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 H.E. JUSTICE NASSIR AL NASSER

BETWEEN

MAHINA

Claimant

and

(1) MAHFUZ

(2) MAHENDRA

Defendants

Hearing : **10 February 2022**
Judgment : **16 February 2022**

JUDGMENT OF H.E JUSTICE NASSIR AL NASSER

UPON this Claim being filed on 17 January 2022

AND UPON a Hearing having been held before H.E Justice Nassir Al Nassir on 10 February 2022, with the Claimant and the Defendants' representative in attendance

AND UPON reviewing the documents and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1. The First Defendant shall pay the Claimant the total sum of **AED 302,337** in relation to his employment dues.

2. The Second Defendant shall pay the Claimant the total sum of **USD 30,000** (equivalent to **AED 110,640**).

3. The Defendants shall jointly or severally pay the Claimant the Court fee in the sum of **AED 8,267.28.**

Issued by:
Ayesha Bin Kalban
SCT Deputy Registrar
Date of issue: 16 February 2022
At: 11am

THE REASONS

The Parties

1. The Claimant is Mahina (the "Claimant"), an individual filing a claim against the Defendants regarding his employment at the First Defendant's company and seeking the reimbursement of an amount paid as an investment to the Second Defendant.

2. The First Defendant is Mahfuz (the "First Defendant"), a company registered in the DIFC.

3. The Second Defendant is Mahendra (the "Second Defendant"), the owner of the First Defendant.

Background and the Preceding History

4. The underlying dispute arises over the employment of the Claimant by the First Defendant pursuant to an Employment Contract dated 8 June 2021 (the "Employment Contract") with a commencement date of 8 September 2021. The Claimant submits that he had made an investment with the Second Defendant in the sum of USD 30,000.

5. On 17 January 2022, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking the sum of AED 413,083 in relation to his employment claim with the First Defendant and the reimbursement of the investment made to the Second Defendant.

6. On 24 January 2022, the Defendants' filed an Acknowledgment of Service setting out their intention to defend part of the claim.

7. On 28 January 2022 and 4 February 2022, a consultation was held before SCT Judge Maitha Al Shehhi, however the parties were unable to

reach a settlement.

8. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 10 February 2022.

The Claim

9. The Claimant entered into an Employment Contract with the First Defendant on 8 June 2021, with a commencement date of 8 September 2021. The Claimant's salary as per the Employment Contract is AED 48,000 per month.

10. During the period of 8 June to 8 September 2021, i.e. prior to the commencement of employment, the Claimant and the First Defendant agreed that the Claimant would receive a monthly incentive of AED 16,000.

11. On 14 January 2022, the Claimant resigned, and his last working day was on 14 February 2022, inclusive of his contractual notice period.

12. The Claimant alleges that he did not receive the 8 June 2021 to 8 September 2021 incentives in the sum of AED 48,000. In addition, the Claimant submits that he did not receive any of his salaries from 8 September 2021 to 14 February 2022 in the sum of AED 252,837, calculated as follows:

3. Upon accepting the Claimant's offer as set out in a Letter of Engagement and a Schedule of Services and Terms and Conditions attached to the letter on 2 July 2019, a contract was formed between the parties (the "Contract"). Key provisions of the Contract in this appeal are as follows:

(a) September salary in the sum of AED 36,837;

(b) October salary in the sum of AED 48,000;

(c) November salary in the sum of AED 48,000;

(d) December salary in the sum of AED 48,000;

(e) January salary in the sum of AED 48,000; and

(f) February salary in the sum of AED 24,000.

13. The Claimant also claims expenses in the sum of AED 1,500.

14. In addition, the Claimant alleges that he and the Second Defendant entered into a simple agreement for future equity (the "Investment Agreement") as the Second Defendant was planning on establishing a tech-start up in the DIFC. On June 2021, the Claimant transferred to the Second Defendant the total sum of USD 30,000 in relation to the investment. However, the Claimant submits that this start-up is not established to date.

15. Therefore, the Claimant filed a claim claiming the total sum of 413,083 which consists of his salaries and expenses as owed to him by the First Defendant and the reimbursement of the investment made to the Second Defendant in the sum of USD 30,000 (equivalent to AED 110,640).

The Defence

16. During the course of the hearing, the First Defendant's representative confirmed that the Claimant is entitled to his salaries and expenses in the sum of AED 302,337.

17. In regards to the Claimant's claim for the reimbursement of his investment made to the Second Defendant, the latter has taken the position that the Claimant has no right to withdraw his investment, stating that the tech start-up (the subject matter of the investment) is set to be established in due course.

Discussion

18. This dispute consists of two issues, the first is the employment matter between the Claimant and the First Defendant. The second issue is the investment matter between the Claimant and the Second Defendant.

19. This first issue is governed by DIFC Law No. 2 of 2019, as amended by DIFC Law No. 4 of 2020 (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

20. The Claimant claims the total sum of AED 302,337 which consists of the following:

(a) Incentives from 8 June 2021 to 8 September 2021 in the sum of AED 48,000;

(b) Salaries including notice period from 8 September 2021 to 14 February 2022 in the sum of AED 252,837; and

(c) Expenses in the sum of AED 1,500.

21. As stated above, the First Defendant's representative did not refute the Claimant's entitlement to the above-mentioned sums. Therefore, I find that the First Defendant shall pay the Claimant the total sum of AED 302,337 in relation to his employment dues.

22. The second issue at hand is governed by the DIFC Contract Law, DIFC Law No. 6 of 2004 in conjunction with the relevant Investment Agreement.

23. As per the Investment Agreement, the Second Defendant was to establish a tech start-up company at the DIFC. While I find that the Investment Agreement was vague in relation to the start-up's establishment date, the Claimant submits that it was understood that the start-up was to be established in September 2021.

24. The Claimant provided an email sent by the Second Defendant on 13 January 2022 which reads as follows: "*subsequent few months of delay we should be resuming in a couple of weeks towards the end of January 2022 the licencing application for the construction equipment rental platform at DIFC. We expect to finish the licensing process few weeks later, perhaps March 2022"*.

25. One could understand that the process of licensing should have been commenced in 2021 as the transfer of the investment amount was made by the Claimant on 14 June 2021.

26. The Claimant therefore submits that the Second Defendant failed to perform the Investment Agreement and requested by way of email for his investment to be reversed.

27. I will proceed on the basis, presumed for present purposes, that the Second Defendant breached the Investment Agreement when he failed to provide evidence of the cause of the delay or documentation in relation to the establishment of the tech start-up or evidence as to what happened to the Claimant's investment and how was the money spent. The question I will deal with is whether the Second Defendant's presumed breach, first, justified the Claimant's termination of the Agreement and, if it did, second, whether the Claimant in fact terminated the Agreement.

Was the breach fundamental?

28. Article 86(1), (2) and (3) of the Contract Law provide as follows:

> "(1) A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.
>
> (2) In determining whether a failure to perform an obligation amounts to a fundamental non performance regard shall be had, in particular, to whether:
>
> (a) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract;
>
> (b) strict compliance with the obligation which has not been performed is of essence under the contract;
>
> (c) the non-performance is intentional or reckless;
>
> (d) the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance.
>
> (3) In the case of delay the aggrieved party may also terminate the contract if the other party fails to perform before the time allowed under Article 81 has expired."

29. Applying Article 86(2) and (3), I determine as follows. There is evidence that the Second Defendant's breach substantially deprived the Claimant of what he was entitled to expect under the Agreement: the Second Defendant did not provide evidence of the establishment of the start-up, the Claimant made the transfer on June 2021 whereby it was understood that the start-up would be established in September 2021. In addition, there is no evidence that the Second Defendant was in strict compliance with the establishment which was of the essence of the Agreement. I am of the view that the non-payment of the Claimant's salaries and the vague promises provided by the Second Defendant is sufficient enough reason to believe that the Claimant could not rely on the Second Defendant's future performance.

30. In my view, the Second Defendant's non-performance led to a fundamental breach. This therefore allows the Claimant the right to terminate the Investment Agreement and is thereby entitled to his investment amount of USD 30,000 (equivalent to AED 110,640).

Conclusion

31. In light of the aforementioned, I find that the First Defendant shall pay the Claimant the total sum of **AED 302,337** in relation to his employment dues.

32. The Second Defendant shall pay the Claimant the total sum of **USD 30,000** (equivalent to **AED 110,640**).

33. The Defendants shall jointly or severally pay the Claimant the Court fee in the sum of **AED 8,267.28.**