Claim No. SCT 211/2020 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 MAHA AL MEHAIRI BETWEEN LIMONIL Claimant and (1) LUNDANE TECHNOLOGIES LTD (2) LINAIN (3) LASTER Defendants Hearing : 28

Claim No. SCT 211/2020

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 MAHA AL MEHAIRI

BETWEEN

LIMONIL

Claimant

and

(1) LUNDANE TECHNOLOGIES LTD
(2) LINAIN
(3) LASTER

Defendants

Hearing **: 28 July 2020**
Judgment **: 10 August 2020**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 29 June 2020

AND UPON a Consultation being held before SCT Judge Delvin Sumo on 12 July 2020

AND UPON the parties failing to reach a settlement at the Consultation

AND UPON a hearing having been listed before SCT Judge Maha Al Mehairi on 28 July 2020, with the Claimant and the Defendants' representative attending

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

IT IS HEREBY ORDERED THAT:

1. The Claimant's claims be dismissed.

2. The Claimant shall pay the suspended Court fee in the sum of AED 4,076.48.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 10 August 2020
At: 1pm

THE REASONS

The Parties

1. The Claimant is Limonil (the "Claimant"), a director formerly working with the First Defendant.

2. The First Defendant is Lundane Technologies Ltd (the "First Defendant"), a company registered in the DIFC, Dubai, UAE.

3. The Second Defendant is Linain (the "Second Defendant") and the Third Defendant is Laster (the "Third Defendant"), who both are directors and shareholders of the First Defendant.

Background and the Preceding History

4. The First Defendant was incorporated in March 2019 and the Claimant became a Director and Shareholder of the Company at the time of

incorporation alongside the Second and Third Defendants.

5. During pre-incorporation meetings held, it was agreed by the Claimant and the Second Defendant to float a financial technology company at the DIFC where all the parties would contribute to the establishment of the company. After much deliberation, the Second Defendant through Linain & Co, a registered business in Nigeria owned by the Second Defendant, agreed to be the sponsor of the First Defendant in the DIFC to the extent where it will fund the incorporation costs, office space costs, salaries of employees, and other associated costs for the smooth and efficient running of the company.

6. It was also agreed that that the Claimant's UAE residency visa and the Claimant's Health insurance costs are within those funds.

7. It was further agreed by all the shareholders that Linain & Co. would be refunded with the costs it had put in when the company would begin to generate funds consequent upon launching its application. Neither at any pre or post incorporation meeting did the shareholders agree to pay any fixed allowance to any director or shareholder on a monthly or regular basis. The agreement was that all shareholders who are also the directors would only be entitled to dividends when profit is declared for the company in conformity with the articles of association to which all shareholders, including the claimant, are signatories.

8. However, the Claimant, after agreeing to the terms cited above, began making demands for funds at regular intervals, citing financial difficulties. Consequently, Linain & co, in consideration of the Claimant's claim of financial difficulties, gave the Claimant varying amounts on each request with the understanding that it is not a salary, allowance or entitlement but only as support to enable him to stand on his feet financially.

9. The dispute arises over the unpaid allowances by the First Defendant. The Claimant is requesting for unpaid allowances for working as a director and a former shareholder within the First Defendant.

10. On 29 June 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming various sums in the amount of USD 37,000 as set below:

(a) 6 months' unpaid allowances in the amount of USD 14,000;

(b) USD 23,000 as compensation for the work he did as the former director of the First Defendant; and

(c) The cancelation of the Claimant's visa.

11. The Defendants filed an Acknowledgment of Service setting out their intention to defend all of the claim.

12. The parties met for a Consultation with SCT Judge Delvin Sumo on 12 July 2020 but were unable to reach a settlement. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 28 July 2020.

The Claim

13. The Claimant seeks the payment of outstanding allowance of USD 14,000 and a compensation of USD 23,000 for his work as a former director and shareholder of the company as well as his participation in the running of the company, the cancellation of his visa, the complete release from all claims made against the Defendants and the cancellation of his shares.

14. The Claimant also submits that he was paid allowances by the Second Defendant for his running of the company from Dubai as the two other defendants were not in the country.

15. Furthermore, the Claimant submits that he assisted in various projects to help establish the company as submitted in his submissions to the Court, and as such he is entitled to his claims.

The Defence

16. The Defendants, in response to the Claim, have denied all claims submitted by the Claimant, stating that the Claimant had no agreement with the Defendants in relation to any allowances, as the Claimant and the Second and Third Defendants were all shareholders and directors and no party was paid allowances in regards to their positions.

17. The Claimant had never made any monetary contribution towards the incorporation or the running of the First Defendant. As the Second Defendant was majority owner of the First Defendant, he was managing the First Defendant.

18. Moreover, the Claimant was never an employee with the First Defendant and the management was not under his responsibilities. The Defendants do not deny that the Claimant was a director and a shareholder with the First Defendant, but the Claimant was subsequently removed as a director by majority vote in accordance with the articles of association and DIFC Laws.

19. In addition, a request was made on 3 May 2020 to all shareholders to pay for their shares according to the percentages and the Claimant neither responded nor paid for the shares requested.. Subsequently, after reporting this to the DIFC authority, the First Defendant submitted a request for the removal of the Claimant which was, in turn, approved by the DIFC registry.

Discussion

20. This dispute is governed by DIFC No.5 of 2018 (the "Companies Law"), in conjunction with the relevant Articles of Association of the First Defendant.

21. The Court will first discuss whether the Claimant is entitled to a monthly allowance as claimed. This is a very straight forward matter as all shareholders and directors were not under any written contract for payment of allowances either monthly or quarterly there is no legal recruitment

to justify payment of allowances for the Claimant. In addition, the Claimant failed to support his claim with any written evidence, and the Defendants submit that the money that was paid to the Claimant was performed as a gesture of good will towards their colleague and does not befall a legal obligation upon the Defendants.

22. In addition, the First Defendant's articles of association as well as the DIFC Companies' Law No. 5 of 2018 set out that no director or shareholder shall be entitled to any remuneration unless there is an ordinary resolution of the company to that effect. In this matter, there is no such ordinary resolution passed by the company to entitle the Claimant or any other Director or shareholder of the company to any remuneration or allowance.

23. In light of this, I dismiss the Claimant's claim for 6 months' allowance.

24. The second matter that the Court will discuss is whether the Claimant is entitled to compensation as a former director and shareholder, for the alleged cancellation of his shares and for his participation in the running of the company.

25. The Claimant claim is in the amount of USD 23,000, and the Claimant did not provide a breakdown of this number for the court to fully understand the rationale behind the claim. The Court agrees that the Claimant participated in the running of the First Defendant but there was no formal agreement put in place to the regulate any payment towards him.

26. The Defendants submit that the Claimant is not entitled to any compensation for his removal as a director and shareholder and he is equally not entitled to any compensation for the cancellation of his shares. The Claimant was duly removed as a director and shareholder of the Company in accordance with the provision of the articles of association of the company and the Companies Law. Article 26 of the Articles of Association of the company provides for the procedure for removal of a Director.

> "26. DISQUALIFICATION AND REMOVAL OF DIRECTORS
>
> A director's office is automatically vacated if he:
>
> (i) Is prohibited by Law or Regulations from being a Director;
>
> (ii) Becomes bankrupt;
>
> (iii) .
>
> (iv) .
>
> (v) .
>
> (vi) Is removed by an Ordinary Resolution of the company"

27. The Defendant submits that the Claimant is not and did not challenge his removal as a director; rather he is only claiming compensation. The ARTICLES OF ASSOCIATION did not provide for any compensation after a director or shareholder is duly removed.

28. The only entitlement for shareholders is remuneration where there an ordinary resolution to that effect. Article 27 and 34 of the company's article of association discusses dividends only in a situation where there is profit generated by the Company. As at the time of the Claimant's removal the Company was at the pre-revenue/pre-market stage, which means that the Company is yet to execute any contract or generate any profit.

29. I agree with the Defendant's submission the Claimant's claim lacks merit, and that there is no legal obligation for the payment of compensation as the Claimant failed to pay the amount associated with his shares with the First Defendant.

Conclusion

30. In light of the aforementioned, I find that the Claimants claims be dismissed.

31. Each party bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 10 August 2020
At: 1pm