THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

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

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS
BEFORE H.E. JUSTICE NASSIR AL NASSER

BETWEEN

LAMAR

Claimant

and

LUINE

Defendant

Hearing : **11 May 2022**
Judgment : **20 May 2022**
Amended Judgment : **24 May 2022**

AMENDED JUDGMENT OF H.E JUSTICE NASSIR AL NASSER

UPON this Claim being filed on 18 March 2022

AND UPON a Hearing having been held before H.E Justice Nassir Al Nassir on 11 May 2022, with the Claimant and the Defendant's representative in attendance

AND UPON reviewing the documents and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the total sum of AED 115,850.

2. The Claimant is entitled to USD 50,000 of equity within Letty at the point of listing to Lester.

3. The Defendant shall provide the Claimant with two economy class flight tickets for the Claimant and his spouse to any global destination.

4. The Defendant shall pay the Claimant the Court fee in the sum of AED 2,317.

Issued by:
Ayesha Bin Kalban
SCT Judge and Registrar
Date of issue: 20 May 2022
Date of Re-issue: 24 May 2022
At: 9am

THE REASONS

The Parties

1. The Claimant is Lamar (the "Claimant"), an individual filing a claim against the Defendant regarding his employment at the Defendant's company.

2. The Defendant is Luine (the "Defendant"), a company registered in the DIFC.

Background and the Preceding History

3. The Claimant was employed by Luine on 7 February 2021 by way of an offer later (the "Offer Letter"). However, the commencement date as per the Offer Letter was on 3 January 2021.

4. On 18 March 2022, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking his final settlement in the sum of AED 140,436 (the "Final Settlement").

5. On 28 March 2022, the Defendant filed an Acknowledgment of Service setting out his intention to contest the jurisdiction of the DIFC Courts.

6. On 11 April 2022, the Claimant amended the Claim and changed the Defendant's name from Mistan to Luine.

7. On 19 April 2022, the Defendant filed an Acknowledgment of Service setting out its intention to defend all of the claim and filed its defence on

the same day.

8. On 26 April 2022, a consultation was held before SCT Judge Delvin Sumo but the parties were unable to reach a settlement.

9. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 11 May 2022.

The Claim

10. The Claimant's case is that he resigned on 24 February 2022 due to two alleged breaches of Contract:

(a) Repeat requests for late and unpaid salary to the owner that were not actioned in full.

(b) Medical Insurance cover not in place without being informed.

11. The Claimant submits that since the Defendant has breached the Offer Letter, it is required to honour the one-month notice.

12. The Claimant submits that he was not paid his salary despite numerous follow ups. As a result, on 25 February 2022 and after he resigned, the Defendant paid him the sum of AED 138,000. However, it does not cover his end of service entitlements which calculates to the total sum of AED 140,436.

13. The Claimant provided that the claimed sum of AED 140,436 consists of the following:

(a) Salary owed in the sum of AED 61,361;

(b) Gratuity (21 days) in the sum of AED 24,231;

(c) Flights in the sum of AED 12,714;

(d) UAE National holidays (public holidays) in the sum of AED 9,807.69; and

(e) Commissions in the sum of AED 32,322.

The Defence

14. The Defendant denies the start date of the Claimant and submits that the Claimant commenced work as per the Employment Offer Letter on 7 February 2021 and not 3 January 2021 as claimed by the Claimant. The Defendant submits that by 3 January 2021 the Defendant was not yet incorporated.

15. The Defendant also submits that on 5 December 2021, the Claimant announced via WhatsApp that he and his wife were leaving on holiday for Australia without providing the Defendant with notice as required by the Offer Letter, nor was the leave agreed. The Claimant then advised that he would be away for 1 month, returning on January 2022. However, the Claimant returned on 4 February 2022.

16. The Defendant submits that given that 18 days of holiday that had already been taken in addition to the UAE public holiday, it was agreed that most of the leave would be unpaid.

17. The Defendant also adds that the Claimant was on unauthorised leave for 29 days.

18. The Defendant submits that the Claimant was entitled to 30 days of paid holiday per annum. On a pro rata basis with start date of 7 February 2021, this entitled the Claimant to 27 days of paid leave. Therefore, the Claimant took 18 days of paid and authorised leave on the following dates:

(a) 1 day in April 2021 from 2 April 2021 to 4 April 2021;

(b) 3 days in May 2021 from 11 May 2021 to 15 May 2021;

(c) 5 days in July 2021 from 18 July 2021 to 23 July 2021;

(d) 3 days in August 2021 from 22 August 2021 to 25 August 2021;

(e) 4 days in September 2021 from 16 September 2021 to 22 September 2021; and

(f) 2 days in October 2021 from 21 October 2021 to 22 October 2021.

19. The Defendant submits that when the Claimant took unauthorised leave on 5 December 2021, he only had 9 days of paid leave in his balance. Therefore, the Defendant's position is that the Claimant's last day of paid leave was on 16 December 2021.

20. The period from 16 December 2021 to 4 February 2022 was unauthorised leave and should be unpaid.

21. The Defendant also submits that the Claimant was paid his salary on the following days:

(a) February salary on 3 March 2021 in the sum of AED 24,970;

(b) March salary on 1 April 2021 in the sum of AED 25,000;

(c) April salary on 3 April 2021 in the sum of AED 25,000;

(d) May salary on 7 June 2021 in the sum of AED 25,000;

(e) June salary on 5 July 2021 in the sum of AED 24,950; and

(f) July salary on 4 September 2021 in the sum of AED 24,950.

22. In relation to the Claimant's claim for flight tickets, the Claimant and his spouse are entitled to one economy return ticket per annum. However, the Defendant submits that the Claimant had not completed 12 months of continuous employment.

23. In relation to the Claimant's claim for gratuity, the Defendant again submits that the Claimant had not completed 12 months of employment with the company.

24. Therefore, the Defendant submits that the Claimant had been paid the total sum of AED 281,500, whilst he is only entitled to AED 258,043. Therefore, the Defendant submits that the Claimant owes the Defendant the total sum of AED 23,457.

Discussion

25. This dispute is governed by DIFC Law No. 2 of 2019, as amended by DIFC Law No. 4 of 2020 (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

26. I shall first determine the start date of Employment to be able to determine the end of service entitlements.

27. Although the Offer Letter was signed on 7 February 2021, the Claimant submits that his start was on 3 January 2021. The Claimant also adds that on 1 April 2021 he was paid the sum of AED 24,970 and on 3 April of 2021 he was paid the sum of AED 25,000.

28. On the other hand, the Defendant argues that by 3 January 2021 the company was not yet incorporated, and the salary paid in April 2021 was for that same month.

29. Clause 1 of the Offer letter provides the following:

> "1. Commencement
>
> You will commence employment with the firm as soon as your application for employment visa is lodged. In order to lodge the application for your employment visa we will require a copy of your passport.
>
> Your anticipated start date is 3 January after the provision of your documents and certificates for the visa application. In the event you are refused a visa and such refusal is full and final this contract maybe terminated by the firm without notice."

30. The Defendant provided a copy of the Claimant's visa, which reflects the issue date of 25 February 2021. However, the Defendant by way of email dated 21 February 2022 to the Claimant provided the calculation of the salaries. The calculation as per the Defendant reflects that start date is on 3 January 2021.

31. Therefore, in accordance with clause 1 of the Offer Letter and the Defendant's email dated 21 February 2021, I find that the Claimant's employment commenced on 3 January 2021.

Salary

32. Clause 2 of the Offer Letter provides the following:

> "you will receive an annual base salary of AED 300,000 payable in monthly installments equivalent to AED 25,000 per month, plus 10% commission on any shareholder placement, subject to quarterly review".

33. The Claimant submits that the Defendant failed to pay him his salary on time and failed to pay him the commission.

34. The Defendant admits that the salaries were not paid, however, it argues that in relation to December 2021 to February 2022, the Claimant is not entitled to his full salary. The reason the Defendant makes such argument is that it alleges that the Claimant took unauthorised leave from 5 December 2021 and at that time he only had a balance of 9 annual leave days. Therefore, the Claimant shall only be paid to 16 December 2021.

35. The Defendant adds that the period from 16 December 2021 until the Claimant's return date on 4 February 2022 would not be paid.

36. The Claimant submits that on 4 November 2021, in a meeting with the Defendant, he requested that if his salary was not paid by 5 November 2021 he would like to start working from home. On 8 November 2021, he did not receive his salary and started working from home.

37. The Claimant provided the Courts with a WhatsApp conversation with the Defendant dated 11 November 2021 as evidence of him working from home. The Claimant submits that there were no issues raised by the Defendant verbally or in writing of him working remotely.

38. On 5 December 2021, the Claimant informed the Defendant by WhatsApp of his travel plans and Mr Mistan responded as follows *"safe travels and speak hopefully when you arrive safely"*. The Claimant submits that there was no objection of him traveling and that he informed the Defendant that he would be working remotely during his travel.

39. The Claimant provided WhatsApp evidence of him requesting updates in relation to work during the period of 14 to 20 December 2021. The Claimant submits that there was no issue raised by the Defendant in relation of him working remotely.

40. The Claimant also provided evidence of him working remotely during the period of January 2022.

41. The Defendant failed to provide any evidence of objection been sent to the Claimant in relation to him working remotely. Therefore, I find that the Claimant was working during the period from 14 December 2021 to 4 February 2022 being the date of his return and is entitled to his salaries during this period.

42. As per the evidence of payment provided, the Claimant was paid the following: the Claimant's total salary from 3 January 2021 to 3 February 2022 is AED 325,000 and from 4 February 2022 to 24 February 2022 is AED 16,666.66. Therefore, the total amount is AED 341,666.66.

43. The Claimant confirmed that he was paid the total sum of AED 287,870. Therefore, the remaining outstanding sum is AED 53,796.66.

Commission and Equity

44. The Claimant claims the sum of USD 8,800 as commission. The Claimant enquired by way of email to the Defendant on 30 June 2021 about his commission as he bought in USD 88,000 for May and June. The Defendant responded on 30 June 2021 to the Claimant as follows "with the commission we will arrange and process over the next week as we have to close the accounts and calculate across all for the end of this quarter".

45. The Defendant by way of an email dated 21 February 2022 to the Claimant provided the following: *"My calculations are as follows. AED 131,630 salary, USD 8,800 sales commissions plus USD 50,000 of equity within Letty at the point of listing to Lester."*

46. The above payments were part of the Claimant's entitlements pursuant to the Offer Letter. The Commission is mentioned at Paragraph 32 of this Judgment. However, in relation to the claim for USD 50,000 of equity within Letty, Clause 2 of the Employment Offer Letter provides:

> "you will receive a stock equity of 1% of any stock that is given to the firm for resell from the date of joining (excluding). By prior agreement, equity will be provided within Letty at an agreed market valuation of USD 50,000 that will be provided at the point of listing to Lester."

47. Therefore, I find that the Claimant is entitled to commission in the sum of USD 8,800 and USD 50,000 of equity within Letty at the point of listing to Lester.

Gratuity

48. The Claimant claims payment of gratuity (21 days) in the sum of AED 24,231.

49. Article 66(1) and (2) of the DIFC Employment Law provides the following:

> "66. Gratuity Payment and Qualifying Scheme Benefits
>
> (1) An Employee who is not registered with the GPSSA under Article 65(1), and who completes continuous employment of at least one (1) year or more with their Employer, before or after the Qualifying Scheme Commencement Date, is entitled to a Gratuity Payment for any period of service prior to the Qualifying Scheme Commencement Date on the termination of their employment.
>
> (2) An Employee's Gratuity Payment shall be calculated as follows:
>
> (a) an amount equal to twenty one (21) days of the Employee's Basic Wage for each year of the first five (5) years of service prior to the Qualifying Scheme Commencement Date; and
>
> (b) an amount equal to thirty (30) days of the Employee's Basic Wage for each additional year of service prior to the Qualifying Scheme Commencement Date, provided that the total Gratuity Payment shall not exceed an amount equal to two (2) times the Annual Wage of the Employee.
>
> .
>
> (7) From the Qualifying Scheme Commencement Date an Employer shall, on a monthly basis, pay to a Qualifying Scheme, for the benefit of each Employee who is not an Exempted Employee, an amount equal to as least the Core Benefits, which shall be calculated as follows:
>
> (a) five point eight three percent (5.83%) of an Employee's Monthly Basic Wage for the first (5) years of an Employee's service, inclusive of any period of employment of Secondment served to prior to the Qualifying Scheme Commencement Date; and
>
> (b) eight point three three percent (8.33%) of an Employee's Monthly Basic Wage for each additional year of service."

50. The abovementioned clauses provide that an employer is required pay to an employee, within 14 days of the employee's termination date, a gratuity payment, in addition to amounts equal to the core benefits set out by the DIFC Employment Law, such amounts to be paid into a Qualifying Scheme. The gratuity payment to be paid must be for any period of service prior to the Qualifying Scheme Commencement Date, which is defined in the Law to be 1 February 2020.

51. The parties have not provided any evidence to demonstrate that the Claimant has been enrolled into a qualifying scheme, nor has any evidence been provided to show that the Claimant would be exempted from being enrolled. In light of this, I order that the Defendant pay to the Claimant an amount equal to the minimum benefits set out by the DIFC Employment Law, which would reflect the contributions that the Defendant would have paid into the qualifying scheme had it complied with the requirements of the DIFC Employment Law. This is to be calculated as follows.

52. The Claimant's employment with the Defendant was for the amount of 1 year, 1 month and 20 days. Taking into consideration the period of service undertaken by the Claimant prior to the commencement date of the Qualifying Scheme, the Claimant would be entitled to contributions for the period between 3 January 2021 to 24 February 2022, being the resignation date I have determined previously in the course of this Judgment.

Between 3 January 2021 - 3 February 2022:

The Claimant's monthly salary is AED 25,000 x 5.83% (being the minimum contribution amount defined by the Employment Law) = AED 1,457.5 per month x 13 months = AED 18,947.50.

Between 4 February 2022 - 24 February 2022:

AED 821.91 (being the Claimant's daily salary) x 5.83%= AED 47.91 per day x 20 days = AED 958.20.

53. Therefore, in accordance with the above, the Claimant's entitlement in regards to contributions that should have been made by the Defendant to a qualifying scheme is AED 19,905.70.

UAE National Holidays

54. The Claimant submits that he had to take annual leave on public holidays as the Defendant informed him that the holidays will be observed pursuant to the United Kingdom bank holidays.

55. Therefore, the Claimant claims that he is entitled to payment in lieu of annual leave taken on public holidays pursuant to Article 32 of the DIFC Employment Law which provides the following:

> "32. Public Holidays and pay
>
> (1) An Employee is entitled to leave on each Public Holiday that is announced in the UAE by the relevant Competent Authority for the public sector or the private sector, whichever is applicable to the Employee's Employer, which falls on a Workday.
>
> (2) An Employer shall pay an Employee their Daily Wage for each Public Holiday.
>
> (3) If an Employee agrees to work on a Public Holiday, in addition to their Daily Wage under Article 32(2), the Employer must provide the Employee with either: (a) a day of leave in lieu of each Public Holiday worked; (b) payment of an amount equal to the Employee's Daily Wage for the Public Holiday worked; or (c) payment of a pro-rated amount of the Employee's Daily Wage based on the time period worked during the Public Holiday."

56. The Claimant submits that he worked on 8.5 public holidays and he is entitled to the sum of AED 9,807.69.

57. Article 16(1)(f) of the DIFC Employment Law provides the following:

> "16. Payroll records
>
> (1) An Employer shall keep records of the following information:
>
> . the dates of the Public Holidays taken by the Employee and the Daily Wages paid by the Employer in respect thereof."

58. The Defendant failed to provide a record of the following public holidays taken by the Claimant. Therefore, I find that the Claimant is entitled to 8.5 days of daily wage calculated as follows: AED 25,000 x 12 months/ 260 days = AED 1153.84 x 8.5 days = AED 9,807.64.

Flight Ticket

59. The Claimant claims the total sum of AED 12,714 as costs of flight tickets.

60. Clause 2 of the Employment Offer Letter provides the following: *"the employee and spouse will be entitled to one return economy class ticket Dubai to any Global Destination on the completion of every 12 months of continuing employment"*.

61. Therefore, I find that the Claimant and his spouse are entitled to one return economy class ticket from Dubai to any global destination. However, I do not agree with the price provided by the Claimant.

Notice period and penalties under Article 19 of the DIFC Employment Law

62. The Claimant made claims of notice period and penalties under Article 19. However, the Claimant failed to quantify such claims in the claim form. Therefore, I shall not discuss them as they do not form part of the claim.

63. The only quantified claims were as mentioned in paragraph 13 of this Judgment.

Conclusion

64. In the light of the above, I find that the Defendant shall pay the Claimant the total sum of AED 115,850.

65. The Claimant is entitled to USD 50,000 of equity within Letty at the point of listing to Lester.

66. The Defendant shall provide the Claimant with two economy class flight tickets for the Claimant and his spouse to any global destination.

67. The Defendant shall pay the Claimant the Court fee in the sum of AED 2,317.