that the Claimant would earn substantial sums above his salary by way of discretionary bonuses. He says this expectation was established in his negotiations with Mr Listan. In the event, the Claimant was not a recipient of any bonus.

26. For me, this claim has no basis. The Claimant is an experienced broker and as such he will be well aware of the invariable practice of brokerage companies to fortify their bonus schemes in such a way that payment of bonuses is reserved for the sole and absolute discretion of the company. Had there been a mutual expectation - which I note falls far short of a promise on any interpretation - that the Claimant would earn substantial sums in bonuses and which amounted in some way to a right on the part of the Claimant, I would have expected an experienced broker such as the Claimant to require the right to be recorded in his employment contract. Instead, however, the Contract provided at clause 8:

> "You will be eligible to be considered for a quarterly discretionary bonus. The Company may in its sole and absolute discretion pay you a bonus of such amounts, at such intervals and subject to such conditions as the Company may in its sole discretion and absolute discretion determine from time to time. You have no contractual entitlement to be paid a bonus and any such award will be at the absolute discretion of the Company. Payment to an individual is dependent upon Company profitability and satisfactory performance and conduct of the individual."

In my view, the entire agreement provision of the Contract rendered any pre-contractual agreements - or expectations - regarding bonuses superseded by clause 8 of the Contact. It cannot have gone unnoticed to the Claimant that in his employment contract there was a provision which contradicted something that was allegedly agreed - or suggested - to him earlier. The inference is that either nothing was agreed or that what was initially agreed was subsequently varied. In either case, Article 12(b)) of the Employment Law is not satisfied. The payment of bonuses was within the Defendant's sole and absolute discretion and, it follows, any exercise of that discretion, and in whoever's favour, I find, was unimpeachable.

Psychiatric harm

28. The Claimant avers that during his employment he was subjected to a "sustained destructive attack" by the Defendant over many months, causing him psychiatric harm which has resulted in both suffering and pain. Furthermore, the Claimant submits that he now faces expenses required to pursue treatment for a condition that he has developed as well as potential loss of future earnings whilst he remains mentally fragile, in as much as his condition has rendered him unable to immediately seek new employment. He says that he had no history of mental illness prior to commencing employment with the Defendant. Under this ground of his claim, the Claimant seeks USD 45,000 by way of compensation, being the equivalent of 3 months' salary.

29. The events that the Claimant refers to and which he alleges constituted a sustained and destructive attack on him each involved his line manager and Senior Executive Officer of the Defendant, Laith. For the purpose of this decision, I will take the Claimant's case at its highest and accept the accounts that he describes as having occurred and which lead to the conclusion that the Claimant was victimised by the Defendant via its officer, Mr Laith, who was therefore in breach Article 43(1) and (2) of the Employment Law which provide:

> "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"

30. On 10 December 2019, the Claimant consulted a doctor on account of his stress. Based on a document which has been submitted to the SCT, it appears that that doctor diagnosed the Claimant with an anxiety disorder and prescribed him with appropriate medication. The Claimant continued working and the victimisation - which, again, has been accepted as having occurred for the purpose of this decision - continued after this date.

31. On 24 February, the Claimant felt acutely unwell and so consulted with a consultant psychiatrist. The psychiatrist diagnosed the Claimant with anxiety disorder again as well as with acute stress reaction and panic disorder "due to stress and `harassment at the workplace,' as stated by the patient." The psychiatrist also issued a sick leave certificate valid for 14 days from that day "in order to help Mr Ludiala recover from the aforementioned situation." The Claimant duly commenced sick leave. The Claimant was given notice of termination of his employment during this period.

32. In reply, the Defendant contends that the Claimant's allegation is devoid of any legal basis and fails to reference any right under the Employment Law that the Defendant has allegedly breached. Moreover, the Defendant submits that the evidence by way of medical notes that the Claimant seeks to rely on are unsubstantiated and fail to prove that the Defendant in any way caused the Claimant psychological damage.

Furthermore, the Defendant says that the Claimant did not report any problems in the workplace - including any work related stresses or anxieties - to the Defendant's human resources department or any other department or personnel of the Defendant.

33. In my judgment, this part of the Claimant's claim is in fact a negligence claim. If this conclusion is correct, it follows that the claim should have been made under Chapter Two: Negligence of Law No. 5 of 2005 (the "Law of Obligations"). Article 17 of the Law of Obligations provides:

> "17. Liability
>
> (1) A defendant is liable in negligence to a claimant if and to the extent:
>
> (a) the defendant owes a duty of care to the claimant;
>
> (b) the defendant breaches his duty of care to the claimant; and
>
> (c) the defendant's acts or omissions in breach of his duty of care to the claimant cause loss to the claimant.
>
> (2) The defendant's liability provided in Article 17(1) shall be reduced by the extent to which the claimant's negligent acts or omissions contributed to his loss."

34. To proceed, in my judgment, the Defendant is correct to state that the Claimant's evidence by way of medical notes fails to prove that the Defendant caused the Claimant psychological harm. Article 17(1)(c) of the Law of Obligations requires that causation is proven. The medical note of 10 December 2019 does not make a determination as to the cause of the Claimant's anxiety disorder and that of 24 February 2020 expressly attributes the finding that the disorders diagnosed were in part caused by "harassment at the workplace" to the Claimant himself. The only cause which is attributable to the psychiatrist, it seems, is unspecified "stress." The Claimant has submitted a further piece of evidence, namely a medical referral letter dated 12 May 2020. But this evidence does not establish causation either. The crucial line in the referral letter reads: "He mentioned that he has been under tremendous stress, which is work related." Again, the finding that the disorder he was diagnosed with was caused by the Defendant is attributed to the Claimant, not to the doctor making the referral. Nor is it sufficient that the Claimant pleaded that he had not suffered from any mental illness before the commencement of his employment with the Defendant. None of this evidence demonstrates that, on the balance of probabilities, the Defendant caused the Claimant's psychiatric harm.

35. I do not say that the Defendant did not cause the Claimant psychiatric harm. I do say, however, that if it had, the Claimant has failed to discharge his 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.

The Restrictive covenants

36. By clause 31 of the Contract, the Claimant made several restrictive covenants with the Defendant. Three of these covenants are of concern in these proceedings (the "Covenants"), and in particular those parts of each that provide for post-termination restrictions:

> "During your employment you are likely to obtain confidential information relating to the business of the Company or any Group Company and personal knowledge and influence over clients, customers and employees of the Company or any Group Company. You agree with the Company that to protect the Company's (and any and all Group Company's) business interests, customer connections and the stability of their workforce that you will not:
>
> a) Non competition
>
> during your employment and for a period of 3 months after the Termination Date compete with the business of the Company or any Group Company by being directly or indirectly employed or engaged in any capacity by any person, firm or company which engages in or provides Restricted Business to Restricted Customers or Prospective Customers;
>
> b) Non dealing with customers
>
> during your employment and for a period of 3 months after the Termination Date compete with the business of the Company or any Group Company either on your own account or for any person, firm or company directly or indirectly by having any dealings or transacting business in relation to Restricted Business with any Restricted Customer or Prospective Customer of the Company or Group Company;
>
> c) Non solicitation of customers
>
> during your employment and for a period of 3 months after the Termination Date compete with the business of the Company or any Group Company either on your own account or for any person, firm or company directly or indirectly in relation to the supply of Restricted Business by soliciting or endeavouring to solicit or entice the business or custom of any Restricted Customer or Prospective Customer."

37. The Claimant submits that the Covenants cause severe prejudice to him and provide no justifiable benefit to the Defendant. Each of the Covenants concerns a restriction that was agreed to last for 3 months after the termination of the Claimant's employment. The Claimant argues that, by the time of his Termination Date, he completed 3 months of garden leave and that, as such, the purpose of the 3 month restriction period will have been satisfied, rendering any further period both redundant, excessive and an unlawful restraint on trade.

38. For its part, the Defendant maintains that the post-termination restrictions in the Contract are enforceable. It says, in short, that the restrictions are necessary to protect the Defendant's confidential, proprietary and business-sensitive information and that the restrictions are entirely reasonable given the Claimant's position of seniority and the access he had to the Defendant's business-confidential information (the "Confidential Information"): "A lesser restriction would not provide the Defendant with the same level of business protection in the circumstances."

39. On a plain reading of the Contract, the Covenants clearly extend for 3 months after the Termination Date, that is, as it happened, until 28

August 2020, and not for a 3-month period after the Claimant ceased to have access to the Confidential Information. According to the terms of the Contract, then, that the Claimant served his notice period on garden leave without access to the Confidential Information rather at work is of no consequence.

40. It seems to me, however, that there is justification for departing from a strict reading of the Contract in the instant matter. I have come to this conclusion for the following reason. The Defendant has explained the purpose of the Covenants, namely, again, to protect its business. The degree of protection or exposure of the Defendant's business is, of course, tied to the Claimant's access to the Defendant's Confidential Information. The minimum period of protection to the Defendant's business that the Covenants were capable of providing was 3 months. Had the Claimant worked during his notice period - and therefore continued to have access to the Confidential Information until the Termination Date - the duration between his access to the Confidential Information and the expiration of the Covenants - and therefore the permissibility of commencing new employment with competitors or dealing with or solicitating the Defendant's customers - would be only 3 months. If, as in fact happened, the Claimant had served his notice on garden leave, however - and therefore had no access to the Confidential Information during the 3-month notice period - the duration between his access to the Confidential Information and the expiration of the Covenants would be 6 months. The Defendant has not explained why one circumstance requires 3 months of separation from the Confidential Information before the Covenants expire while the other requires double that length of time.

41. Furthermore, had the Claimant been terminated for cause while at work - and therefore terminated while having access to the Confidential Information - the Covenants would only protect the Defendant's business for 3 months from the termination date. This would be the case even if the Claimant had been terminated for cause for, say, breaching the Defendant's confidentiality policy which would obviously indicate a greater risk to the Defendant's business after termination and justify a longer period with restrictions in force. Yet the period without access to the Confidential Information in this scenario would be half the length of the period which the Claimant is now asked to serve while he has not been terminated for cause and much less for any reason that calls into question his honesty or integrity.

42. It seems to me that the differences between the lengths of time that the Claimant would be without access to the Confidential Information before the Covenants expired in these various scenarios - 3 months or 6 months - are arbitrary and cannot be explained as different measures required to protect business in different scenarios. For me, it is much more likely that these differences were unintended. If this were not the case, I would have expected an explanation from the Defendant as to why a hypothetical star employee might be required to be without access to the Confidential Information for 6 months before the Covenants expired, simply because he had served notice on garden leave, while a hypothetical employee who breached the Defendant's confidentiality policy would only be required to be without access to the Confidential Information for 3 months, simply because he had been terminated immediately. All the Defendant has submitted is that the Covenants are necessary, that is, as such, to protect its confidential, proprietary and business-sensitive information. For me, by the Defendant giving this generic explanation which applies to each of the different outcomes I have highlighted, it is to be inferred that there was no intention for different circumstances to result in different lengths of time without access to the Confidential Information before the Covenants would expire.

43. In light of the above observations, in my judgment, the Covenants should be construed as providing 3 months of protection to the Defendant's business from the date on which the Claimant no longer had access to the Confidential Information. While requiring a slight departure from the plain language of the Contract, this construction, I think, results in a greater internal logical therein and, in my view, is most likely what the Defendant and the Claimant intended to agree when they entered into the Contract.

44. The SCT was not taken to the case of Monex Europe Ltd v (1) Charles Pothecary (2) Guy Kaufman [2019] EWHC 1714 (QB), but it is worth making mention of a few points from the judgment which support the above conclusion. At [43] of Monex, deputy judge of the High Court, Clive Sheldon QC, summarised the applicable legal principles on restrictive covenants in employment contracts. As material:

> "(1) A restrictive covenant is void as an unreasonable restraint of trade unless the employer can show that it goes no further than is reasonably necessary to protect his legitimate business interests;
>
> (2) The Court is entitled to consider whether a covenant of a narrower nature would have sufficed to protect the employer's position;
>
> .
>
> (7) Even if the covenant is held to be reasonable, the Court will decide, as a matter of discretion, whether the injunctive relief should be granted having regard, amongst other things, to its reasonableness at the time of trial."

In applying the above principles to the instant matter, I will proceed on the presumption that the minimum duration without access to the Confidential Information guaranteed by the Covenants after termination - 3 months - is indeed necessary to protect the Defendant's business.

45. To proceed, as shown in [43(1)] of Monex, a restrictive covenant is void unless the employer can show that it goes no further than is reasonably necessary to protect his legitimate business interests. If 3 months was deemed a sufficient duration to protect the Defendant's business, 6 months is clearly not so necessary and the offending Covenants are, therefore, void.

46. As shown in [43(2)], a court is entitled to consider whether a covenant of a narrower nature would have sufficed to protect the employer's position. In my view, having served his notice on garden leave for 3 months, not only would narrower covenants suffice, but their doing away with altogether it what is appropriate.

47. As shown in [43](7)], even if a covenant is held to be reasonable, a court will decide, as a matter of discretion, whether the injunctive relief should be granted. This principle, of course, concerns circumstances where a covenant has been breached and where the innocent party has subsequently sought an injunction from the court to prevent further breach. In my regard, for the reasons given above, even if the Covenants were regarded to be reasonable in principle, still, if exercising my discretion, I would have relieved the Claimant of them in as much as his garden leave served any purpose the Covenants were intended to serve.

48. For the reasons given above, I find that the Covenants were not enforceable upon the expiration of the Claimant's notice period and are now

void. It follows that the Claimant is under no further obligation to abide by the Covenants.

Damage to reputation

49. The Claimant has been dismissed from his role with the Defendant within 12 months of commencing employment with it. 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. Moreover, the Claimant purports that all of the Lucial desks internationally will be made aware of the fact that the Claimant is no longer working for the Defendant as potential and existing clients will be informed of this when they call the Defendant's office. The Claimant is then put at a distinct disadvantage in the future, he says, by having to explain why he was dismissed, and, accordingly, the prospects of finding alternative employment at the salary he would normally expect to receive will be negatively affected. The Claimant seeks USD 45,000 by way of compensation for this alleged damage to his reputation.

50. For its part, the Defendant submits that the Claimant's claim for compensation for alleged damage to his reputation is baseless in law and in bad faith. 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 market. Moreover, the Defendant has argued that serving the Claimant with notice of termination does not, in and of itself, trigger an entitlement to compensation for damage to reputation.

51. 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 as the Claimant has not yet begun to seek new employment. This claim is, therefore, both speculative and premature and, as such, falls to be dismissed.

Conclusion

52. In light of the aforesaid, I find that the Claimant's claims must be dismissed, bar his claim that the Covenants are void and that, accordingly, he is under no obligation to continue to honour them.

53. The Claimant having been largely unsuccessful in his claim, 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: 13 July 2020
At: 12pm