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

BEFORE H.E. JUSTICE OMAR AL MUHAIRI

BETWEEN

(1)FERGUS

(2)FERIT

Claimants

and

FIDELITY

Defendant

Hearing:**23 March 2015**

Judgment:**5 April 2015**

JUDGMENT OF H.E. JUSTICE OMAR AL MUHAIRI

Background

1.The First Claimant is **Fergus**("the First Claimant"), former employee of Alpha Management Limited, Registered in the DIFC.

2. The Second Claimant is **Ferit**("the Second Claimant"), former employee of **Fidelity**, Registered in the DIFC.

3. The Defendant is **Fidelity**("the Defendant"), a company registered in the DIFC.

4. On 1 March 2013, the First Claimant signed an employment contract with the Defendant as a business consultant.

5. On 15 May 2013, the Second Claimant signed an employment contract with the Defendant as Administrator- xxxx (see paragraph 10 below).

6. On 31 December 2014, the Claimants signed a mutual termination and release agreement with the Defendant ("the agreement") and a No Objection Certificate was issued on the same day. As per clause 4 of the agreement with both Claimants, it states that:

> "The parties agree that the visa cancellation and transfer procedure of the Employee will begin as soon as practical following the signature of this Agreement"

7. The Defendant failed to execute the agreement with both signed with both Claimants. Therefore, on 25 February 2015, both the First and Second Claimant jointly filed an SCT claim alleging that they have resigned from their positions at the Defendant company, which was conveyed to the CEO of the company, following which, The Claimants' resignations were accepted.

8. In addition, the Claimants allege that the CEO of the Defendant, against the terms of the agreement refused to cancel their visas. Furthermore, it is linking the cancellation of the Claimants' visas with an internal dispute between the shareholders.

9. The Claimants filed a case with the DIFC Courts Small Claims Tribunal seeking a visa cancellation by the Defendant and a transfer of their visas to a company in DMCC.

10. The Defendant in its defence alleges that it had an agreement with xxxx Group, a company which acquired a stake of 25% in the Defendant's company. Both the Defendant and xxxx in late 2014 decided to separate.

11. On 19 December 2014, the Defendant and xxxx engaged in extensive negotiations and xxxx issued an email offer setting the terms of agreement. On 31 December 2014, the Defendant's CEO alleges that he signed the mutual termination and release agreement for the Claimants on the basis of the email offer received by xxxx. But xxxx produced a legal termination agreement that was different than what had been agreed with the Defendant by email.

12. The Defendant alleges that the agreement signed with the Claimant was in good faith and on the basis that the agreement with xxxx would

proceed pursuant to what was agreed by email.

13. In addition, the Defendant fears that by cancelling the employment visas it will be liable for further payments to the Claimants and will be exposed and suffer financial losses.

The Hearing

14.&#65533;On 6 January 2015, a hearing was held before me. Both the First and Second Claimants and the Defendant attended the hearing.

Discussion

15.&#65533;The First and Second Claimants signed the Mutual Termination and Release Agreement on 31 December 2015. By signing the agreement both parties are under an obligation to perform what has been agreed in the agreement.

16. As per Clause 4 of the Mutual Termination and Release Agreement between the Claimants and the Defendant, it states that:

> "The parties agree that the visa cancellation and transfer procedure of the Employee will begin as soon as practical following the signature of this Agreement".&#65533;

17.&#65533;Pursuant to Article 59(1) of the DIFC Contract Law (DIFC Law No. 6 of 2004), it states that:

> "To the extent that an obligation of a party involves a duty to achieve specific results, that party is bound to achieve that result."

18. Pursuant to Article 77 of the DIFC Contract Law, it states that:

> "Non-performance is failure by a party to perform any one or more of its obligations under the contract, including defective performance or late performance".

19. The Defendant failed to execute Clause 4 of the Mutual Termination and Release Agreement signed with the Claimants. The Defendant also failed to perform its obligation under the agreement signed with the Claimants. Furthermore, it delayed the performance of such obligation, consequently the Defendant failed to comply with Article 59(1) and Article 77 of the DIFC Contract Law.

20. In addition the Defendant also failed to provide the agreement it had entered into with xxxx and also failed to provide any evidence of financial losses or future financial losses to be suffered if it executed the mutual termination and release agreement signed with the Claimants.

In conclusion

21.&#65533;For the reasons stated above, the Defendant shall cancel both the First and Second Claimants' visas.

22. Each party shall bear their own costs.

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Issued by:

Nassir Al Nasser

Judicial Officer

Date of issue: 6 April 2015

At: 8am