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 AYESHA BIN KALBAN

BETWEEN

MACI

Claimant

and

MAGNUS LIMITED

Defendant

Hearing : **9 December 2020**
Judgment : **17 January 2021**

JUDGMENT OF SCT JUDGE AND DEPUTY REGISTRAR AYESHA BIN KALBAN

UPON this Claim being filed on 11 November 2020 (Amended 10 December 2020)

AND UPON a hearing having been listed before SCT Judge Ayesha Bin Kalban on 9 December 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 amount of AED 24,848.35.

2. The Defendant shall pay the Claimant a portion of the Court fee in the amount of AED 496.96.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 17 January 2021
At: 10am

THE REASONS

The Parties

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

2. The Defendant is the Magnus limited (the "Defendant"), a company registered in the DIFC.

Background and the Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an offer of Employment dated 17 August 2020 (the "Employment Contract").

4. The Claimant was hired from Canada and brought to Dubai for employment. The Claimant commenced his employment on 1 October 2020.

5. The Claimant was terminated during his probationary period from the Defendant company by way of verbal notice on 1 November 2020 in accordance with section 62(6)(a) of the Employment Law DIFC Law No. 2 of 2019.

6. On 11 November 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming AED 24,848.35 in relation to his unpaid employment entitlements in addition to the amount of USD 135.32 being the Court fee applicable to the filing of the Claim. Upon my direction during the course of the Hearing, the Claimant amended the Claim Form on 10 December 2020 correctly identifying the Defendant to be Magnus Limited, rather than the previously named representative of the Defendant.

7. Subsequently, on 11 November 2020 the Defendant filed his defence and supporting exhibits.

8. The parties met for a Consultation with SCT Judge Delvin Sumo on 29 September 2020 but failed to reach a settlement with respect to the Claimant's claims. In line with the rules and procedures of the DIFC Courts' Small Claims Tribunal (the "SCT"), this matter was referred to me for

determination, pursuant to a Hearing held on 9 December 2020.

The Claim

9. The Claimant's case is that he was employed with the Defendant in the position of Business Development Manager for Magnus Limited in the DIFC, and was verbally terminated on 1 November 2020 without prior notice being provided by the Defendant to the Claimant.

10. The Claimant, in filing his Claim, seeks payment in the amount AED 24,848.35 in regards to his outstanding salary for the month of October 2020 as well as a fee applicable to obtaining a visit visa in order to remain in the UAE and be able to continue working for the Defendant. The Claimant submits that this amount was paid from his own expenses and seeks to be reimbursed by the Defendant.

The Defence

11. First and foremost, it is imperative to note that the Defendant does not contest the Claimant's entitlement to his outstanding salary for the month of October 2020, and submits that the Defendant has valid reason for refraining from making this payment to the Claimant.

12. The Defendant, in responding to the Claimant's claims, submits that the Claimant breached his contract by not providing his highest educational certificate attested by the UAE embassy in Canada prior to his arrival nor did he action this effectively once he was made aware upon his arrival in the UAE. The Defendant further submits that the Claimant failed to produce a copy of his marriage certificate to verify and process the Claimant's spouse's visa, nor did he provide the required documents for processing at any time during his employment. Therefore, the Defendant submits that the Claimant should not be entitled to the visa processing fee in the amount of AED 779.90.

13. Furthermore, the Defendant submits that the Claimant is in breach of the Employment Contract as he had contacted the Defendant's previous business partner with whom the Defendant is in direct competition.

14. The Defendant submits that AED 23,693.83 had been made available to the Claimant, which consisted of the base salary, housing allowance, transportation allowance, and guaranteed commissions calculated as one half of the base salary for the month of October. The base salary, housing allowance, transportation allowance, and guaranteed commissions were calculated as one quarter of the base salary for the month of November pro rata for one day of employment in November and reimbursement for an AED 23 travel expense incurred by the Claimant on October 25, 2020.

15. The Defendant submits that the Defendant paid AED 13,852.11 in relocation expenses for flights and hotel and therefore plans to offset the salary owed to the Claimant by that amount due to the Claimant not surpassing his employment beyond the 3-month notice period, in accordance with the Employment Contract. The Defendant, in the course of its Defence, makes various claims against the Claimant which, the Defendant submits, would form part of a Counterclaim to be filed by the Defendant against the Claimant. As discussed during the Hearing, as no formal Counterclaim was lodged by the Defendant with the Court, I will not make any determination on the claims referred to by the Defendant.

Discussion

16. The Defendant has not contested the Claimant's entitlement to his outstanding salary in the amount of AED 23,000 and his salary for the one day worked in the month of November 2020. It is unclear on what basis the parties have calculated the amount that the Claimant is entitled to in respect of the one day worked on 1 November 2020, therefore I have determined that the calculation set out in the DIFC Employment Law shall prevail. I hereby order that, in addition to the amount of AED 23,000, the Claimant is entitled to the amount of AED 1,061.53 for his day worked on 1 November 2020 (23,000 x 12 = 276,000 / 260 = 1,061.53) in respect of his outstanding salary. The Claimant is also entitled to the amount of AED 23 in respect of the expense incurred by the Claimant on 25 October 2020.

17. I turn to the matter of the Claimant's claim for the amount of AED 779.90 paid by the Claimant to obtain a visit visa in order to remain in the UAE. The Claimant submits that the Defendant failed to procure an employment visa for the Claimant which therefore leads to the Claimant having to obtain a visit visa at his expense.

18. Article 21(1) of the DIFC Employment Law reads as follows:

> "21(1) An Employer shall not request, charge or receive, directly or indirectly, from a person seeking employment, a payment for:
>
> (a) employing or obtaining employment for the person seeking employment; or
>
> (b) providing information about Employers seeking Employees.

19. Article 57(1) of the DIFC Employment Law states:

> " if an Employee is required to work in the DIFC, their Employer is required to obtain and maintain, at the Employer's own cost, the requisite sponsorship documentation (including UAE and DIFC identity documentation), visas, authorisations, licenses, permits and approvals as may be required from time to time by Federal Law, Dubai Law, a Competent Authority or a Personnel Sponsorship Agreement, to enable the Employee to work lawfully for the Employer in the DIFC and comply with any such requirements."

20. The Articles set out above provide a clear view on the DIFC Employment Law's position in respect of an employer's obligation to obtain, at its own cost, a visa for any of its employees. The Defendant's failure to do so, did in fact lead to the Claimant being forced to obtain a visit visa at his own expense. The Defendant does make submissions to the effect that the Claimant had failed to produce the required documents for the visa application in a timely fashion, however this should have been identified by the Defendant upon the Claimant commencing work with the Defendant. Therefore, I am of the view that the Claimant is entitled to the amount of AED 779.90 in respect of his visit visa.

21. In calculating the sum of all of the Claimant's entitlements, I have come to the conclusion that the Claimant is entitled to the amount of AED 24,864,43. In review of the Claim Form, the Claimant has sought payment in the amount of AED 24,848.35, and has paid the Court fee

applicable to this claim value. Therefore, I order that the amount owed to the Claimant be capped at the amount of AED 24,848.35, being the amount that the Claimant has sought payment for.

Conclusion

19. In light of the aforementioned, I find that the Defendant shall pay the Claimant the amount of AED 24,848.35 in respect of his employment entitlements.

20. I am also of the view that, the Defendant shall pay the Claimant the amount of AED 496,96 being the court fee paid for the filing of this Claim

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
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At: 10am