Claim No. SCT 295/2018

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 SCT JUDGE NASSIR AL NASSER

BETWEEN

ISMENE

Claimant/Defendant in Counterclaim

and

IRAYNA HAIR BEAUTY SALON

Defendant/Claimant in Counterclaim

Hearing: **2 October 2018**

Further Submissions: **4 October 2018**

Judgment: **9 October 2018**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant and the Defendant

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall cancel the Claimant's visa.

2. The Claimant shall pay the Defendant the sum of AED 1,145.00.

3. The Claimant shall delete pictures related to the Defendant's salon posted on his social media from May 2018 up to date.

4. All other claims and counterclaims are dismissed.

5. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 9 October 2018

At: 3pm

THE REASONS

The Parties

1. The Claimant/Defendant in the Counterclaim is Ismene (herein "the Claimant"), an individual filing a claim against the Defendant regarding his alleged employment at the Defendant company.

2. The Defendant/Claimant in the Counterclaim is Irayna Hair Beauty Salon (herein "the Defendant"), a company registered in the DIFC located at, DIFC, Dubai.

Background and the Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an Employment Contract dated 24 June 2018. However, the Claimant worked with the Defendant since 28 February 2016 on a different contract or offer letter with the previous owner of the Defendant. When the current Defendant took over the salon, new contracts were provided for the employees, consequently, the Claimant signed a new Contract on 24 June 2018. The Claimant's total monthly salary was AED 10,000 which consists of AED 5,000 basic salary and AED 5,000 other allowances.

4. On 2 September 2018, the Claimant resigned from the Defendant.

5. On 4 September 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of AED 1,000 deducted from his salary without prior permission and without knowing the reason, overtime, commission, deduction of AED 1,700 and cancellation of his visa.

6. Separately, the Defendant filed a claim SCT-297-2018 as a counterclaim on 6 September 2018 claiming the sum of AED 200,000 which consisted of the Claimant's failure to serve the 60 days' written notice as per the contract, seeing the Claimant working for another salon in the DIFC, transferring the Defendant's customers to another salon, confidentiality, posting salon pictures in social media and displaying the company's contact details.

7. On 18 September 2018, SCT Judge Maha Al Mehairi issued an order consolidating both claims, and ordering SCT 297/2018 to be treated as a counterclaim under claim SCT-295-2018.

8. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 20 September 2018 but were unable to reach a settlement.

9. Both parties attended the hearing before me listed on 2 October 2018.

The Claim

10. The Claimant's case is that he was employed by the previous owner of the Defendant on 28 February 2016 and then later signed a new contract with the new (current) owner on 24 June 2018. On 2 September 2018, the Claimant provided the Defendant with his resignation and on 4 September 2018 he filed a claim claiming the total sum of AED 3,834 which consists of an unauthorized deduction of AED 1,000, overtime, commission, an unauthorised deduction of visa costs in the sum of AED 1,700 and cancellation of his employment visa.

11. The Claimant alleges that, upon his resignation, he tried to come to the Defendant's premises to serve his notice period, but the Defendant refused. He also alleges that he called the Defendant but with no answer.

The Defence and Counterclaim

12. The owner of the Defendant alleges that when she bought the business in May 2018, the Claimant did not have an employment contract, therefore, she provided new employment contracts for all her employees, including the Claimant. The Employment Contract reflected that the Claimant commenced work since 28 February 2016.

13. The Defendant alleges that the deduction of AED 1,700 related to the express visa which the Claimant agreed to pay. The Defendant alleges that the express visa was issued upon the Claimant's request as he was planning to go on leave and since the normal process would take time to be issued, he requested for an express visa and agreed to pay for it.

14. The Defendant also alleges that in relation to the Claimant's claim for commission, the Employment Contract fails to mention that the Defendant is obliged to pay commission. However, by the discretion of the Defendant commission had previously been paid to the Claimant.

15. The Defendant also alleges that his previous employment contract stated that his working hours were 12 hours a day, however, in the Contract signed on June 2014, the working hours were not stated but it was mentioned that the Claimant from time to time would work for the best interest of the Defendant.

16. The Defendant also alleges that since the Claimant's resignation, the Claimant never attended the salon or answered the Defendant's calls.

17. On 6 September 2018, the Defendant, filed a counterclaim claiming damages.

18. The Defendant alleges that due to the Claimant's failure to attend the salon since his resignation this caused a shortage in the number of employees and shortage in sales.

19. The Defendant also alleges that the current owner of the salon received a phone call from one of the previous owners who mentioned matters about the salon which were confidential in nature and no one should know about.

20. The Defendant also claims that the Claimant should delete pictures posted by him on social media about the salon.

21. The Defendant also mentioned that the Claimant was seen working in a different salon, which is against the law.

22. The Defendant also alleges that at the Consultation held with SCT Judge Maha Al Mehairi, the Claimant mentioned that he will serve the notice period under a condition of paying him back his deductions.

23. In its counterclaim, the Defendant is seeking a claim for damages for breach of confidentiality, working in another salon (while the Claimant was under the Defendant's visa), social media pictures posted by the Claimant related to the Defendant's salon and that the Claimant failed to serve his notice period.

24. The Defendant alleges that since the Claimants provided his resignation, he did not serve his notice period, therefore, the Claimant is required to pay the Defendant 21 days' leave which the Claimant took without completing his one year service with the company, and the air fare ticket provided to him, and AED 84,000 loss in sales since he did not serve his notice period.

Claimant's response to the Counterclaim

25. In response to the Defendant's counterclaim, the Claimant alleges that he was not paid overtime, although, he alleges that the Defendant agreed to pay him the overtime. The Claimant also alleges that he is only supposed to work 8 hours a day, yet he used to work for 12 hours.

26. The Claimant also alleges that the Defendant deducted AED 1,000 for an unknown reason and AED 1,700 for the express visa.

27. The Claimant alleges that he never asked for an express visa.

28. In relation to the holiday and air ticket, the Claimant alleges that he was working with the Defendant since 28 February 2016 and the contract should be treated as continuous although he signed a new Employment Contract with the Defendant in June 2018.

29. The Claimant alleges that he is entitled to an air ticket and holidays as he was working from 2016 with the previous owner.

30. In relation to the social media allegation, the Claimant alleges that the social media pictures relate to his work only, in which he had an approval from the previous owner. However, the Claimant agreed to delete the pictures on his social media from May 2018 onwards.

Discussion

31. This dispute is governed by DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

32. I would like to first establish whether the Employment Contract signed on June 2018 is continuous to the previous Employment Contract with the previous owner or not.

33. The Claimant worked with the previous owner since 28 February 2016. The Defendant bought the salon in May 2018, and in June 2018 the Defendant provided the Claimant with a new Employment Contract which mentions that the Claimant worked since 28 February 2016. Therefore, I find that the Claimant's Employment is continuous, and the Employment Contract signed on 24 June 2018 is not a Contract for new Employment.

The Claim

34. The Claimant claims the total sum of AED 3,834 which consists of an unauthorized deduction of AED 1,000, overtime, commission, an unauthorised deduction of visa costs in the sum of AED 1,700 and the cancellation of his employment visa.

35. In relation to the unauthorized deduction of AED 1,000 alleged by the Claimant, there is no evidence of such deduction presented before the Courts. Therefore, I am not satisfied with such claim.

36. In relation to overtime and commission, the Claimant alleges that his Employment Contract stated that his working hours are 8 hours a day only and he used to work for 12 hours a day. He also alleges that he had discussed this with the Defendant and it was agreed that the Defendant would pay him overtime. In addition, the Claimant argues that it is mentioned in his contract that he is entitled to overtime.

37. In response to the Claimant's argument, the Defendant argues that the Employment Contract did not state his working hours or overtime. However, clause 1.4 of the Employment Contract states that "*the Employee is employed on a full-time basis and is obliged to conform to the hours of his/her professional time to his/her work for the employer and may not accept any other work business assignment or external engagement without the prior written approval of the employer, unless specifically mentioned in this agreement.*"

38. The Defendant also provided the Claimant's previous contract which mentions that the working hours are based on the Salon's working time.

39. The Claimant failed to provide any evidence that the parties agreed on overtime nor is it mentioned in the contract that overtime shall be paid.

40. Therefore, I shall dismiss the claim for overtime for lack of evidence.

41. In relation to the Claimant's claim for commission, the Claimant argues that he is entitled to commission. On the other hand, the Defendant argues that commission was not mentioned in the contract nor was it agreed between the parties. The Defendant argues that commission was paid at the discretion of the owner from time to time depending on the sales of the business.

42. I find that there was no agreement between the parties in regard to commission. Therefore, I dismiss the Claimant's claim for commission.

43. In relation to the Claimant's claim for the deduction of AED 1,700 for express visa expenses. The Claimant alleges that the Defendant offered to complete his visa by an express way.

44. The Defendant argues that during that period she was abroad, and the Company had to issue employment visas for its employees, however, this might take a couple of days. The Claimant had bought his flight ticket to travel on his annual leave and decided that changing the dates of the ticket would be expensive. Therefore, the Defendant argues that the Claimant himself approached the receptionist and asked for an express visa at his own cost.

45. The Defendant provided a witness statement from the receptionist stating that the Claimant agreed to pay his express visa expenses. The Defendant also provided a WhatsApp conversation between the receptionist and the Defendant as she was abroad. The WhatsApp conversation reads as follow: "*If he could request for VIP in processing his Visa, he pays the extra he said. Coz his passport will not make it, his*

travelling in 27th."

46. The Defendant also provided the Claimant's leave request which was from 27 July 2018 to 17 August 2018.

47. I am satisfied with the evidence provided by the Defendant. I find that the deduction made by the Defendant is legal, therefore, the Claimant is not liable to the refund of AED 1,700.

48. In relation to the cancellation of visa, the employment relationship between the parties is terminated, therefore, the Defendant shall cancel the Claimant's visa.

The Counterclaim

49. In its Counterclaim, the Defendant is claiming the sum of AED 200,000 in damages for breach of confidentiality, working in another salon (while the Claimant is under the Defendant's visa), social media pictures posted by the Claimant related to the Defendant's salon and that the Claimant failed to serve his notice period.

50. At the hearing, the Defendant reduced the counterclaim from AED 200,000 to the amount of AED 88,000, which consisted of loss of sales as a result of the Claimant failing to serve his notice period and the cost of his annual leave taken and air fare ticket.

51. The Defendant alleges that the Claimant was in breach of confidentiality as per the Employment Contract as he disclosed financial, HR and other salon related matters to a third party. However, the Defendant failed to provide any evidence of the breach.

52. Therefore, I am not satisfied with the Defendant's allegation as there is no sufficient evidence to establish the breach.

53. In relation to the Claimant working in another salon while under the Defendant's visa, the Defendant also failed to provide sufficient evidence to prove this claim.

54. Therefore, I am not satisfied with such allegation due to lack of evidence.

55. In relation to social media pictures being posted by the Claimant which related to the Defendant's salon, the Claimant agreed at the hearing to delete any pictures from the period of May 2018 onwards.

56. In relation to the Claimant's failure to serve the notice period of two months as per the Employment Contract, in which the Defendant alleges that she had suffered loss in sales in the amount of AED 84,000 per month.

57. The Defendant alleges that following the Claimant's resignation, he failed to attend work or return any calls from the Defendant. It is alleged by the Claimant, that he went to the salon to serve his notice period, but the Defendant informed him to not come to work.

58. There is no evidence before me that suggests that the parties negotiated the terms of the notice period, nor is there any evidence provided by the Claimant that the Defendant informed him not to serve his notice period.

59. The Defendant also provided a document which reflects the sales that the Claimant is expected to achieve for the salon during the month of June 2018. However, the Defendant failed to provide how much the sales had decreased during the period that the Claimant should have served his notice period.

60. As I also mentioned above, there is no sufficient evidence to establish whether the Claimant did not attend work on his own initiative or as per the Defendant's instructions, and there is no evidence of communication between the parties in relation to the notice period.

61. Therefore, I am not satisfied that the Defendant is entitled to damages for loss of sales due to lack of evidence.

62. In relation to the annual leave taken by the Claimant and the Air ticket provided by the Defendant, the Defendant alleges that the Claimant is not entitled to annual leave as he did not complete one year of Employment as per the contract.

63. Clause 3 of the Appendix 2 of the Employment Contract states that:

> "the Employee is entitled to 30 days off per annum."

64. The Claimant worked from February 2016 to the date of his resignation, the parties did not provide evidence of the Claimant's balance. However, I will calculate the leave balance from January 2018 up to 2 September 2018 (the date of resignation).

65. As per the Employment Contract, the Claimant is entitled to 30 days annual leave per annum, which is calculated as 2.5 days per month. Since the Claimant worked from February 2016 up to 2 September 2018, and the failure of the parties to provide the leave record, I find that the burden of providing the leave balance falls upon the Defendant pursuant to Article 16(1)(h) of the DIFC Employment Law which states the following:

> "(1) for each employee, an employer shall keep records of the following information:
>
> (h) the dates of the vacation leave taken by the employee, the amounts paid by the employer and the days and amount owing."

66. The Defendant alleges that the Claimant has to pay for his excess leave but failed to provide his leave balance. However, the Defendant only provided a copy of the Claimant's leave request from 27 July 2018 until 17 August 2018 which calculates to 22 days.

67. Therefore, I am not satisfied with the Defendant's argument due to lack of evidence.

68. In relation to the air ticket claimed by the Defendant in the sum of AED 1,145, the Defendant alleges that the Claimant shall return this amount

as he did not complete one year of employment.

69. As per clause 2 of Appendix 2 of the Employment Contract it states that:

> "one return trip per calendar year to his/her home country."

70. Also, as per his previous contract with the previous owner, the Claimant shall be entitled to an air ticket only upon the completion of 3 years of employment.

71. Therefore, I find that the Claimant is liable to pay back the Defendant the sum of AED 1,145 in relation to air ticket as he did not complete one year of employment as per the Employment Contract signed between the Claimant and the Defendant.

Conclusion

72. In light of the aforementioned, I find that the Defendant shall cancel the Claimant's visa. In regard to the Counterclaim, I find the Claimant liable to repay the Defendant the sum AED 1,145.00 which consists of an Air ticket, I also find that the Claimant shall delete the pictures of the Defendant's salon on his social media from the period of May 2018 up to date. All other claims and counterclaims are hereby dismissed.

73. Each party shall bear their own costs.



Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 9 October 2018

At: 3pm