THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

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

Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS

BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

IRMAK (DUBAI) LIMITED

Claimant/Respondent

and

ISADORE

Defendant/Applicant

Hearing:**3 July 2018**

Judgment: **17 July 2018**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON hearing the Claimant/Respondent and the Applicant/Defendant at the Jurisdiction Hearing on 3 July 2018;

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

IT IS HEREBY ORDERED THAT:

1. The Defendant's Application to contest jurisdiction is denied.

2. The DIFC Courts have jurisdiction to hear this dispute. The case will be listed for a consultation.

3. Each party shall bear their own costs as to the Application.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 17 July 2018

At: 11am

THE REASONS

Parties

1. The Claimant/Respondent is Irmak (Dubai) Limited is a company incorporated in the Dubai International Financial Centre ("DIFC"), that provides accounting and auditing, consultancy and advisory services (the "Claimant").

2. The Applicant/Defendant is Isadore (hereafter the "Defendant"), an individual who was an ex-employee of the Defendant.

Background and the Preceding History

3. The underlying dispute arises over an alleged breach of employment contract. The Defendant started working for the Claimant on 5 September 2016 ("Employment Contract"), with a full-time position of Senior Recruitment Officer. The Defendant was paid a monthly salary of AED 50,000 for the period of one year and six months. On 19 March 2018 the Defendant's Employment Contract was terminated, with one month's notice, making 19 April 2018 her last working day. Prior to the issue of the Termination Letter, evidence had come to light that the Defendant had for some time been undertaking activities contrary to the best interests of the Claimant and, which put her, in clear and material breach of the Employment Contract.

4. On 11 June 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for a declaration stating that the Defendant breached her Employment Contract. The Claimant also requested a reimbursement of the amount of AED 152,060.27 (post termination of employment payment), damages for breach of contract, and recovery of costs of submitting this Claim, a total Claim amount of AED 272,060.27.

5. The Defendant responded to the claim on 18 June 2018 by contesting the jurisdiction of the DIFC Courts and the SCT over the dispute.

6. On 3 July 2018, I heard submissions of the Claimant's representative and the Defendant, representing herself, and thereafter, the case was reserved for determination as to the jurisdiction.

Particulars and Defence

7. The Claimant's initial Claim Form and Particulars of Claims stated that the Claimant signed an Employment Contract on 5 September 2016 with Iverson Management (Private) Limited . The company later changed its name to Irmak, however, the employees that were working under the company at that time did not sign a new contract to reflect the new name. On 19 March 2018 the Defendant was handed a termination letter on Irmak letter head detailing the logistics of her departure from the company.

8. The Defendant's last day in the company was 19 April 2018. Prior to the issue of the Termination Letter, evidence had come to light that the Defendant had for some time been undertaking activities contrary to the best interests of the Claimant and which put her in clear and material breach of the Employment Contract. Upon entering the Claimant's employment, in September 2016, the Defendant owned and operated an independent recruitment firm, Ivonne FZ LLC, trading as Ivonne Consultancy. At that time, it was made clear to the Defendant that by entering into the Employment Contract, she would be expected to and required to cease her involvement in Ivonne due to the obvious conflict of interest. the Claimant had uncovered that the Defendant continued to actively operate, run and manage Ivonne during her time as an employee and as such the Claimant filed a case against the Defendant.

9. The Defendant's Application to Contest Jurisdiction was supported by the First Witness Statement of the Defendant, Isadore and exhibits to support the Witness Statement. In that witness statement, the Defendant argued that the DIFC Courts and therefore the SCT do not have jurisdiction over the Claim because the company that she signed the Employment Contract does not exist anymore under the DIFC.

10. The Defendant argued that after she was terminated from the company and she submitted a claim against her previous employer, Iverson, for bonus pay for the financial year of 2017, which she then learned. from an email dated 23 April 2018, sent from the Claimant's representative to the SCT Registry stating that Iverson no longer exists.

"Dear Isolda,

. . .

Irmak (Dubai) Limited ("Irmak") confirms that it has received a claim form submitted by Ms Isadore.

. . .

In the first instance we would point out that the Claimant was not employed by Mr Ike personally and nor is there a legal entity named "Iverson Management (Irmak Group)". The Claimant was until recently, employed by Irmak (Dubai) Limited, DIFC Registered No.XXX"

As such she made a name search on the DIFC company register and did not find the company Iverson and withdrew her case.

11. She contends that she never at any point in time received any communication from Iverson to effect any new employment agreement under the Claimant. Moreover, after receiving her termination letter and cancelling her visa with the Claimant, she had no ties to Iverson or the Claimant, and as such, contends that no claim can be filed against her for termination for cause.

12. Furthermore, the Defendant states that Iverson, her previous employer, never cancelled her Iverson DIFC visa or put her on a new visa under the Claimant when it closed. As such she has no contract from the Claimant, no transfer of employment document whatsoever, and no amendments were made to her original Employment Contract and as such no ties to the Claimant.

13. At the Hearing, the Claimant replied to the Defendant's arguments, highlighting that the Employment Contract dated 5 September 2016 was a valid employment contract, and that the termination was based under the terms and conditions of that Contract. He also added that the name change was made only a few months after the Defendant joined the company and so she was aware of the name change that happened. The Claimant's representative also added that Iverson, the company, did not close, but only changed the name it was operating under. In addition, it operated under the same structure and same management as it had before the name change.

14. The Claimant's representative also highlighted that the Claimant has not ceased to exist or "been closed down" and nor has there been any "transfer" of the Defendant's Employment Contract to any "Parent Company". The Claimant, therefore, remains a valid DIFC Company, Registration No. XXX, details of which can be viewed on the DIFC public register of companies and the contractual relationship between the

parties cannot be invalidated or voided on that basis. For the avoidance of any doubt, the Claimant's "Parent Company" is an entirely different entity, again, reference to which can be seen on the DIFC public register of companies, which bears no relevance to the current matter.

15. The Claimant's representative also added that the email sent to the SCT Registry was to clarify the situation between the parties, stating that Iverson has no legal entity as a name and everything under that name moved under the new name, being Irmak (Dubai) Limited.

Findings

16. The jurisdiction of the DIFC Courts is determined by Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended, (the "JAL") which provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, namely:

"(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;

(b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract;

(c) Civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within DIFC and is related to DIFC activities; . . .

(e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations. . . .

17. Based on the submissions and the arguments at the Jurisdiction Hearing, I find that this dispute falls within the jurisdiction of the DIFC Courts. The Claimant holds the burden of proof to show that the DIFC Courts and the SCT have jurisdiction over the Claim.

18. The Court is satisfied that the Claimant's argument in the Jurisdiction hearing proves that the Claimant has not ceased to exist or "been closed down" and nor has there been any "transfer" of the Defendant's employment contract to any "Parent Company", and in my view, with regard to this dispute, there was just a name change on the system.

19. Moreover, the Defendant's Employment Contract with Iverson contains a Jurisdiction Clause stating: *"This agreement shall be governed by and constructed and interpreted in accordance with the laws and regulations of the DIFC and the parties hereto submit to the non-exclusive jurisdiction of the DIFC Courts in respect of any dispute or claim arising from the terms of this Agreement."*

20. In addition, the Claimant argued that the Defendant worked in the DIFC at all times, she was well aware of the change that had happened in the company due to the name change, new business cards were issued, and new email signatures were provided to all of the employees. The Claimant also added that the Defendant, as a senior Recruitment Officer working in the HR Department, should be well aware of the changes that happen in the Company.

21. In light of the evidence presented before this Court, I find that this Claim does fall within Article 5(A) of the JAL, namely, *"a civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party civil/commercial claim"*. This matter also relates to a *"contract or promised contract, whether partly or wholly concluded, that was finalized or performed within the DIFC or will be performed or is supposed to be performed within the DIFC pursuant to express or implied terms stipulated in the contract."*

22. The parties are in agreement that there is a written Employment Contract with Iverson, a company that changed its commercial name but kept its original commercial license with the DIFC, therefore, it can only be concluded that the DIFC Courts is the right jurisdiction to hear this dispute.

23. Therefore, the Defendants' application to contest jurisdiction is denied and the merits of the case shall be considered.

24. The parties shall bear their own costs.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 17 July 2018

At: 11am