Claim No. SCT 113/2018

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

IFRAH

Claimant

and

IBHAN LLC

Defendant

Hearing: **22 April 2018**

Judgment: **24 April 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 Claimant shall pay the Defendant the sum of AED 4,000 as the remaining balance of the loan.

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

3. The Defendant shall return the Claimant's personal property available at the Defendant's shop.

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: 24 April 2018

At: 4pm

THE REASONS

The Parties

1.The Claimant is Ifrah (herein "the Claimant"), an individual filing a claim against the Defendant regarding her alleged employment at the Defendant company.

2. The Defendant is Ibhan LLC (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 27 June 2017. However, the parties admitted that the Claimant was employed in July 2017 until the termination date on 30 October 2017. the Claimant's total salary was AED 4,000 which consists of AED 1,500 basic salary and AED 2,500 (housing, food and transportation).

4. On 12 March 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of salary for the month of October 2018 in the sum of AED 4,000, penalties under Article 18 of the DIFC Employment Law No. 4 of 2005 amended by DIFC Law No. 3 of 2012 (the "DIFC Employment Law") for 114 days in the sum of AED 5,700, cancellation/transferring process and return of the Claimant's passport and to return the Claimant's personal property which comprises of a hair salon mannequin stand and a mannequin.

5. The parties met for a Consultation with SCT Judge Natasha Bakirci on 18 March 2018 but were unable to reach a settlement.

6. The Defendant responded to the claim on 13 March 2018, defending the claim.

7. Both parties attended the hearing before me listed on 22 April 2018.

The Claim

8. The Claimant's case is that she was employed by the Defendant from 27 June 2017 up to the date of termination on 30 October 2017. The Claimant alleges that she was not paid her salary for October 2017 despite numerous follow ups with the Defendant.

9. In addition, the Claimant alleges that the Defendant has claimed that the monthly salary that is owed to the Claimant satisfies the amounts owed by the Claimant in respect of a loan, the loan allegedly taken by the Claimant from the Defendant. However, the Claimant alleges that this information is not true since the Claimant has never taken a loan from the Defendant.

10. Furthermore, the Claimant alleges that she has requested the Defendant to provide evidence to support the loan allegation, however, the Defendant failed to do so.

11. Therefore, the Claimant asserts that the Defendant still did not pay her monthly salary from 1 October 2017 to 30 October 2017. In addition, the Claimant alleges that she is entitled to penalties under Article 18 of the DIFC Employment Law, as the Defendant failed to settle the salary owed within 14 days of the termination date.

12. The Claimant adds that this has adversely affected the Claimant's livelihood; the Claimant has not been able to pursue further employment as the Claimant has not been able to sign the visa cancellation form confirming her outstanding dues have been paid by the Defendant.

13. The Claimant also alleges that the Defendant has illegally withheld the Claimant's passport which the Defendant failed to return despite the requests.

14. Furthermore, the Claimant alleges that she has personal property comprising of a hair salon mannequin stand and a mannequin at the Defendant's premises, which the Claimant has been unable to obtain.

15. The Claimant now seeks the payment of her salary for October 2017 in the sum of AED 4,000, penalties under Article 18 of the DIFC Employment Law in the sum of AED 5,700 calculated pursuant to the basic salary at the rate of AED 50 per day from 30 October 2017 to 21 February 2018, cancellation of visa and to return personal property available in the salon.

The Defence and Counterclaim

16. The Defendant does not contest the salary for the month of October in the sum of AED 4,000. However, the Defendant alleges that the Claimant entered into a loan agreement with the Defendant in the sum of AED 8,000, in which the Claimant failed to pay back. The Defendant provided pay slips which were signed by the Claimant for the month of July 2017, August 2017 (not signed because the Claimant was on leave) and September 2017 which was again signed by the Claimant, the pay slips provide the salary for each month and a note which reads "SALARY FROM Ibhan FOR THE MONTH OF SEPTEMBER 2017 CURRENT OUTSTANDING PAYABLE TO THE COMPANY IS AED 8,000"

17. The Defendant alleges that the Claimant was terminated due to her misconduct and misbehaviour. In addition, the Defendant alleges that the Claimant was given a verbal warning twice.

18. The Defendant also filed a counterclaim against the Claimant. The Defendant in its counterclaim sought the sum of AED 8,000 in regard to the loan, the sum of AED 200 in relation to free service provided by the Claimant to a client without the Defendant's consent and absconding service fee in the sum of AED 1,500.

19. In relation to the cancellation of visa, the Defendant alleges that she had requested the Claimant to attend several times but without any success, the Defendant also provided a copy of cancellation with pending issues document dated 31 October 2017.

20. In relation to the personal property of the Claimant, the Defendant agreed to return this.

Discussion

21. 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.

The Claim

22. At the hearing the Defendant did not contest that the October 2017 salary in the sum of AED 4,000 was not paid to the Claimant.

23. Article 18(1) and (2) of the DIFC Employment Law states the following:

> "18. Payment where the employment is terminated
>
> 1.An employer shall pay all wages and any other amount owing to an employee within fourteen (14) days after the employer or employee terminates the employment.
>
> 2.If an employer fails to pay wages or any other amount owing to an employee in accordance with Article 18(1), the employer shall pay the employee a penalty equivalent to the last daily wage for each day the employer is in arrears."

24. The Claimant claimed penalties under Article 18 of the DIFC Employment Law, arguing that she was terminated on 30 October 2017 but without receiving her October 2017 salary within 14 days after the termination. Therefore, the Claimant argues that she is entitled to penalties under Article 18 of the DIFC Employment Law. The Claimant also provided calculation of the sum she is entitled to; the Claimant calculated the penalties pursuant to her basic wage which is wrong. The Claimant should have calculated the penalties pursuant to her last daily wage.

25. Also, the Claimant when filing the Claim should have calculated the penalties from the date she is entitled to it until the date of filing the claim and not as she has calculated in the amount claimed.

26. On the other hand, the Defendant argues that the Claimant is not entitled to penalties under Article 18 of the DIFC Employment Law. In addition, the Defendant argues that the Claimant owed the Defendant the sum of AED 8,000, taken as a loan at the beginning of her employment.

27. The Defendant supported their argument by pay slips signed by the Claimant when receiving her salary for each month and as mentioned above the pay slip stated the amount of loan taken by the Claimant.

28. However, the Claimant then argued that she did not take any loan from the Defendant. She also argued that this note was added after this claim, but then she argued that it is not her signature on the pay slip, then she admitted that it is her signature on the pay slip, but she did not notice the clause in the pay slip and that she was not aware of it.

29. Therefore, I find that the Claimant is not entitled to penalties under Article 18 of the DIFC Employment Law as the Defendant did not pay the Claimant her salary because she was terminated and there was a loan still outstanding which is higher than the Claimant's salary.

30. In relation to the cancellation of the Claimant's visa, the Defendant shall proceed and cancel the Claimant's visa.

31. In relation to the property belonging to the Claimant, the Defendant agreed to return this property to the Claimant.

The Counterclaim

32. The Defendant in its counterclaim sought the sum of AED 8,000 in regard to the loan, the sum of AED 200 in relation to free service provided by the Claimant to a client without the Defendant's consent and absconding service fee in the sum of AED 1,500,

33. The Defendant argues that the Claimant owed the Defendant the sum of AED 8,000 taken as a loan at the beginning of her employment.

34. The Defendant supported its argument using pay slips signed by the Claimant when receiving her salary for each month and as mentioned above, the pay slip stated the amount of loan taken by the Claimant.

35. However, the Claimant then argued that she did not take any loan from the Defendant. She also argued that this note was added after her claim was filed, but then she argued that it is not her signature on the pay slip, then she admitted that it is her signature on the pay slip, but she did not notice the clause in the pay slip and that she was not aware of it.

36. I also find that the Claimant signed a similar pay slip every month except August 2017 pay slip as she was on leave on that day.

37. I am satisfied with the evidence provided by the Defendant in relation to the loan, therefore the Claimant shall pay back the Defendant the sum of AED 8,000.

38. In relation to the absconding fees, the Defendant argues that on numerous occasions they had called the Claimant to cancel the visa, but the Claimant failed to attend. On the other hand, the Claimant argues that on numerous occasions she had contacted the Defendant to cancel the visa but failed to do so.

39. Pursuant to the evidence provided, I can see that both parties were in pursue of the cancellation. Therefore, I am not satisfied to award such amount to the Defendant as the absconding was basically filed by their choice.

40. The Defendant argues that the Claimant provided services in the sum of AED 200 to a client for free without the managements approval. However, the Defendant failed to provide evidence in relation to the invoice or accounting invoice.

41. Therefore, I dismiss the Defendant's claim of AED 200 for lack of evidence.

Conclusion

43. In light of the aforementioned, I find that the Defendant is liable to pay the Claimant her October Salary in the amount of AED 4,000, cancel the Claimant's visa and return all personal belongings to her. In regard to the Counterclaim, I find the Claimant liable to repay the Loan of AED 8,000. All other claims and counterclaims are hereby dismissed.

44. Therefore, I find the Claimant liable to pay the Defendant the sum of AED 4,000.

45. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 24 April 2018

At: 4pm