Claim No: CFI 016/2015

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

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

IN THE COURT OF FIRST INSTANCE

BEFORE H.E. JUSTICE ALI AL MADHANI

BETWEEN

ABU ALHAJ HOLDING

Claimant

and

SHEIK SULTAN KHALIFA SULTAN AL NEHAYAN

Defendant

Hearing:**5 December 2016**

Counsel: Mohammed Abu Al Haj as a litigant in person for the Claimant

Daniel Roussin and Helene Mathieu (Helene Mathieu Legal Consultants) for the Defendant

Judgment: **11 September 2017**

JUDGMENT OF H.E. JUSTICE ALI AL MADHANI

ORDER

UPON hearing the Claimant and the Defendant at trial on 5 December 2016;

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

IT IS HEREBY ORDERED THAT:

1. The Claimant's Claim be dismissed.
2. The Defendant pay the Claimant's costs, to be assessed by the Registrar if not agreed by parties.

Issued by:

Lema Hatim

Assistant Registrar

Date of issue: 11 September 2017



JUDGMENT

Parties

1. The Claimant is Abu Alhaj Holding; so named, but correctly Abu Alhaj Holding Ltd (hereafter the "Claimant"), with Mohammed Abu Alhaj being the Director and CEO.

2. The Defendant is Sheikh Sultan Khalifa Sultan Al Nehayan, director of Gold Holding Ltd (hereafter the "Defendant"). The Defendant was originally named twice, first in his capacity as director of Gold Holding Ltd and secondly without that description, but I find the distinction to be unnecessary.

Background and History of Proceedings

3. This is a complex case, compounded by the fact that the Claimant was not legally represented at the pre-trial review and during the trial itself. Although the Claimant did have the benefit of legal representation up to two months prior to the pre-trial review and was represented at the case management hearing. The Claimant claimed that all lawyers approached by it, including those from the DIFC Courts's Pro Bono Programme, had cited that there was a conflict of interest and declined to represent the company. The Claimant submitted that this was because the Defendant is a member of the UAE ruling family.

4. At the pre-trial review, I advised the Claimant that he needn't limit himself to lawyers based within the DIFC, or even Dubai, as it had been alleged that lawyers were reluctant to represent a claim against the Defendant due to his prominence within the country. I suggested that the Claimant's legal representation could be from anywhere in the world, where the Defendant could not be accused of having influence. However, the Claimant asserted that he was unsuccessful in securing any representation, international or otherwise.

5. The proceedings were commenced by a Claim Form issued on 2 June 2015, with Particulars of Claim filed on 12 August 2015. The total value of the Claim was USD 360 million, later described as being claimed as damages for which the Defendant is liable, made up of the following:

    - USD 10 million, to Abu Alhaj Holding: for the price of shares in Gold Holding transferred by Abu Alhaj Holding to the Defendant ("the shares claim");

    - USD 200 million, to Abu Alhaj Holding: for the loss caused to Gold Holding under his management ("the mismanagement claim"); and

    - USD 150 million, to Mr Abu Alhaj (the "former Claimant") as compensation for defaming him (the "defamation claim").

6. The Defendant filed a Defence and Counterclaim on 25 August 2015 and the Claimant filed a Reply and Defence to Counterclaim on 28 September 2015.

7. In application notices dated 8 October 2015, the Defendant applied for immediate judgment dismissing the Claimant's claim and seeking security for costs, these were considered in a hearing before Justice Roger Giles on 16 February 2016. In Justice Giles' Order dated 18 February 2016, he ordered there be judgment for the Defendant in respect of the mismanagement and defamation claims, the application for security for costs was dismissed. The shares claim was not struck out but deficiencies in the allegations were highlighted and the Claimant was ordered to provide further particulars to rectify these. Detailed reasons for these decisions are contained within the Order of Justice Giles and will not be examined further here.

8. The Claimant applied for an extension of time to file further Particulars of Claim but this was refused by Order of Justice Giles on 9 March 2016. Further Particulars of Claim regarding the shares claim were provided by the Claimant and an amended defence from the Defendant followed thereafter.

The Claim

9. As examined in Justice Giles' Order dated 18 February 2016, The Claimant submitted that an agreement was reached between it and the Defendant, for ten million shares to be transferred from the Claimant to the Defendant for USD 10 million.

10. It is the Claimant's case that the parties negotiated a stock option agreement for 10 million shares at USD 0.50, therefore the total price of the shares was USD 5 million. It is alleged that the Defendant offered to purchase 1 million class A shares from the Claimant and this offer was accepted on 8 December 2013.

11. Thereafter, the Claimant submits that the Defendant asked to purchase an additional 9 million class A shares for USD 9 million; to which the Claimant agreed and transferred the shares on 14 October 2014. Accordingly, it is alleged that the Defendant received 10 million shares in total and that it was agreed that payment for the shares was expected.

12. The Claimant submits that there is a written agreement for the purchase of the 9 million shares but it cannot be accessed at present. The Claimant asserts that it regularly asked the Defendant for payment of the shares and the Defendant continued to respond that he would soon have the liquidity to pay for the them. No payment was received; therefore, the Claimant seeks the sum of USD 10 million corresponding to the transfer of 10 million class A shares from it to the Defendant.

The Defence

13. It is alleged that at the beginning of 2013, Mohammed Abu Alhaj convinced the Defendant to become Chairman of the Claimant company which was yet to be formed. The Defendant was to receive 1 million shares for his involvement in providing his name and contacts to further help finance and develop the company.

14. The Defendant submits that in July 2013, Hussein Abu Alhaj, Mohammed Abu Alhaj's brother, incorporated the Claimant company, with Mohammed Abu Alhaj being appointed the Director and CEO and the Defendant being appointed Chairman.

15. It is asserted that there was never any agreement for the transfer of shares to the Defendant in consideration of payment of USD 10 million. Pursuant to the Memorandum of Understanding between the parties dated 13 October 2014 (the "MOU"), it was agreed that 9 million shares would be transferred to the Defendant; however, the Defendant submits that this was in exchange for him becoming Chairman and providing support to the Claimant company, rather than for any monetary consideration. The Defendant highlights that the MOU provided for other binding obligations to be placed upon the Defendant, including non-compete and confidentiality covenants, as well as regarding the eventual disposal of the transferred shares.

16. Accordingly, the Defendant denies that any amounts of any nature are owed to the Claimant and seeks for the case to be dismissed with costs.

Discussion

17. It is evident that the transfer of shares from the Claimant to the Defendant had been completed by 2014, the question is whether the Defendant was or is under an obligation to pay the Claimant USD 10 million for the shares.

18. As summarised above, the Claimant is seeking payment for the shares, while the Defendant is arguing that his involvement in providing his name and contacts to the Claimant company, in addition to his potential to raise funds for it, constituted consideration for the shares**.**

19. At the Hearing, the Claimant referred to a shares transfer certificate and said it was something the Defendant must pay for. The Claimant further introduced the witness statement of Mr Martin Werner Bucher, stating:

″An Agreement was reached between the Defendant and the Claimant (2) Abu Alhaj Holding, represented by Mohammad Abu Alhaj, in that, ten million (10,000,000) shares be transferred Abu Alhaj Holding to the Defendant for the consideration of Ten million dollar(USD 10,000,000), and it was supposed to be paid within few days after the transfer of shares completed.The shares got transferred to the Defendant (2) Sheikh Sultan Khalifa Sultan Al Nehayan during 2013 and 2014 and was confirmed by the Registrar of the DIFC.the Defendant (2) H.H Sheikh Sultan Khalifa Sultan Al Nehayan never transfer the ten million dollar (USD 10,000,000) for the shares as he obligated to.″

20. Conversely, the Defendant submits that the Claimant's Claim remains unproven as there is a lack of evidence. With regards to the witness statement of Mr Bucher, the Defendant relies on the MOU that was signed by the Defendant and Mr Abu Alhaj on 13 October 2014, to establish that consideration for the transfer of shares is not as alleged by the Claimant.

21. The MOU in its inauguration reads the following:

″WHEREAS, AAH has agreed to transfer Nine Million of his A Class Shares to SKSAN in consideration for the support of SKSAN set out in this Memorandum of Understanding ("MOU") and on the basis of the additional understanding set out herein."

22. Article 1.1 of the MOU states:

"AAH will transfer Nine Million of his A Class Shares in to the name of SKSAN and will attend to all administration required to register such transfer and such A Class in to the name of SKSAN."

23. Article 2.1 sets out the support to be provided by the Defendant:

"2.1�� As shareholder of the Gold Holding, SKSAN agreed to provide the following support to the business:

- SKSAN will at all time act in the best interest of the Gold Holding and will use reasonable efforts to support the business of Gold Holding maintain and improve its good reputation;
- SKSAN will use reasonable efforts to increase the business and profitability of Gold Holding by introducing potential clients to Gold Holding...;
- SKSAN will assist with IPO of Gold holding on NASDAQ Dubai and/or such other Stock Exchange ..;
- SKSAN will make reasonable efforts tointroduce other potential investors to Gold Holding who may wish to acquire shares in the company either prior to or during the IPO process."

24. Finally, the MOU at Article 6.5 reads;

"Upon signing the MOU all the previous shares option mentioned on previous agreement offered to SKSAN will be cancelled."

25. The MOU's validity was recognised by both the Claimant and the witness Mr Bucher during the cross examination, there was no challenge of any kind.

26. I am persuaded by the Defendant's argument that the actual consideration for the shares was intended to be his involvement in the Claimant company; that his name and efforts would be used to increase the number of costumers and investors for the Claimant. This is supported by the MOU which I prefer to the Claimant's evidence, namely the witness statement of Mr Bucher, for the following reasons:

- The MOU did give reference to consideration as it recorded "Nine Million of his A Class Shares to SKSAN in consideration for the support of SKSAN" so it was not silent about the consideration as the Claimant submits.
- The MOU was recognised by both the Claimant and the witness Mr Bucher during the cross examination, with no challenges of any kind.
- The MOU cancelled and replaced any previous agreement in respect of the transfer of shares between parties, if there was any, in Clause 6.5 "Upon signing the MOU all the previous shares option mentioned on previous agreement offered to SKSAN will be cancelled."
- The witness statement of Mr Bucher fails to explain how he came to know the facts he refers to in his evidence. Mr Bucher does not claim to have witnessed the deal or to have seen any binding document relating it.
- The evidence of Mr Bucher fails to address Article 6.5 of the MOU, which cancelled and replaced any previous agreement with regards to the transfer of shares between parties. He also fails to mention that the incident he describes took place following the date of the MOU, in order to avoid the effect of the Article 6.5.
- The evidence of Mr Bucher is supported by a bundle of documents but none of them recorded the transfer of shares or the price of USD 10 million and how it was to be paid.
- The Claimant Mr Abu Al Haj gave no evidence of his own and it's not helpful for him to profess he never knew that he should produce such evidence.
- I also preferred the Defendant's evidence because the Claimant failed to give an account as to whether the shares transferred to other parties such as Sheikh Malek Al Sabah, Andre Gauthier or the witness Mr Bucher, been paid for and how.

27. In summary, I am of the view that the Defendant received 10 million of Class A shares in the company Gold Holding Ltd in return for his involvement in providing his name and contacts to the company, as well as his ability to raise funds for the company. This is how the arrangement has been recorded in Article 2.1 of the MOU and that there is no evidence supporting that allegation that he is liable to pay to the Claimant any monetary sum in consideration for the shares.

28. Furthermore, I am not convinced by the Claimant's argument that the Defendant did not fulfil his duties as set out in Article 2.1 of the MOU as this aspect of the Claim was struck out by the Order of Justice Giles on 18 February 2016.

Costs

29. The Claimant is to pay the Defendant's costs of the proceedings on the standard basis, to be assessed by the Registrar if not agreed by parties.








Issued by:

Lema Hatim

Assistant Registrar

Date of issue: 11 September 2017

At: 2pm

