Claim No: **SCT 254/2018**

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

IMTIHAL

Claimant

and

(1) INGABORG

(2) INORAK EQUITY HOLDINGS LTD

(3) INORAK FUND INVESTMENTS (DIFC) LIMITED

Defendants

Hearing: 23 October 2018

Judgment: 30 October 2018

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this claim having been called on 26 July 2018 and 12 September 2018 for a First and Second Consultation before SCT Judge Ayesha Bin Kalban

UPON the parties not having reached a settlement

UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 23 October 2018, with the Claimant attending via phone and the Defendants' representatives attending in person

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

IT IS HEREBY ORDERED THAT:

1. The DIFC Courts do not have jurisdiction to hear this dispute. The Claim is therefore dismissed in full.

2. Each party shall bear their own costs.

Issued by:Maha Al MehairiSCT JudgeDate of issue: 30 October 2018At: 12pm

THE REASONSParties1.Imtihal (hereafter the "Claimant") is an individual formerly employed as the Chief Financial Officer of Inorak Group Holdings Limited, pursuant to a Contract of Employment dated 1 October 2011 (the "Employment Contract").2.The First Defendant is Ingaborg, an individual and the Chief Executive Officer of Inorak Group Holdings Limited as stated in the Employment Contract (hereafter the "First Defendant"). The Second Defendant is Inorak Equity Holdings Ltd, a company registered in the DIFC (hereafter the "Second Defendant"). The Third Defendant is Inorak Fund Investments (DIFC) Limited, a company registered in the DIFC (hereafter the "Third Defendant"). All three Defendants (hereafter the "Defendants") were represented by Mr Izek, the aforementioned CEO, and Ms Isioma, the Head of Legal at Inorak Fund Investments.Background/Procedural History.3. This claim arises due to the Claimant's alleged employment at "Inorak", via the Employment Contract of 1 October 2011. The Claimant alleges that he was not paid for the services he provided to "Inorak" and that the Defendants are thus liable to him for the amount of AED 420,000.4. The Defendants allege that they have no contractual relationship with the Claimant and are thus not liable to him for any amounts claimed. Furthermore, the Defendants argue that this claim is time-barred and that the DIFC Courts lack jurisdiction over the Claim as to the First Defendant.5. On 11 July 2018, the Claimant filed a Claim Form in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking employment payments and entitlements of AED 420,000, as well as interest as determined by the Court (hereafter the "Original Claim Form"). The Claimant did not particularise his claims at this time and instead sought a lump sum.6. The Defendants filed a Defence on 18 July 2018 followed by Acknowledgements of Service on 25 July 2018. It is noted that the Second and Third Defendants indicated their intent to defend against all of this Claim while the First Defendant indicated his intent to contest the jurisdiction of the DIFC Courts. The Defendants also informed the Claimant and the SCT Registry that they would be represented by the same representatives, consolidating correspondence and submissions. As such, it was determined by the SCT Registry that all issues would be dealt with at the Consultations and subsequent Hearing rather than move to a Jurisdiction Hearing as to the First Defendant only.7. The parties attended a Consultation before SCT Judge Ayesha Bin Kalban on 26 July 2018 however the parties failed to reach a settlement. The Claimant sought permission to amend the Original Claim Form. Such permission was granted, and the Claimant submitted the Amended Claim Form on 30 August 2018 (hereafter the "Amended Claim Form"). The Defendants responded to the Amended Claim Form on 6 September 2018.8. After a Second Consultation held before SCT Judge Nassir Al Nasser on 12 September 2018, the parties remained unable to reach a settlement. Thus, the parties were given a Hearing and submission schedule

with the Hearing to take place on 2 October 2018. In order to allow the Claimant sufficient time to consult with legal counsel, the Hearing schedule was postponed with the Hearing rescheduled for 23 October 2018. The Claimant submitted the Re-amended Claim Form on 7 October 2018 in advance of this rescheduled Hearing and additionally requested that the Hearing be postponed again until after 2 November 2018 (hereafter the "Reamended Claim Form"). The Defendants registered their objection to any further delays and on 9 October 2018 I rejected the Claimant's request for a further postponement of the Hearing.9. Thus, the Hearing went forward as scheduled on 23 October 2018, at which time the Claimant appeared via telephone while the Defendants' representatives, Mr Izek and Ms Isioma, appeared in person. At the conclusion of the Hearing I reserved this Claim for judgment.**The Claim**10. In sum, the Claimant has claimed AED 420,000 to include "full payment of salary / entitlements under the terms of the Contract of Employment for the seven months between 1 October 2011 and 30 April 2012." In addition, the Claimant has claimed interest at a rate determined by the DIFC Courts, to run from 1 May 2012 until the case is decided. The Claimant did not further particularise his claims in the Original Claim Form, nor did he elaborate on the specific sums included within the AED 420,000 lump sum in the Amended or Reamended Claim Form.11. The Original Claim Form, filed on 11 July 2018, stated that the Claimant was employed by "Inorak" pursuant to the Employment Contract, which was signed by Mr Izek as Chief Executive Officer. The Claimant contends that he worked for "Inorak" from 1 October 2011 to 20 April 2012. During this seven-month period, the Claimant alleges that there were late and lacking salary payments, which caused him to eventually resign after many attempts and promises to remedy the payment issues. The Claimant contends that he conducted work from the Isuri Office Tower in Dubai, including establishing a "Chart of Accounts", creating "financial projections," and conducting meetings with "external stakeholders". The Original Claim Form seeks full payment of salary and entitlements pursuant to the Employment Contract, totalling AED 420,000. The Claimant also sought interest to be determined by the Court.12. The Claimant subsequently amended the Claim Form on 30 August 2018. The Amended Claim Form sought to specifically address the arguments made in the Defendants' defence. The Claimant argued that the employer in his Employment Contract was meant to be the Defendants, however the companies were not yet registered in the DIFC. The Claimant contends that it was understood that the intention was to establish a company in the DIFC and transfer his employment to such company. Furthermore, it is clear that he was employed by the "Inorak Group of Companies" of which the Defendants are a part of and thus, the Defendants are liable for the amounts claimed.13. The Claimant thus contends that the DIFC Courts do have jurisdiction over this matter considering that part of the Claimant's role for the company was to register a new legal entity in the DIFC. While the Claimant admits that he did not work out of the DIFC, he emphasises that the intention was to register the company with the DIFC and the staff was working towards that goal.14. As to the statute of limitations argument, the Claimant contends that the statute of limitations under the DIFC Employment Law is 6-years and he has brought his claim within the 6-year period, which began to run as of 9 August 2012 after his three-month notice period expired. The Claimant also submitted additional evidence that he is entitled to the sums claimed under the Employment Contract.15. On 7 October 2018, the Claimant again amended his claim via the Reamended Claim Form, which seeks to incorporate further evidence of other individuals and companies that were allegedly not paid by the Defendants in order to establish a pattern of behaviour.**The Defence**16. The Defendants submitted a unified defence. Their initial defence outlined four main arguments, all made without prejudice to the other arguments included:

(a) None of the Defendants are actually party to the Claimant's Employment Contract and therefore cannot be liable for the claims;

(b) The DIFC Courts have no jurisdiction over the First Defendant who has no contractual relationship with the Claimant and has not submitted to the jurisdiction of the DIFC Courts;

(c) The Claimant's claim is time-barred as it has been brought after the expiration of the statute of limitations under UAE Law;

(d) The Claimant has not sufficiently proven the amounts claimed under the terms of the Employment Contract.

17. In response to the Claimant's Amended Claim Form, the Defendants resubmitted their same arguments in defence, with the change that the argument that the DIFC Courts lack jurisdiction over the First Defendant had been dropped from the defence. The Defendant further argued that any intention that the Defendants had to register an entity in the DIFC and further operate in the DIFC is not relevant to the Claim. The Second and Third Defendants were only recently registered in the DIFC and this cannot be used as a basis to bring this claim.18. As to the limitation period, the Defendant argues that the Employment Contract terms are from 1 October 2011 until 30 April 2012. While the Claimant contends that he resigned with the final day of his notice period being 9 August 2012, this is inaccurate. This argument is without proof and is being used to attempt to bring the claim within the 6-year statutory limitation required under DIFC Employment Law. However, it is the UAE Labour Law, which includes a one-year limitation, which is applicable to this dispute, pursuant to the details of the Employment Contract and the details of the work arrangement between the Claimant and "Inorak."19. Finally, the Claimant is attempting to use irrelevant additional documentation and claims against the Defendants in support of his case, an attempt that cannot be allowed. The Defendants' Reamended Defence largely reiterated these same arguments.**Hearing**20. As the First Defendant originally contested jurisdiction, the Hearing proceeded first on the question of jurisdiction. The Defendant reiterated the arguments presented in the Amended Defence. None of the Defendants are parties to the Employment Contract and thus they owe no duties and have no liabilities for the Claims. In any event, the Defendants argued, the Claim has been brought beyond the statute of limitations as the Employment Contract has a governing law listed as UAE or Dubai Law, not DIFC Law. Dubai Law includes a 12-month limitation for employment claim. Furthermore, the Defendants continued, there is no nexus to the DIFC and thus, the DIFC Law does not apply as per the DIFC Employment Law; the Claimant's usual place of work was never in the DIFC and the Second and Third Defendants only recently incorporated within the DIFC.21. The Defendants argued that the Claimant is seeking to use the establishment of the Second and Third Defendants to create DIFC Courts jurisdiction incorrectly. The Claim must be rejected under the clear terms of the Employment Contract, as the governing law is UAE Law and the parties to the Employment Contract are not party to this suit. The Defendants argued that the DIFC Courts can apply UAE Law, but under the UAE Law, the Claim must be rejected.22. Finally, the Defendants argued that the Claimant has sought to artificially arrange his claim to fall within the DIFC Employment Law's statute of limitations, however this attempt must be rejected as artificial and due to the fact that UAE Law and not DIFC Law is applicable to this dispute.23. At the Hearing, the Claimant argued that he was employed by the First Defendant under an ambiguous "Inorak" company. The understanding in undertaking this employment was to eventually come under the umbrella of the DIFC in terms of registration, regulation and court jurisdiction. The Claimant resigned after seven months in frustration from no payment, by handing his letter of resignation to the First Defendant on 9 May 2012. The First Defendant denies having received this letter, however, according to the Claimant this is not the case. Furthermore, the Second and Third Defendants are part of the "Inorak" group of companies, same as his Employment Contract. Thus, the Defendants are liable for the claims made under the Employment Contract.24. At the conclusion of the Hearing, I reserved the Claim for judgment.**Discussion**25. The first issue is whether the DIFC Courts have jurisdiction over this matter. The DIFC Courts and the Small Claims Tribunal typically have jurisdiction over employment cases that concern employment within the DIFC and the amount in question is less than AED 500,000. However, this matter does not involve employment within the DIFC. Instead, the dispute involves employment

that was intended to transfer to the DIFC at a later time, a transfer which did not occur according to both parties' version of the facts.26. Thus, I will assess whether the DIFC Courts may have jurisdiction in some other capacity. The jurisdiction of the DIFC Courts is determined by Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended, (the "JAL") which provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, namely:

> "(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;
>
> (b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract;
>
> (c) Civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within DIFC and is related to DIFC activities; . . .
>
> (e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations. . . .
>
> (2) civil or commercial claims or actions where the parties agree in writing to file such claim or action with [the DIFC Courts] whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

27.Typically, as mentioned before, employment cases concerning employment within the DIFC have jurisdiction pursuant to Article 5(A)(1)(e) as the DIFC Employment Law states:

> "4. Application of the Law
>
> (1) The Law applies to an employee of:
>
> (a) an establishment having a place of business within the DIFC; or
>
> (b) an entity that is created by Law No. 9 of 2004, and the employee is based within, or ordinarily works within or from, the DIFC.
>
> (2) The applicable law to a contract of employment of an employee based within, or who ordinarily works within or from the DIFC, shall be this Law. "

28. This Claim does not fall within the above provision of the DIFC Employment Law as both parties agree that the Claimant was not based within and did not ordinarily work within or from the DIFC. While the intention may have been for him to do so eventually, that eventuality never occurred, and he resigned well before any shift into the DIFC occurred. While he argues that he made attempts to register the company within the DIFC and otherwise did work to further that goal, that work alone is not sufficient to bring his whole employment under the DIFC Employment Law and within the jurisdiction of the DIFC Courts. This claimed activity would also be insufficient to bring the claim under DIFC Courts' jurisdiction pursuant to Article 5(A)(1)(b) or (c) as the Claimant has not provided any proof of significant activities within the DIFC.29. While the Second and Third Defendants are DIFC Entities at this time, and thus may fall under Article 5(A)(1)(a), they are not parties to the Employment Contract upon which this Claim is based. The Claimant has not articulated a sufficient legal argument as to why these DIFC Entities should be responsible for the amounts he claims are due pursuant to his Employment Contract with another entity. While he argues that these two Defendants are part of the "Inorak" group of companies, as was his employer pursuant to his Employment Contract, he has not shown sufficient proof of this claim. The same can be said of the First Defendant. While it is not denied that the First Defendant signed the Employment Contract in question as an officer of the employing company, the Claimant has not given sufficient legal argument or evidence to show why the First Defendant should be liable for these claims in his personal capacity, rather than the employing company itself.30. The Claimant has contended that the employing company, a Cayman Island registered entity, no longer exists or perhaps did not exist and that he is left without remedy. However, this also has not been shown and this cannot be used as reasoning for why the DIFC Courts should become involved in a matter outside of its jurisdiction.31. Therefore, while the DIFC Courts may generally have jurisdiction over claims involving DIFC Entities like the Second and Third Defendants, the DIFC Courts do not have jurisdiction over this matter as a whole. As this matter involves employment in on-shore Dubai without a sufficient link to the DIFC, the DIFC Courts cannot be the proper court to determine the claim. The DIFC Courts cannot decide on matters wholly unrelated to the DIFC solely because the Claimant has named an DIFC Entity as one of the Defendants unless there is a valid contractual clause opting-in to the jurisdiction of the DIFC. There is no such clause in this case.32. Thus, I can see no avenue through which the Claimant can find DIFC Courts' jurisdiction over this claim based on the arguments and evidence provided. Without jurisdiction, it is not appropriate for me to make any findings in this case and I must dismiss the Claim in full.**Costs**33. The parties shall bear their own costs.**Conclusion**34. In sum, this case must be dismissed in full as the DIFC Courts do not have jurisdiction over the matter.

Issued by:Maha Al MehairiSCT JudgeDate of issue: 30 October 2018At: 12pm