Claim No. SCT 039/2020

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

LIZZI

Claimant

and

LIGNA SECURITIES LIMITED, DIFC BRANCH

Defendant

Hearing **: 18 March 2020**
Judgment **: 29 March 2020**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON the Claim Form being filed on 12 February 2020

AND UPON the Defendant filing an Acknowledgment of Service with an intention to defend all of the claim dated 18 February 2020

AND UPON the parties being called on 26 February 2020 for a Consultation with SCT Judge Delvin Sumo and the parties not having reached a settlement

AND UPON a Hearing having been held before SCT Judge Nassir Al Nasser on 18 March 2020, with the Claimant and the Defendant's representative in attendance

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 outstanding sum of GBP 1,373.04 in respect of his End of Service Gratuity.

2. The Claimant's other claims are dismissed.

3. There shall be no order as to costs.

Issued by:
Nassir Al Nasser
SCT Judge
Date of issue: 30 March 2020
At: 11am

THE REASONS

The Parties

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

5. The Defendant is Ligna Securities Limited, DIFC Branch, a company registered in the DIFC located at DIFC, Dubai (the "Defendant").

The Preceding History

6. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an employment contract dated 1 December 2011 (the "Employment Contract").

7. On 1 October 2019, the Claimant was terminated by the Defendant by way of a termination letter, and his last working day was on 29 November 2019.

8. On 12 February 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming recovery of alleged unjustified deductions made by the Defendant throughout his tenure with the company, in respect of his bonus and his end of service gratuity, in the total sum of USD 78,000.

9. On 18 February 2020, the Defendant responded to the claim by filing an Acknowledgment of Service with an intention to defend all of this claim.

10. The parties met for a Consultation with SCT Judge Delvin Sumo on 26 February 2020 but were unable to reach a settlement.

11. Thereafter, the parties attended a hearing listed before me on 18 March 2020.

Claimant's submission

12. The Claimant filed a claim with the SCT alleging that, during the course of his employment, the Defendant had, on a numerous occasion, made regular deductions from the Claimant's remuneration on an equal percentage.

13. The Claimant alleges that such deductions were illogical and contrary to any accepted HR practice in the UAE and thus contradict the nature of an end of service gratuity payment ("ESG").

14. The Claimant alleges that on numerous occasions he attempted to seek clarification from the Defendant in relation to the deductions of the ESG but failed to receive a valid explanation. Upon the Claimant's termination, he requested from the Defendant to look into the erroneous computation that had been made in calculating the Claimant's ESG and in making the deductions, however the Defendant refused any responsibility in respect to the calculations made, including the alleged deductions.

15. The Claimant confirms that, an amount of GBP 52,000 was paid to him upon his termination. On the Claimant's account, his salary as per the Employment Contract was GBP 150,000 per annum but, during the course of his employment, this was reduced to GBP 100,000 per annum. The Claimant alleges that the ESG must have been calculated on the basis of his last working day, being 29 November 2019, and therefore the Claimant alleges that he should be entitled to GBP 54,000. The Claimant also alleges that the Defendant failed to provide him with an ESG calculation.

16. Furthermore, the Claimant alleges that the Defendant was deducting its costs incurred towards the ESG as employee benefits in his bonus calculation. The Claimant states that the Defendant deducted USD 6,000 from his remuneration every quarter since 2013.

17. The Claimant sought to rely on two emails dated 27 July 2018 and 7 September 2018, wherein it is suggested that the Defendant confirms the deduction was made in respect of medical insurance and the ESG. As such, the Claimant alleges that the Defendant owes him the amounts that were deducted from his bonus calculations as "employee benefits" amounting to approximately GBP 60,500, in addition to the ESG benefits he is entitled to in accordance with the DIFC Employment Law.

18. The Claimant also adds that, in the bonus calculation statements, there are discrepancies as to the definition of `employee benefit' deduction made by the Defendant, i.e. sometimes such deductions are referred to as "Medical", "Parking" and "Housing" or other terms without specification or consistency. The Claimant also refers to an email from HR dated 29 January 2018 confirming the medical charges for 2015, 2016, 2017 and 2018.

19. The Claimant further adds that, pursuant to the Employment Contract, the relationship between the parties is governed by the DIFC Employment Law, and the Law makes no explicit mention to the payment of ESG to be borne by an employee nor is it stated within the Employment Contract.

The Defendant's submissions

20. The Defendant denies the Claimant's allegations and his claims for outstanding payments in respect of his bonus and ESG.

21. In relation to the alleged bonus deductions, the Defendant states that the Claimant was entitled to receive a bonus calculated on net revenue at the end of the bonus period. As per the Employment Contract, the bonus calculation was as follows:

> "50% of net revenue generated by the Claimant less 100% of his direct employment costs"

22. The `net revenue' is defined in the Employment Contract as being "the gross revenue generated by the Claimant (the "Gross Revenue"), less other adjustments which included discounts, clearing, settlement and execution fees, difference of the payments, bad debts, outstanding receivables and infrastructure building services charges (the "Adjustments")".

23. The `Direct Employment Costs' are defined in the Contract as "direct costs of the Claimant's employment and employment benefits, including those amounts paid to him in respect of his basic salary, employers payroll taxes, employee benefits and his travel and entertainment costs".

24. The Defendant alleges that the Claimant was not entitled to a bonus payment for bonus periods where the net revenue was negative (i.e. because the direct employment costs exceeded the net revenue). Where the net revenue was negative, this was carried forward to the subsequent bonus period and offset against any positive net revenue generated by the Claimant.

25. The Defendant submits that the above formula is a very common method of calculating revenue-based bonus awards granted to employees and is effectively another form of profit sharing. In order for the Defendant to determine whether there was any profit to share with the Claimant in the form of a bonus, it calculated the net revenue generated by the Claimant during the relevant bonus period (which is Gross Revenue less Adjustments) and then offset this against the Claimant's direct employment costs for that bonus period. The direct employment costs naturally included all costs incurred by the business in relation to the employee which includes ESG accrual.

26. The Defendant alleges that the amounts offset for direct employment costs were labelled "Employee Benefits (housing & parking)" which was an administrative label used for all employees of the Defendant who received this bonus for banking/administration simplicity. All direct employment costs for each employee were adjusted against the net revenue in accordance with the Defendant's bonus policy and therefore, for this reason, the direct employment costs fluctuated from month to month.

27. In relation to the ESG, the Defendant alleges that the Claimant is entitled to USD 67,523.14 but he was paid USD 67,369.31. The Defendant has agreed to pay the Claimant the outstanding sum of USD 153.83. however, the Defendant only paid the Claimant the sum of GBP 52,054.79 as ESG.

28. The Defendant submits that the claim is baseless and should be dismissed.

Discussion

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

30. The main issues to be considered are (i) whether the ESG is considered to be a direct employment cost; and (ii) what is the correct calculation of the ESG pursuant to the DIFC Employment Law.

31. The Claimant argues that throughout the course of his employment, the Defendant deducted his ESG entitlement on a monthly basis from his monthly allowances without his consent nor without it being mentioned in the Employment Contract or the Law.

32. On the other hand, the Defendant's argument is that pursuant to the Employment Contract, the bonus calculation was as follows:

> "50% of net revenue generated by the Claimant less 100% of his direct employment costs"

33. I must determine whether the ESG is considered to be a direct employment cost.

34. As defined in the Employment Contract, the `Direct Employment Costs' are direct costs of the Claimant's employment and employment benefits, including those amounts paid to him in respect of his basic salary, employers payroll taxes, employee benefits and his travel and entertainment costs.

35. The Defendant argues that the Direct Employment Costs include all costs incurred by the business in relation to the employee which includes ESG accrual.

36. Article 20(b) of The DIFC Employment Law, states the following:

> "An Employer shall not deduct from an Employee's Remuneration or accept payment from an Employee, unless: (b) the prior written agreement of the Employee has been obtained in respect of the deduction or payment, provided that such deduction or payment is not prohibited under this law."

37. In light of the above, I find that the deductions made by the Defendant were pursuant to the Employment Contract, and fall within the scope of the below term:

> "50% of net revenue generated by the Claimant less 100% of his direct employment costs"

38. I also interpret that "Direct Employment Costs" include the costs incurred by the business (in this case the Defendant) in relation to the Employee.

39. Therefore, I dismiss the Claimant's claim of unlawful deductions as I find that the Claimant agreed that the Defendant will deduct "Direct Employment Costs" by virtue of the clear term set out within the Employment Contract.

40. In relation to the calculation of the ESG, the Claimant's annual basic salary was GBP 100,000.

Therefore, GBP 100,000 /12 / 30 = GBP 277.77.

41. The Claimant was employed by the Defendant from 10 January 2012 to 29 November 2019. Therefore, the Claimant worked for a period of 7 years and 324 days.

42. Article 66(2) of the DIFC Employment Law states the following:

> "An Employee's gratuity payment shall be calculated as follows:
>
> (a) An amount equal to twenty one (21) days of the Employee's basic wage for each year of the first five (5) years of service prior to the Qualifying Scheme Commencement date; and
>
> (b) An amount equal to thirty (30) days of the Employee's basic wage for each additional year of service prior to the Qualifying Scheme Commencement."

43. Therefore, in light of the above, the Claimant is entitled to the following:

a. 277.77 x 21 x 5 = GBP 29,165.85 for the first five (5) years;

b. 277.77 x 30 x 2 = GBP 16,662.20 for the 2 years; and

c. 277.77 x 27.36 = GBP 7,599.78.

44. Therefore, the Claimant is entitled to ESG in the sum of GBP 53,427.83.

45. As noted at paragraph 27 above, the Defendant only paid the Claimant the sum of GBP 52,054.79 which accounted for the period up to 29

October 2019 and failed to take into consideration the last date of employment, being 29 November 2019. Therefore, I find that the Defendant shall pay the Claimant the sum of GBP 1,373.04.

Conclusion

46. In light of the aforementioned, the Defendant shall pay the Claimant the difference in the ESG in the sum of GBP 1,373.04.

47. The Claimant's other claims are dismissed.

48. There shall be no order as to costs.

Issued by:
Nassir Al Nasser
SCT Judge
Date of issue: 30 March 2020
At: 11am