Claim No: SCT 349/2021

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS

BETWEEN

LAGLE

Claimant

and

(1) LALITA
(2) LAKYLE
(3) LAJOS

Defendants

ORDER WITH REASONS OF H.E. JUSTICE MAHA AL MHEIRI

UPON this Claim having been called on 8 April 2022 for a Jurisdiction Hearing before H.E. Justice Maha Al Mheiri, with the Claimant and the Third Defendant's representatives in attendance

IT IS HEREBY ORDERED THAT:

1. The Claimant's Claim against the Third Defendant shall be dismissed for lack of jurisdiction.

2. Each party shall bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Registrar
Date of issue: 19 April 2022
At: 4pm

SCHEDULE OF REASONS

1. The Claimant is Lagle (the "Claimant"), an individual filing a claim against the Defendants in relation to his employment.

2. The First Defendant is Lalita (the "First Defendant"), a company registered in the DIFC, located at DIFC Fintech Hive.

3. The Second Defendant is Lakyle (the "Second Defendant"), a company registered in London, UK.

4. The Third Defendant is Lajos (the "Second Defendant"), a company registered in London, UK.

5. On 9 December 2021, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking final settlement of his employment rights. On 24 February 2022, the Claimant amended their claim to include the Third Defendant ("Amended Claim")

6. On 24 February 2022, the Third Defendant filed an Acknowledgment of Service setting out its intention to dispute the jurisdiction of the DIFC Courts.

7. The Third Defendant submits that it is an entity incorporated in the United Kingdom and does not have the capacity to hire or enter any employment relationship in the DIFC, nor does it have a corporate presence in the DIFC and the United Arab Emirates.

8. The Third Defendant also adds that the only entity incorporated in the DIFC and has the authority to employ staff is the First Defendant, which, as shown by the Claimant's employment visa, is the First Defendant's sponsor.

9. The Claimant submits that the Third Defendant is to remain a party to this claim on the bases that the offer letter dated 19 August 2021 (the "Offer Letter") was issued on the letterhead of the Second Defendant mentions the shares of the Third Defendant to be granted to the Claimant.

10. In response, the Third Defendant argues that the Claimant filed an employment claim seeking alleged entitlements pursuant to an employment relationship under the DIFC Employment Law as he was issued an employment visa by the First Defendant.

11. The Third Defendant adds that a UK entity who is not registered in the UAE will not be able to process employment visas in the DIFC.

12. Article of 5(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended (the "JAL"), sets out the DIFC Courts' jurisdiction over:

i. "(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;

ii. (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;

iii. (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; . . .

iv. (e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations. . .

. . . 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."

13. The Third Defendant argues that:

a. It is not DIFC registered entity and has no corporate presence in the UAE;

b. It has not entered a contract to be carried out, related to or performed in the DIFC;

c. It has not opted in for the jurisdiction of DIFC Courts and there is no contract between the Claimant and the Third Defendant referred to in the current claim; and

d. The Offer Letter is the base of all connections in this Claim, and this Offer Letter is not issued or entered by the Third Defendant.

14. Upon reviewing the employment agreement, I note that the letterhead sets out the Second Defendant's company details and the Claimant was employed to be working within the Second Defendant's group of companies, namely, the company in Dubai (which is the company registered in the DIFC) pursuant to the Claimant's employment visa.

15. The agreement does not provide that the Claimant was employed by the Third Defendant. In addition, the governing law that governs the agreement was stated to be the UAE Labor Law.

16. The Third Defendant also submits that, in regards to the shares of the Third Defendant referred to in the Offcer Letter, the First and Second Defendants are subsidiaries of the Third Defendant and would not decide on the actions of their shareholder. Therefore, the Third Defendant submits that there is no valid offer made to the Claimant in regards to its shares on the basis that the First and Second Defendants were not authorised to offer these.

17. In addition, the Offer Letter clearly refers to an alleged Offer of equity of the Third Defendant that is subject to the Articles of Association of the Third Defendant, meaning any shares will not be transferred or issued without the approval of the shareholders of that company by way of a resolution.

18. The Court is of the view that the Third and First Defendants are two separate entities that are licensed in different jurisdictions and are registered in differing corporate registries. Therefore, it must be concluded that the two companies (the First and Third Defendant) have different legal personalities.

19. In addition, there is no mention of the Third Defendant in the Offer letter, other than the offer of shares of the Third Defendant. In my view, that does not qualify as acceptance of the DIFC Jurisdiction by the Third Defendant.

20. Since the Claimant has been issued a visa in the DIFC under the sponsorship of the First Defendant and the Claimant was working with the First Defendant, the Court has found that the DIFC Courts have the jurisdiction to hear and determine this claim between the Claimant and the First Defendant, as the employment claim relates to a DIFC registered company.

21. It has also been found by the Court of First Instance that the DIFC Courts have Jurisdiction to hear the Claim against the Second Defendant as issued in the Judgment of Justice Lord Angus Glennie, which found that the Offer Letter issued to the Claimant by the Second Defendant amounts to a contract between the Claimant and the Second Defendant.

22. These circumstances do not apply to the Third Defendant as there is no contractual connections between them and Claimant. The Third Defendant plays the role of the Shareholder Company of the subsidiaries being the First and Second Defendant and carries no link to the Claimant.

23. Therefore, I am of the view that the DIFC Courts do not have jurisdiction to hear and determine the Claim against the Third Defendant.