IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

LYLE

Claimant

and

(1) LAMAR
(2) LAMARLUTHER

Defendants

ORDER WITH REASONS OF JUSTICE LORD ANGUS GLENNIE

UPON the Claimant filing an Appeal Notice dated 18 January 2022 in the Small Claims Tribunal (**"SCT"**) in the Dubai International Financial Centre Courts (the **"DIFC Courts"**)

AND UPON H.E. Justice Nassir Al Nasser granting the Appeal on 25 January 2022 due its success to meet the requirements of Rule 53.91 of the Rules of the DIFC Courts (**"RDC"**)

AND UPON hearing the Claimant and the Defendants during the Appeal hearing on 25 February 2022

AND UPON reviewing the relevant documents on the case file

IT IS HERE BY ORDERED THAT:

1. The Appeal is allowed.

2. The DIFC Courts have jurisdiction to hear and determine this Claim against both the First and Second Defendants,

3. The position of the Third Defendant is unaffected by this Order.

4. Each party shall bear its own costs of the Appeal to this court.

Issued by:
Nour Hineidi
Registrar
Date of issue: 11 March 2022
Time: 10am

REASONS

1. This is an Appeal by the Claimant against the SCT Order of H.E. Justice Nassir Al Nasser dated 7 January 2022 in Claim No. SCT-349-2021 dismissing the Claimant's claim against the Second Defendant for lack of jurisdiction. It was not in dispute that the DIFC Courts had jurisdiction over the claim against the First Defendant. Permission to Appeal was granted by H.E. Justice Nassir Al Nasser on 25 January 2022 after a Permission Hearing (RDC 53.101-53.103) on the basis that the Appeal had a real prospect of success (RDC 53.91).

2. RDC 53.87 states that the court will allow an Appeal where the decision of the SCT was (i) wrong; (ii) unjust because of a serious procedural or other irregularity in the proceedings; or (iii) wrong in relation to any other matter provided for under any law. The only ground relied upon by the Claimant in this case is ground (i), namely that the original decision of the SCT was wrong.

3. I bear in mind that to establish jurisdiction the Claimant need establish only a good arguable case for the application of the relevant gateway (in this case the issue is as to the existence of a contract with the Second Defendant), i.e. a plausible (albeit contested) evidential basis for it; but in this case, which involves the construction of a legal document with few, if any, disputed facts, it is appropriate to determine the issue at this jurisdiction stage.

4. I heard the parties on 25 February 2022. The Claimant appeared before me in person. The Second Defendant was represented by Dr Loura Voda of Fichte & Co Legal Consultancy.

5. The facts giving rise to this dispute and the arguments deployed on each side before the SCT are fully summarised in the Order of 7 January 2022 and I need not repeat them here.

6. The Second Defendant is a company registered in England and Wales under Registration number 0000. Its registered office is in London. The First Defendant is registered in the Dubai International Financial Centre (**"DIFC"**) with a registered office there. It is a subsidiary of the Second Defendant. The First Defendant was formed on 25 August 2021.

7. The central issue between the parties is whether the Job Offer Letter dated 19 August 2021, issued to the Claimant by the Second Defendant and accepted by the Claimant by his "Acceptance Signature" on 29 August 2021, constituted a contract between the Claimant and the Second Defendant, as the Claimant contends, or, as the Defendants contend, between the Claimant and the First Defendant. If the position is as the Claimant contends, i.e. if (contrary to the Second Defendant's case) the Contract is between the Claimant and the Second Defendant, it is not now disputed that the DIFC Courts would have jurisdiction under Article 5(A)(1)(b) of the Judicial Authority Law, Dubai Law No. 12 of 2004 as amended (the **"JAL"**), which provides for the DIFC Courts to have jurisdiction where, among other things, the contract will be performed or is supposed to be performed within the DIFC. On behalf of the Second Defendant, it was accepted that the contract was to be performed within the DIFC so that the DIFC Courts would have jurisdiction under Article 5(A)(1)(b) over claims between the parties to the contract. That is obviously correct. On this basis, jurisdiction might also be established under Article 5(A)(1)(c) of the JAL. The SCT judge must simply have overlooked this point when he said (or implied) at para 20 that, even if he had determined that there existed an employment relationship between the Claimant and the Second Defendant, he would not have found jurisdiction to have been established under Article 5(A) of the JAL.

8. The Offer Letter is dated 19 August 2021. It is important to note that that was 6 days before the First Defendant came into existence. The Claimant told me in his submission that discussions between himself and the Second Defendant had begun some considerable time before August, and I have no doubt that that is correct.

9. The Offer Letter is a two-page document. It was written under the letterhead or logo (**"x Lamar."**) of the Second Defendant; and at the bottom of each page was printed the full name of the Second Defendant, the address of its registered office in England, its registered number, and its trading name (**"Lamar."**). It begins with this paragraph:

> "We are pleased to offer you the role of Head of Growth, Strategy & Expansion subject to you having the appropriate visa and/or residency in the UAE along with a cleared criminal records check, within our group of companies (of which you will be employed in the local office) and look forward to having you on board according to your availability."

After clause 1, defining the Period of Service, the Offer Letter continues:

> "Your employment with Lamar. shall commence once your visa and Criminal Record check formalities are completed."

Clause 2 deals with Remuneration. It provides for a monthly salary and holds out the prospect of shares in the parent company (Luther), once the anticipated employee share scheme, which "we are currently looking to establish", has been created and implemented. Clause 3, dealing with Medical benefits, refers to the period of your "employment with us", and goes on to say "we shall provide you" with the means of medical care etc. Clause 4, Visa, states that "You will be under our employment visa sponsored by Lamar.". Clause 5, Notice Period, provides that

> "the employment contract may be terminated by you or by Lamar., for a valid reason, by written notice to the other party with at least 60 days in advance to termination".

Finally, the Offer Letter states that this working arrangement "will be bound by all policies, including NDA and contract annexes, of Lamar.; always in compliance with the UAE Labor Law." The letter is signed by Mr Amar M. Bhatti, who styles himself as "Director".

(Underlining within the quoted passages from the Offer Letter has been added for emphasis and to link with comments made in the following paragraphs.)

10. Reading the terms of the Offer Letter, I am left in no real doubt that the Contract is and was intended to be between the Claimant and the Second Defendant. My reasons for coming to this view can be stated quite shortly. The offer of employment set out in the letter was clearly intended to be capable of immediate acceptance. Had the Claimant signed it the next day to indicate acceptance of the offer, that would immediately have brought into existence a contract between the Claimant and the Second Defendant. Who else could have been a party to the contract? At that time the First Defendant did not exist. The only other possible candidate was the Second Defendant. The fact that the Claimant did not sign the letter until 29 August 2021, by which time the First Defendant had been incorporated, can make no difference to this analysis; the letter cannot change its meaning simply because a new party is brought into being.

11. Quite apart from the point outlined above, there are many indications within the Offer Letter that point to its having been intended as an offer of employment made by the Second Defendant on its own behalf. There is no reference in the letter to the First Defendant being in the course of being created. The letter was written on the Second Defendant's letter paper, and signed by Mr Bhatti, who signed as Director (presumably Director of the Second Defendant, since he could not at that stage have been a Director of the First Defendant which was a non-existent company). The letter contains many indications in its wording ("we", "our", "us", "Lamar.," in the underlined passages) that it is written and sent by and on behalf of the Second Defendant. And it contains other provisions which only make sense if the contract coming into existence by acceptance of the Offer Letter is a contract with a company which was already in existence. For example, where the Offer Letter states that "we are currently looking to establish a share scheme for certain employees", the reference to something being done "currently" implies the present existence of a company already doing it at that time; and the reference to incorporation of "all policies ... of Lamar.", including a Non-disclosure Agreement (**"NDA"**) and contract annexes, has no meaning unless it is a reference to then existing policies of a then existing company. While I accept that the style "Lamar." may be used generally within the Lamar group, and for all I know may be used by the First Defendant since it has come into existence, it is clear in this letter, for the reasons indicated, that it can only refer to the Second Defendant.

12. A number of arguments were advanced on behalf of the Second Defendant.

13. It was argued that the reference in the opening paragraph of the Offer Letter to the position of Head of Growth, Strategy & Expansion being "within our group of companies (of which you will be employed in the local office)" was sufficient to make it clear that the intended employment was not with the Second Defendant itself but with the local (DIFC) company within the Lamar. group where he would be employed. But while this wording may well indicate an intention to establish a local group company which would in due course take over his employment contract in a manner to be mutually agreed, it cannot possibly mean that, as at the date of the Offer Letter, that was what was being offered - for the simple reason that the First Defendant, the local office within the group of companies, did not exist and therefore could not then have been the employer.

In this connection it is interesting to note that all payments to the Claimant until the termination of his employment were made by the Second Defendant. A draft Employment Contract bearing to be between the First Defendant and the Claimant - purporting to commence not in August 2021 (when the Second Defendant's Offer Letter was accepted by the Claimant) but on 26 September 2021 (the date when the First Defendant was incorporated), and therefore clearly intended to supersede from that date forward the existing contract between the Claimant and the Second Defendant - was intimated by the First Defendant in mid-November 2021 but was never agreed. The Claimant raised certain issues about its terms - including the absence from it of any reference to the share scheme - and his employment was terminated before this proposed new Employment Contract with the First Defendant could be finalised.

14. It was also argued that the Second Defendant, being a United Kingdom company, was not registered in the United Arab Emirates (UAE) and not licensed to employ individuals to work in the UAE. That may be correct - I express no view on the matter - but it is not in any event an answer to the fact that the Offer Letter was not and, for reasons explained earlier, could not have been an offer of employment with a UAE company that did not then exist.

15. Another point raised on behalf of the Second Defendant to support the contention that any contract was made not with it but with the First Defendant was that it was the First Defendant which had sponsored the Claimant's residence visa for the UAE and for that purpose it had to be named as the Claimant's employer. But the residence visa was issued on 17 November 2021, at about the same time as the draft Employment Contract with the First Defendant was in circulation, and the Defendants both clearly contemplated at that time that the Claimant's employment would be transferred to the First Defendant under the proposed Employment Contract. So, nothing turns on that.

16. In granting permission to Appeal, the SCT judge H.E. Justice Nassir Al Nasser was impressed by the fact that the Second Defendant agreed in the Offer Letter to the Claimant being entitled to benefit from the parent company share scheme; the importance of that being, as I understand it, that this was a personal obligation undertaken by the Second Defendant under the Offer Letter, whatever might be the position as to whether the promised employment was with that company or with the First Defendant, and it was an obligation which was not mentioned at all in the proposed Employment Contract proffered by the First Defendant in November 2021. I see the force of this but, since I have decided this Appeal on other grounds, I need not consider the point in detail.

17. For the reasons set out above, I am satisfied that the Offer Letter and its signed acceptance brought into existence a contract between the Claimant and the Second Defendant. At the very least there is a good arguable (or plausible) case to that effect. Accordingly, I shall allow the Appeal and declare that the DIFC Courts have jurisdiction to hear and determine the Claim against the Second Defendant. Each party shall bear its own costs of this Appeal.