Claim No. SCT 548/2019

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 AND DEPUTY REGISTRAR AYESHA BIN KALBAN

BETWEEN

LENNOX

Claimant

and

LOLA FASHIONS LIMITED LTD UAE

Defendant

Hearing

: 14 January 2020

Judgment

: 16 February 2020

JUDGMENT OF SCT JUDGE AND DEPUTY REGISTRAR AYESHA BIN KALBAN

UPON this Claim being filed on 4 December 2019

AND UPON the Defendant filing an Acknowledgment of Service intending to defend all of this Claim dated 11 December 2019

AND UPON a Consultation being held before SCT Judge Delvin Sumo on 16 December 2019

AND UPON the parties failing to reach a settlement at the Consultation

AND UPON a hearing having been listed before SCT Judge Ayesha Bin Kalban on 14 January 2020 with the Claimant and the Defendant's representative attending

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 sum of AED 9,966.

2. The Defendant shall immediately cancel the Claimant's visa.

3. The Defendant shall pay the Claimant the Court fee in the sum of AED 376.50.

4. The Defendant's Counterclaim be dismissed.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of issue: 16 February 2020

At: 10am

THE REASONS

The Parties

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

2. The Defendant is Lola Limited Ltd UAE (the "Defendant"), a retail 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 Employment Contract dated 16 February 2019 (the "Employment Contract").

4. On 23 November 2019, the Claimant resigned from her position in the Defendant company by way of email. The email contains several pieces of information regarding the Claimant's employment, as she states therein that her employment had only commenced in June 2019, and that she had previously resigned from her position on 29 October 2019, however she states that her resignation was not accepted by the Defendant. She further states that she agreed to work for the Defendant for a further 4 months, during which she tendered her resignation on 23 November 2019 as stated above.

5. On 28 November 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming her salary for the days she worked in the month of November 2019 in the amount of AED 9,966 and seeking the cancellation of her visa.

6. On 11 December 2019, the Defendant filed an Acknowledgment of Service intending to defend all of the claim. In its defence of the same date, the Defendant indicated its intention to file a counterclaim against the Claimant. On 5 January 2020 and pursuant to the directions of the Court, the Defendant filed its counterclaim for the amount of AED 100,000 for the loss of sale and damages caused to the Defendant as a result of the Claimant's actions during the tenure of her employment with the Defendant.

7. The parties met for a Consultation with SCT Judge Delvin Sumo on 16 December 2019 but were unable to reach a settlement. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 14 January 2020. Upon hearing from the parties, I directed there be further submissions filed by the Defendant, to which the Claimant had the opportunity to respond. The Claimant then filed a request to file a response, and this was completed on 9 February 2020. I then proceeded to reserve my judgment on this matter.

The Claim

8. The Claimant's case is that she was employed with the Defendant as a `fashion designer' from June 2019 until her resignation on 23 November 2019.

9. The sum claimed by the Claimant as set out in the Claim Form is AED 9,966, in addition to her claim for her employment visa to be cancelled by the Defendant.

The Defence and Counterclaim

10. The Defendant, in responding to the Claimant's claims, alleges that the Claimant had established a workshop outside of the Defendant's premises, and that she had been working there while under the Defendant's employment. The Defendant submits that the Claimant had attempted to solicit the Defendant's employees and clients, and that the Claimant had misappropriated company property for her own benefit. The Defendant therefore claims that the Claimant is liable for its losses in profit alleging that the Defendant suffered as a result of the Claimant redirecting the Defendant's clients to her personal business. The Defendant quantifies these claims in the amount of AED 100,000, and has submitted them by way of a counterclaim.

11. In support of its counterclaim, and pursuant to my directions as handed down in the Hearing, the Defendant has submitted numerous witness statements from its employees, the contents of which collectively reflect the submissions provided by the Defendant. The employees state that the Claimant had indeed been working in a workshop not owned by the Defendant and had been requiring their services to perform work therein. The employees claim that they had been unaware of the fact that their performance of this work was for the Claimant's personal business, and were under the impression that they were operating under the Defendant's management team's instructions.

12. A statement submitted by the Defendant also provided that the Claimant had, on 21 November 2019, confirmed to the Defendant that she had fallen ill and would not be attending the Defendant's premises. The Defendant received word that the Claimant was actually attending to her personal business and a representative of the Defendant drove down to the workshop allegedly owned by the Claimant. Therein, the Defendant submits that its representative found the Claimant working on an order that had not gone through the Defendant, and had engaged the service of a former employee of the Defendant. Upon confronting the Claimant, the representative of the Defendant states that the Claimant apologised to the managing director of the Defendant for her actions.

13. When asked about this incident during the course of the Hearing, the Claimant denied that she had been performing any work, and that she merely happened to be in that workshop while visiting with her family.

14. The Defendant submits that the Claimant has breached Article 5 of the Employment Contract set out below and therefore should be liable for damages allegedly caused to the Defendant as a result of this breach.

15. The Defendant also has submitted a list of missing items reflecting materials that the Defendant alleges that the Claimant had misappropriated from the Defendant.

Discussion

16. This dispute is governed by DIFC Employment Law No. 2 of 2019 (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

The Claim

17. In responding to the Claim, the Defendant has not made any submissions as to the Claimant's entitlement to receive her dues pursuant to the Employment Contract. Accordingly and in review of the DIFC Employment Law and the Employment Contract, I find that the Defendant is liable to pay the Claimant the amount of AED 9,966 being her outstanding dues for the period of time during which she was employed with the Defendant in November 2019.

18. The Defendant was directed, during the course of the Hearing and by way of email from the SCT Registry, to cancel the Claimant's employment visa. The Defendant reserved its right to do so, citing its reasons for doing so as its pending claims against the Claimant. All claims brought in this matter are now settled pursuant to this Judgment, and thus there should be no issue preventing the Defendant from cancelling the Claimant's visa. Therefore, I hereby order the Defendant to ensure that the Claimant's visa be cancelled.

The Counterclaim

19. As set out above, the Defendant submits that, due to the fact that the Claimant had breached the Employment Contract by allegedly working for another entity while under the Defendant's employment, the Defendant's monthly sales have suffered a loss that the Claimant should be liable for. The Defendant seeks a payment from the Claimant in the amount of AED 100,000 for the target sales that the Claimant had allegedly promised, but failed, to achieve.

20. Article 5 of the Employment Contract reads as follows:

> ".. During the term of service with the Lola Ltd, the Employee may not be personally employed or engaged in any business or hold any other office whatsoever without written approval of the Lola Ltd."

21. The above set out clause stipulates that the Claimant must not extend herself for business with any other entity without seeking the Defendant's consent. In my view, this clause does not contain any elements of a non-compete clause, as the latter type of clause is typically designed to restrict an employee from seeking employment with a competitor of the employer upon the termination of the employment relationship. The clause at hand however, restricts the Claimant from working for another entity while under the Defendant's employment.

22. In review of the evidence submitted and in light of the facts before me, I do believe that the Claimant had indeed been engaged in another business, in breach of the Employment Contract. However, Article 5 of the Employment Contract does not impose a penalty should a breach occur, and does not specify any liability on behalf of the Claimant. I am of the view that the appropriate remedy for such a breach should be a termination of the Claimant's employment, however as the Claimant has resigned this would no longer be available to the Defendant as a remedy.

23. Furthermore, I find that the Defendant has failed to provide any evidence linking the Claimant to the materials that have allegedly gone missing. The Defendant has also made mention of the fact that the Claimant had been soliciting the Defendant's clients to her personal workshop, however no evidence has been submitted to support this claim.

24. I further find that the Defendant has failed to meet its burden of proof to demonstrate that the Claimant should be liable for the losses suffered by the Claimant. The Defendant has not provided any evidence to link the Claimant's actions by engaging in a separate business to the Defendant's failure to meet its monthly target sales. In order for the Claimant to be deemed liable, her conduct would have had to constitute the direct and only cause of the loss of sales, however it is not inconceivable that the Defendant's sales have fallen as a result of other factors such as a slow economy or market conditions. Therefore, I am of the view that the Claimant is not liable for the Defendant's loss of sales and dismiss the counterclaim accordingly.

Conclusion

25. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 9,966 and order that the Defendant proceed to cancel the Claimant's visa forthwith.

26. The Defendant shall immediately cancel the Claimant's visa.

27. The Defendant shall also pay the Claimant the court fee in the amount of AED 367.50.

28. The Defendant's counterclaim is hereby dismissed.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of issue: 16 February 2020

At: 10am