Claim No: SCT 117/2015

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS

BEFORE H.E. JUSTICE SHAMLAN AL SAWALEHI

Between

FLAVIA

Claimant

v

THE FLETCH GROUP

Defendant

Hearing: **17 August 2015**

Judgment: **24 August 2015**

JUDGMENT OF H.E. JUSTICE SHAMLAN AL SAWALEHI

UPON hearing the Claimant and the Defendant

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

IT IS ORDERED THAT:

The Claimant's Claim is rejected.

The reasons:

1.The Claimant requested the Defendant to pay her all the benefits due at the end of her Employment Contract. The Defendant had refused to pay, which had led the Claimant to file this case before the Court

2. No settlement was reached by the parties at the end of the consultation and, consequently, the case was sent for adjudication. On 17 August 2015 I heard both parties' submissions.

3. In the Claimant's Particulars of Claim, the Claimant argued that her employment had been terminated through a Settlement and Release Agreement signed by both parties on 16 June 2014 , but her leave entitlement had been calculated incorrectly as it should have been calculated on the basis of her daily wage and not on the basic wage .

4. The Claimant argued that all payments that had been agreed as per the Settlement and Release Agreement had been paid after 14 days when the Claimant had followed up with the Defendant, and had asked to be compensated for the penalty related to not paying her dues within 14 days after her departure date.

5. In its defence, the Defendant argued that in the Settlement and Release Agreement, both parties had agreed to a negotiated settlement of all the Claimant's termination claims which had been paid and received by the Claimant pursuant to that agreement, in the total sum of AED 154,999.92.

6. The Defendant further argued that the Claimant was the senior human resources executive of the Defendant , therefore the Claimant knew or ought to have known exactly how the Claimant's termination benefits would be calculated when she signed the Settlement and Release Agreement , as she was privy to how termination benefits were calculated in respect of terminated employees .

7. I have examined both parties' submissions and I have found that the Settlement and Release Agreement had stated that the settlement payments were in full and final settlement of all the Claimant's rights under the Claimant's employment contract and the DIFC Employment Law, which was acknowledged by the Claimant.

8. Moreover, I have found that the Claimant had more than one opportunity to better substantiate her final settlement calculations or the value of the full and final settlement after her termination date on 16 June 2014 , as the Claimant's end of service gratuity and vacation entitlements were paid into her bank account on 23 July 2014. Subsequently, 2 months later in the middle of September 2014, when the DIFCA Employment Permit Cancellation was signed by the Claimant to validate all of the final settlement calculations, and the Claimant accepted that she had no rights to make any claims thereafter .

9. I have noticed that to enforce the Settlement and Release Agreement the Defendant had made 2 payments to the Claimant's bank account, the first payment in the amount of AED 84,992.02, and the second payment in the amount of AED 70,000. The Claimant did not dispute those payments, and I have found that both payments were made within the agreed timeline; therefore the principle of penalty for late payment after 14

days is not applicable.

10. I should bring the Claimant's attention to the fact that the DIFC Courts do acknowledge and respect the parties' intention to have their own binding agreement and the Courts shall support the enforcement of such an agreement, therefore I shall enforce what the parties have agreed to. By the Claimant signing the Settlement and Release Agreement on 16 June 2014, she has agreed to enter into a new arrangement with the Defendant to determine her entitlement at the end of the employment contract, which shall be enforced by this Court over any provision of the DIFC Employment Law that deals with employment end of service benefits generally.

11. For the above-cited reasons, I have rejected all the Claimant's claims.

Issued by:

Nassir Al Nasser

Judicial Officer

Date: 24 August 2015

At: 4pm