Claim No. SCT 511/2019

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

KINS

Claimant

and

KRINA HOLDINGS LIMITED

Defendant

Hearing: **19December 2019**

Judgment: **24December 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON this Claim being filed on 30 October 2019

AND UPON the Defendant filing an Acknowledgment of Service intending to defend all of this Claim dated 6 November 2019

AND UPON a Consultation being held before SCT Ayesha Bin Kalban on 17 November 2019

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

AND UPON a hearing having been listed before SCT Judge Nassir Al Nasser on 19 December 2019, with the Claimant and the Defendant's representative attending

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 235,384.20 in relation to penalties under Article 19 of the DIFC Employment Law.

2. All other claims shall be dismissed

3. The Defendant shall pay the Claimant the Court fee in the sum of AED 4,707.68.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of issue:25December 2019

At: 9am

THE REASONS

The Parties

4. The Claimant isKins (herein "the Claimant"), an individual filing a claim regardinghis employment at the Defendant company.

5. The Defendant isKrinaHoldings Limited (herein "the Defendant"), a company registered in the DIFC located inDIFC, Dubai, UAE.

Background and the Preceding History

6. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an Employment Contract dated 1July2017(the "Employment Contract").

7. On 21 May 2019, the Claimant resigned as an employee of the Defendant and his last working day was on 31July 2019.

8. On 30October 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming penalties under Article 19 of the DIFC Employment Law and compensationin the sum of AED 385,384.80.

9. On 6November 2019, the Defendant filed an Acknowledgment of Service intending to defend all of the claim.

10. The parties met for a Consultation with SCT Judge Delvin Sumo on 17November2019 but were unable to reach a settlement.

11. Both parties attended the hearing before me listed on 19December2019.

The Claim

12. The Claimant's case is that he was employed with the Defendant as a `Chief Operating Officer'from 1July2017 to 31July 2019. Upon his resignation, the Claimant alleges that the Defendant made several claims to avoid paying his end of service dues.

13. The Claimant alleges that the parties negotiated and agreed upon a settlement agreement (the "Settlement Agreement") on 1 October 2019,and the Defendant paid the Claimant the amounts owing under the Settlement Agreement on 1 and 15 October 2019, however, the sumpaid failed to include the penalties.

14. The Claimant is seeking the sum of AED 235,384.80 in respect of penalties under Article 19 of the DIFC Employment Law, as, it is claimed that, the Defendant delayed payment of the Claimant's end of service entitlements for 60 days,being 15 August until the full payment was made on 15 October 2019.

15. The Claimant also alleges that he is entitled to compensation in the sum of AED 150,000 due to mental harassment, delay in cancellation of his visa, legal costs and the costs incurred of borrowing money from friends and family for his survival.

The Defence

16. In relation to the Claimant's claim for penalties, the Defendant admits that the Claimant was not paid his dues in full until 13 October 2019. However, the Defendant denies that the Claimant is entitled to any penalties and submits that the SCT should exercise its discretion to waive any penalties, alleging that the Claimant's unreasonable conduct was the material cause for the delay in paying the Claimant's entitlements.

17. The Defendant alleges that the Claimant's unreasonable conduct included:

a. Refusing the Defendant's earlier offer to pay his employment entitlements in installments, in circumstances where he contributed to the Defendant's financial difficulties and he was responsible for managing the Defendant's cash flow and securing funding for the ongoing operations;

b. Causing five other employees to resign from the Defendant at the same time, which put further financial pressure on the Defendant at the same time, as it was required to pay the employees' termination and end of service benefits at the same time;

c. Not acting in the best interests of the Defendant and breaching fiduciary duties;

d. Failing to honour his obligation under the settlement agreement reached between the parties on 1 October 2019, which led to further delays in the payment of the Claimant's employment entitlements;

e. Deliberately delaying settlement discussions by instructing a law firm to make entirely unreasonable amendments to the terms of the Settlement Agreement, which included, for example, disputing a clause confirming the fact that he had received independent legal advice even though this clause is a legal requirement and the Claimant was legally represented in all settlement discussions.

18. In relation to the Claimant's claim for compensation in the sum of AED 150,000,the Defendant denies that the Claimant is entitled to such compensation on basis that the Claimant did not include any legal basis to support such a claim.

19. The Defendant also alleges that the Claimant is unnecessarily seeking penalties under Article 19 of the DIFC Employment Law for late payment of his end of service entitlements.It is asserted by the Defendant that the penalties are intended to compensate an employee for any delay in payment of their employment entitlements on the termination of their employment, and in this instance, the Claimant is attempting to be compensated twice for the delay in payment of his employment entitlements.

20. The Defendant also alleges that Rule 53.70 of the Rules of the DIFC Courts ("RDC") stipulates that:

"the SCT may not order a party to a small claim to pay sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, except:

(1) Such part of any Court or Tribunal fees paid by that other party as the SCT may consider appropriate; and

(2) Such further costs as the SCT may assess by the summary procedure and order to be paid by a party who has behaved unreasonably."

21. RDC 53.71 states that "a party's rejection of an offer in settlement will not of itself constitute unreasonable behaviour under Rule 53.70(2), but the SCT may take into consideration when it is applying unreasonableness test."

22. The Defendant alleges that they had not acted unreasonably in the circumstances, rather the Defendant has tried to reach an amicable resolution of the dispute with the Claimant and therefore there is no justification for the SCT to award legal costs to the Claimant.

23. The Defendant also denies that the Claimant has been subject to any mental harassment, and in fact alleges that the delay in visa cancellation has been caused by the Claimant.

Discussion

24. This dispute is governed by DIFC Employment Law No. 2 of 2019 (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

25. There are two issues in this claim, which I will discuss further below. The first issue is the Claimant's claim for penalties under Article 19 of the DIFC Employment Law and the second issue is whether the Claimant is entitled to compensation.

26. Article 19 of the DIFC Employment Law stipulates as follows:

> (1) An Employer shall pay to an Employee all Remuneration (excluding, where applicable, any Additional Payments deferred in accordance with Article 18(2)), the Gratuity Payment and all accrued Vacation Leave not taken, within fourteen (14) days after the Termination Date.
>
> (2) Subject to the provisions of Article 19(3) and 19(4), an Employee shall be entitled to and the Employer shall pay a penalty equal to an Employee's Daily Wage for each day the Employer is in arrears of its payment obligations under Article 19(1).
>
> (3) A penalty pursuant to Article 19(2) may only be awarded to an Employee if the amount due and not paid to the Employee in accordance with Article 19(1) is held by a Court to be in excess of the Employee's Weekly Wage.
>
> (4) A penalty pursuant to Article 19(2) will be waived by a Court in respect of any period during which:
>
> (a) a dispute is pending in the Court regarding any amount due to the Employee under Article 19(1); or
>
> (b) the Employee's unreasonable conduct is the material cause of the Employee failing to receive the amount due from the Employer.

27. I am satisfied that the Claimant resigned in May 2019 but it was agreed by the parties that the Claimant's last working day would be on 31 July 2019, and thatthe Claimant was not paid his dues in full until 15 October 2019.

28. Pursuant to Article 19(1) of the DIFC Employment Law, I am of the view that an Employer is required to pay an Employee all remuneration within fourteen (14) days after the termination, and in such instances where payment is not made within the time period, pursuant to Article 19(2) that Employer shall pay a penalty equal to an Employee's daily wage for each day the Employer is in arrears of its payment obligation under Article 19(1).

29. Therefore, I find that there was a delay from 15 August 2019 up to the date of full payment on 15 October 2019.

30. The question which arises is whether this delay was caused by the Claimant's unreasonable conduct or not.

31. The Defendant argues that the Claimant's unreasonable conduct caused the delays (the argument for which I have set out in paragraph 17 above).

32. I am not satisfied that the Claimant's refusal to accept the Defendant's offer to pay his employment entitlements in instalments can amount to unreasonable conduct as Article 19(1) clearly states that the Employer shall pay an Employee all remuneration within fourteen (14) days of his last working day.

33. The Defendant failed to provide evidence to demonstrate that the Claimant's resignation led to the resignation of other Employees which put further pressure on the company or thatthe Claimant did not act in the best interests of the Defendant and breached his fiduciary duties.

34. The Defendant also argues that the Claimant failed to honour his obligation under the Settlement Agreement. At the hearing, the Claimant argued that the parties failed to agree upon a settlement. Instead the Claimant acknowledged that settlement negotiations took place however the parties did not finalise and sign the Settlement Agreement.

35. The Defendant also argues that the Claimant delayed the settlement discussions by instructing his law firm to make amendments to the terms of the Settlement Agreement. I also find that negotiating terms fails to amount to unreasonable conduct as both parties are entitled to negotiate in their best interest.

36. Upon reviewing the case file and the parties' submissions, I find that payment of the Claimant's end of service entitlements were delayed due to the Defendant's conduct in trying to enter into the Settlement Agreement. Therefore, I find that the Claimant is entitled to penalties of his daily wage from 15 August to 15 October 2019 in the sum of AED 235,384.20 (AED 85,000 x 12 months /260= AED 3,923.07 x 60 days= AED 235,384.20).

37. The Claimant argues that he is entitled to compensation in the sum of AED 150,000 due to mental harassment, delay in cancellation of his visa, legal costs and the costs incurred in borrowing from his friends and family for his survival.

38. I find that the Claimant failed to provide any evidence to demonstrate the harm suffered in order to be compensated the sum of AED 150,000. In relation to the delays, this is governed by Article 19 of the DIFC Employment Law which awards penalties for any delays in payments. Therefore, I dismiss the Claimant's claim for compensation in the sum of AED 150,000.

Conclusion

39. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED235,384.20 in relation to penalties under Article

19 of the DIFC Employment Law.

40. All other claims shall be dismissed

41. The Defendant shall pay the Claimant the Court fee in the sum of AED 4,707.68.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of issue:25December 2019

At: 9am