Claim No: SCT 074/2021

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE SMALL CLAIMS TRIBUNAL

BETWEEN

LAKHI

Claimant

and

LEKH RESTAURANT

Defendant

ORDER WITH REASONS OF SCT JUDGE DELVIN SUMO

UPON reviewing the Claim Form submitted by the Claimant dated 16 March 2021 (the "Claim")

AND UPON this Claim having been called for a Consultation before SCT Judge Delvin Sumo on 29 March 2021

AND UPON the Claimant attending the Consultation and the Defendant failing to appear although served notice of the claim

AND UPON reviewing the case file and submissions contained therein

IT IS HEREBY ORDERED THAT:

1. The Claim shall be dismissed.

2. The DIFC Courts do not have jurisdiction over this Claim.

3. Each party shall bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of Issue: 31 March 2021
At: 8am

SCHEDULE OF REASONS

The Parties

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

2. The Defendant is Lekh Restaurant, a company registered in DIFC, Dubai, UAE (the "Defendant").

Discussion

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an offer letter dated 19 December 2019 (the "Offer Letter") and an employment contract dated 2 March 2020 (the "Employment Contract"). On 16 March 2021, the Claimant filed a Claim with the DIFC Courts' Small Claims Tribunal (the "SCT") claiming his end of service entitlements in the sum of AED 58,286.67.

4. Rule 53.2 of the Rules of the DIFC Courts (the "RDC") requires that the SCT only hear cases that fall within the jurisdiction of the DIFC Courts. The relevant wording is set out below:

> "The SCT will hear and determine claims within the jurisdiction of the DIFC Courts:
>
> (1) where the amount of the claim or the value of the subject matter of the claim does not exceed AED 500,000 or;
>
> (2) where the claim relates to the employment or former employment of a party; and
>
> all parties elect in writing that it be heard by the SCT (there is no value limit for the SCT's elective jurisdiction in the context of employment claims); or
>
> (3) which do not fall within the provisions of sub-paragraph (1) or (2) above, but in respect of which:
>
> a. the amount of the claim or the value of the subject matter of the claim does not exceed AED 1,000,000; and
>
> b. all parties to the claim elect in writing that it be heard by the SCT, and such election is made in the underlying contract (if any) or

subsequent to execution of that contract."

5. The jurisdiction of the DIFC Courts is determined by Article 5(A) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended (the "JAL"), which provides a number of limited gateways through which the DIFC Courts may exercise jurisdiction over a claim, which are, as relevant:

"1. The Court of First Instance will have exclusive jurisdiction to hear and determine:

a. The civil, commercial and labour claims and actions to which the DIFC or any DIFC body, DIFC establishment or licensed DIFC establishment is a party.

b. The civil, commercial and labour claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalized 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.

c. The Court of First Instance shall have exclusive jurisdiction to hear and determine the civil, commercial and labour 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;

d. Appeals against decisions or procedures made by DIFC bodies where DIFC Laws and DIFC Regulations permit such appeals and claim;

e. Action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations.

2. The Court of First Instance may hear and determine any civil or commercial claims or actions where the parties agree in writing to file such claim or action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions.

3. The Court of First Instance may hear and determine any civil, commercial and labour claims or actions falling within its jurisdiction if the parties agree in writing to submit to the jurisdiction of another court over the claim or action but such court dismisses such claim or action for lack of jurisdiction. The Court of First Instance may not hear or determine any civil, commercial and labour claim or action in respect of which a final judgment is rendered by another court."

6. The above confirms that civil, commercial, and labour claims which are related to the DIFC fall within the jurisdiction of the DIFC Courts by default. However, Article 5(A)(2) regarding the ability of parties to `opt in' to the jurisdiction of the DIFC Courts only refers to civil and commercial claims. As the term "labour" has not been included in Article 5(A)(2), it is concluded that labour or employment claims relating to employment outside the DIFC cannot be determined by the DIFC Courts.

7. The Claimant's Offer Letter is signed between the Claimant and the Defendant, Lekh Restaurant. However, the Employment Contract is signed between the Claimant and Lista Restaurant & lounge FZE. Both the Defendant and Lista Restaurant & lounge FZE appear to have the same owner, named Leuke.

8. The Claimant claims that he has, at all times, during the course of his Employment worked in Lekh Restaurant located in the DIFC, even though his Employment Contract is with a different entity located outside of the DIFC. The Claimant has failed to provide any proof or evidence demonstrating that the Claimant had indeed worked in Lekh Restaurant located in the DIFC.

9. Furthermore, the Claimant's visa is issued by `Lista Restaurant and Lounge - Lius', which appears to be the same employer indicated in the Employment Contract. I also note that the Claimant's resignation letter dated 23 November 2020 is addressed to `Lista Restaurant, located in Dubai'.

10. In light of the aforementioned, I find that the DIFC Courts have no jurisdiction to hear and determine employment claims related to companies registered outside the DIFC.

Conclusion

11. The Claimant's claim shall be dismissed due to the Courts' lack of jurisdiction.

12. Each party shall bear its own costs.