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 SCT JUDGE MARIAM DEEN

BETWEEN

GIDEON

Claimant

and

GRIAME LLC

Defendant

Hearing: **6 October 2016**

Judgment: **10 October 2016**

JUDGMENT OF SCT JUDGE MARIAM DEEN

UPON the Claim Form being filed on 3 August 2016;

UPON a Jurisdiction Hearing having been held before SCT Judge Natasha Bakirci on 15 August 2016, with the Claimant and the Defendant's representative in attendance;

UPON an Order being issued by SCT Judge Bakirci on 7 September 2016 finding the Small Claims Tribunal of the DIFC Courts to have jurisdiction to hear the dispute;

UPON the parties being called on 21 September 2016 for a Consultation with SCT Officer Ayesha Bin Kalban and the parties not having reached settlement;

UPON a Hearing having been held before SCT Judge Mariam Deen on 6 October 2016, with the Claimant and the Defendant's representative in attendance;

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1.The Defendant shall pay the Claimant a final settlement of AED 13,808.20 owed by the Defendant for unpaid salary.

2. The Defendant shall pay the Claimant AED 44,383.50 as a penalty pursuant to Article 18(2) of DIFC Employment Law and an additional AED 493.15 per day from the date of this Judgment, until payment is made.

3. The Defendant shall cancel the Claimant's visa without delay, such procedure to be completed no later than 24 October 2016.

4. The Defendant shall reimburse the Claimant's Court fee in the amount of AED 799.90.

5. The Claimant shall return to the Defendant all office equipment retained by him no later than 24 October 2016.

THE REASONS

Parties

6. The Claimant is Gideon (the "Claimant"), an individual filing a claim against the Defendant regarding his alleged employment.

7. The Defendant is Griame LLC (the "Defendant"), a DIFC registered company.

Background

8. The underlying dispute arises over the alleged employment of the Claimant by the Defendant and subsequent termination of the Claimant's employment by the Defendant.

9. On 3 August 2016, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of certain employment entitlements. The Claimant claimed a total of USD $11,100.66 against the Defendant.

10. The Defendant responded to the claim on 9 August 2016 by contesting the jurisdiction of the DIFC Courts and the SCT over the dispute.

11. Following a Jurisdiction Hearing on 15 August 2016 an Order was issued by SCT Judge Natasha Bakirci on 7 September 2016 finding the Small Claims Tribunal of the DIFC Courts to have jurisdiction to adjudicate the case.

12. The parties met for a Consultation with SCT Officer Ayesha Bin Kalban on 21 September 2016 but were unable to reach a settlement.

13. On 6 October 2016 I heard submissions from the Claimant and the Defendant's authorised representative, following which the case was reserved for judgment. Both parties were provided the opportunity to submit further documentation based on the arguments made at the Hearing. The Claimant submitted additional evidence on 9 October 2016, relating to salary payments received by him to date.

The Claim

14. The Claimant's case is that he was employed by the Defendant on 13 March 2016 and it was the CEO who offered him the job, albeit a who signed the employment contract. At the Hearing the Claimant Clarified that he had worked with both Mr Bondel and Mr Kerr but was in no doubt that the former was his `boss' and the latter he understood to be the office manager.

15. The Claimant also stated that he received his initial salary payment on 3 April from Mr Kerr following some confusion about how he would be paid but two subsequent payments came directly from the Defendant on 3 and 31 May 2016.

16. The Claimant submits that Mr Kerr was authorised to sign the employment contract on Mr Bondel's behalf and produces a Board Resolution dated 11 January 2016 as evidence of this; it states that:

> "In future, any momentous document that require signature from C.E.O of company Can be signed by Mr. Kerr &#65533;& Perry."

17. The Claimant also asserts that in addition to the employment contract being in the Defendant's name, his employment visa is also in the Defendant's name and Mr Bondel would have been responsible for or at least aware of this. A copy of the DIFC employment visa and DIFC customer portal, listing Mr Terry's current email address under `correspondence details' for the Claimant's new employment visa package, as evidence that the Defendant's CEO was involved in the visa application.

The Defence

18. The Defendant submits that the Claimant was not employed by him and the Employment Agreement is invalid as it was signed by Mr Kerr who was not authorised by the Defendant to employ anyone on its behalf. In the hearing it was claimed that the employment contract itself was not complete or valid in any event, as the Claimant had not signed it; the Claimant responded by confirming that it had been electronically signed by him.

19. The Defendant submits that Mr Kerr and his company were the Claimant's true employer and its relationship with was governed by a Service Provider Agreement dated 1 February 2016. In the hearing the Defendant explained that it understood the Claimant to be working for it as a consultant, via. Evidence in the form of a Service Contract and emails were produced demonstrating that another company, Point 2 company was responsible for obtaining the Claimant's visa under the instruction of Mr Singh. The Defendant denied having any knowledge of the Claimant's employment contract or visa until recently.

20. In relation to the Board resolution produced by the Claimant as evidence of Mr Kerr authority to sign on behalf of the Defendant, the Defendant highlights that the Board Resolution was addressed to Emirates Financial Towers and was specific to tenancy matters only and that 2 signatories were required in place of Mr Perry's, not one.

21. In answer to the alleged salary payments made by the Defendant to the Claimant, it was acknowledged that there had been a direct payment from the Defendant to the Claimant in May 2016 but the Defendant claimed that this was in fact a loan from the Defendant to Mr Perry/ SAMIand not a payment of wages.

Discussion

22. 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 Employment Agreement, in so far as it is found to be valid.

23. The Claimant confirmed in the Hearing that he was seeking payment from the Defendant of unpaid salary for the days he worked in June 2016. In order to determine whether the Defendant is liable to pay any unpaid salary to the Claimant it must first be established that the Defendant was in fact the Claimant's employer.

The Employer

24. At Clause 1.1 of the Employment Agreement, the Claimant is clearly identified as an employee of the Defendant and I am satisfied that it has been signed by Mr Kerr and the Claimant electronically. The question, therefore, is whether Mr Kerrhad the requisite authority to sign the Employment Agreement on the Defendant's behalf.

25. Following the approach taken by the Court of First Instance in *Ginette PJSC v Geary Middle East FZE & Geary Limited* (7 April 2016), although the Defendant claims that Mr Kerrdid not have express authority to enter into the Employment Agreement on its behalf, he can be found to have `apparent authority' under DIFC law if the Court is satisfied that the conduct of the Defendant, reasonably interpreted, caused the Claimant to believe that the Defendant consented to having the Employment Agreement signed by Rout, purporting to act for the Defendant.

26. The Doctrine of Apparent Authority (the "Doctrine") is set out in Articles 130 and 131 of DIFC Contract Law, No. 6 of 2004:

> "130. Apparent authority
>
> Apparent authority is the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's conduct towards such third persons.
>
> 131. Creation of apparent authority
>
> Except for the conduct of transactions required by statute to be authorised in a particular way, apparent authority to do an act is created as to a third person by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him."

27. It appears that Mr Kerrclearly held himself out as having the requisite authority to sign the Employment Agreement as he signed using the title `Head of the Middle East Currency Matters'. In addition to Mr Kerrbeing present at the Claimant's interview, he is also named at Clause 1.6 of the Employment Agreement as the Claimant's "Supervisor". Furthermore, although I accept the Defendant's submission that the Board Resolution was specific to location of the documents, it demonstrates that Mr Kerrhas been authorised to sign agreements on behalf of the Defendant in the past (albeit as a co-signatory). In light of the above, it would not have been far-fetched for the Claimant to have believed, in the circumstances, that Mr Kerrhad the requisite authority to sign the Employment Agreement on the Defendant's behalf. Conversely, the Claimant had no reason not to believe that Rout had authority to sign.

28. Moreover, the Claimant's employment visa was made in the Defendant's name and even if I was to accept the Defendant's assertion that it was not responsible for applying for the Claimant's visa, the DIFC customer portal confirms that Mr Bondel's correct contact email address was registered and he would have been properly notified upon the issuance of visas. Therefore, if the Defendant had truly objected to the Claimant's visa being made in its name there would have or should have been some protest at the time it became known, even if it were unaware initially.

29. I am satisfied that Mr Kerrhad `apparent authority' under the Doctrine, even if actual authority was lacking. There may be no evidence of Mr Kerrbeing expressly authorised to sign the Employment Agreement, however this is obviously distinct from any evidence being furnished proving he was definitely not authorised to sign on behalf of the Defendant.

30. The Claimant provided screenshots of text messages from Bank to support his assertion that he received one salary payment of AED 7,782 from SAMIand two subsequent payments on 3 and 31 May in the sum of AED 15,000 from the Defendant. Although this evidence does not establish who the payer for each amount was, the Defendant concedes that one of the May payments was made by it, therefore I can determine that at least one salary payment was made directly from the Defendant to the Claimant. However, there is some disagreement about the nature of this payment as the Defendant contends that it was in fact a loan made to SAMI. I do not find the salary arrangements between the Claimant, Defendant and SAMI/ Mr Kerrto be clear or persuasive with respect to the identity of the true employer.

31. The Claimant brings this case and the burden of proving it rests with him, however, further to producing an employment contract and visa in the Defendant's name and in the absence of any evidence proving he was not the Defendant's employee, I am not convinced there is more that is needed in order to establish an employment relationship between the parties. It follows that the Defendant is responsible for unpaid salary owing to the Claimant up to the date of termination, which I will consider below.

32. As discussed at the Hearing, if the Defendant believes Mr Kerrto have fraudulently misrepresented it and/or acted above and beyond his authorised scope this is a separate matter between the Defendant and Mr Peter/ SAMI, for which a separate legal action may be lodged with the Court. However, it would not be in the interests of justice to join a third party to the Claimant's case and burden it with the additional delay and complexity of resolving legal issues between the Defendant and third party.

The Effective Date of Termination

33. The Claimant states he received oral notification of redundancy from Mr Bondel and Mr Kerron 28 June 2016. He submits that this did not comply with Clause 19.1 of the Employment Agreement which requires written notice of termination which he was told he would receive but never has. The Claimant accepts that he stopped attending work the following day as he understood he was being terminated along with several other employees, although he continued to do some work from his phone after this date.

34. I am satisfied that the Claimant's non-attendance at the office following 28 June 2016 indicates his acceptance of the oral notice of termination. Pursuant to Article 13 of DIFC Contract Law, notice may be given by any means appropriate to the circumstances and although the Employment Agreement itself required it to be written, I am of the view that by not attending work following the date he received oral notification, the Claimant accepted that he had been terminated and the written contract was effectively modified by the oral agreement and conduct of the parties.

35. Pursuant to Article 59(2)(b) of DIFC Employment Law the Claimant would have been entitled to a 30-day period of notice as he was continuously employed for more than three months but less than five years. However, Article 59(3) states:

> "This Article will not prevent an employer and employee from agreeing to a longer or shorter period of notice nor shall it prevent either party

from waiving notice or accepting a payment in lieu of notice."

36. Therefore, as Clause 19.1.1 of the Employment Agreement states that there shall be zero days' notice if the period of continuous employment is less than six months, the parties have agreed that the Claimant is not entitled to any notice and no objection to this has been raised.

37. Ordinarily it would be for the employer to prove that the employee's entitlements have been paid, however, in light of the Defendant's denial of its employer status I rely on evidence produced by the Claimant in the form of screenshots of text messages from bank confirming the following payments:

3 April 2016 AED 7,782

3 May 2016 AED 15,000

31 May 2016 AED 15,000

38. The Claimant confirmed in the hearing that he is satisfied he has been paid in full for his work up to and including 31 May. As I have found the date of termination to be 28 June 2016 he is entitled to a further 28 days of salary. The Claimant's agreed monthly wages were AED 15,000; therefore, the daily wage can be calculated as follows: (15,000 x 12) / 365 = AED 493.15. Accordingly, I find that the Claimant is owed (493.15 x 28) AED 13,808.20 for the 28 working days he has not been paid.

Article 18 of the DIFC Employment Law

39. In his amended Claim Form and at the Hearing, the Claimant confirmed that he sought the penalty under Article 18 of DIFC Employment Law to be activated, it provides:

"(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."

40. The Defendant has not shown any attempts to pay the Claimant what he was owed within 14 days of his termination. Therefore, in accordance with the DIFC Courts precedent set by the judgment of Justice Roger Giles in *Asif Hakim Adil v Frontline Development Partners Limited* (CFI-015-2014, 3 April 2016) and the judgment of H.E. Justice Ali Al Madhani in *Pierre-Eric Daniel Bernard Lys v Elesco Limited* (CFI-012-2014, 14 July 2016), the Claimant is entitled to Article 18 penalties running from 14 days after his official date of termination until the date payment is made. For the purposes of Article 18, the Claimant's date of termination was 28 June 2016.

41. Therefore, the Defendant has been in arrears since 13 July 2016 (14 days following termination) and the penalty began to accrue at the daily rate of AED 493.15 from this date. Accordingly, as of the date of this Judgment, the penalty is owed for 90 days from 13 July 2016 through 10 October 2016, totalling AED 44,383.50 (90 x 493.15). With the daily penalty of AED 493.15 continuing to accrue until the date of payment. In my opinion there has been no undue delay in the bringing of this Claim, just over a month after the termination of the Claimant, as he explained in the Hearing that he had initially endeavored to recover his unpaid salary directly from the Defendant prior to filing his Claim with the SCT.

Conclusion

42. In light of the aforementioned, I find that the Defendant was the Claimant's employer and the Employment Agreement to be valid and binding. The Defendant is liable to pay the Claimant's unpaid salary and an additional penalty for every day that it has been in arrears, pursuant to Article 18 of DIFC Employment Law. The Claimant's Court Fee is also to be reimbursed. Furthermore, the Claimant's employment visa must be cancelled and all office equipment retained by the Claimant returned to the Defendant within 14 days.



Issued by:

Mariam Deen

SCT Judge

Date of issue: 10 October 2016

At: 4pm