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 NASSIR AL NASSER

BETWEEN

JINGAL

Claimant/Defendant in Counterclaim

and

JANE FZ - LLC

Defendant/ Claimant in Counterclaim

Hearing:**28 February 2019**

Judgment:**6 March 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON a hearing having been listed for me on 28 February 2019, with the Claimant in attendance via teleconference, and the Defendant in attendance in person,

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 USD 41,233 plus 9% interest from the date the Judgment is entered until the date of full payment.

2. The Defendant's counterclaim shall be dismissed.

3. The Defendant shall pay the Claimant the Court fee in the sum of USD 2,061.65.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 6 March 2019

At: 2pm

THE REASONS

The Parties

1. The Claimant is Jingal (herein "the Claimant"), an individual living in Tehran, Iran.

2. The Defendant is Jane FZ-LLC (herein "the Defendant"), a company registered in, Fujeirah, UAE.

Background and Procedural History

3. The underlying dispute arises over the non-payment of the monthly sum of USD 8,200 for the period of two months and 25 days, and a bonus payment for the year 2017 in accordance with the Consultancy Agreement commenced on 8 April 2015 (the "Agreement") signed by both the Claimant and the Defendant.

4. On 8 January 2019, the Defendant filed their defence and counterclaim. In the counterclaim, the Defendant seeks to claim the sum of USD 60,000 in damages due to the Claimant's breach of his contractual obligations.

5. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 24 January 2019 but were unable to reach a settlement.

6. On 28 February 2019, a hearing was listed before me, at which the Claimant attended via teleconference and the Defendant's representative attended in person.

The Claim

7. The Claimant alleges that pursuant to the Agreement, he is entitled to the total sum of USD 41,233 which consists of the monthly sum of USD 8,200 for a period of 2 months and 25 days, and a bonus payment for the year 2017 in the sum of USD 18,000 as per Article 3 of the Agreement.

The Defence

8. The Defendant alleges that on 25 July 2018, the Claimant terminated the Agreement by way of a letter of termination, which he sent to the Defendant.

9. The Defendant alleges that on or around 24 July 2018, the Defendant confronted the Claimant about several dealings the Claimant had concluded with the Defendant's suppliers, in breach of Clause 8(4) of the Consultancy Agreement, which provides that the Claimant was obliged to inform the Defendant of any offer he received to be involved in a business concern in any capacity during the term of the Agreement. The Defendant alleges that shortly after the Claimant was confronted, he issued his resignation letter to the Defendant and terminated the Agreement.

10. The Defendant alleges that the Claimant is not entitled to payment of the amount claimed in respect of the Consultancy Fees in light of his fundamental breach of the Agreement, contrary of DIFC Contract Law. Furthermore, the Defendant alleges that the Claimant did not perform the services contracted faithfully and the Claimant by diverting business and funds away from the Defendant, unlawfully caused and conspired to cause economic loss and damage to the Defendant. In addition, the Claimant acted in breach of terms implied by DIFC Law, including the duty to perform the services faithfully and to avoid conduct calculated to damage the business and interests of the Defendant.

11. Therefore, the Defendant alleges that in accordance with the DIFC Contract Law (DIFC Law No. 6 of 2004) the Defendant is entitled to withhold payment of the sums claimed in light of the Claimant's non-performance and breach of duty.

12. In relation to the Claim for the bonus payment, it is alleged by the Defendant that in the normal course of dealings under the Agreement, the annual bonus is a performance-based bonus, measured on key performance indicators set by the Defendant and discussed with the Claimant annually. Furthermore, in or around December 2017, the Defendant discussed the Claimant's performance and determined that the Claimant was not entitled to the annual bonus.

13. The Defendant alleges that the Claimant is not entitled to any payment under the Agreement in light of his fundamental breach of the same and the loss he has caused the Defendant to suffer.

The Defendant's Counterclaim

14. The Defendant alleges that the Claimant, in breach of his contractual obligations, engaged in direct dealings with the Defendant's suppliers calculated to reduce the Defendant's profits, damage the business and interests of the Defendant, divert potential business away from the Defendant and to secretly profit at the expense of the Defendant.

15. The Defendant also alleges that the Claimant unlawfully received payments from such suppliers to the detriment of the Defendant. As a result, the Defendant suffered loss and damage, including reputational damage.

16. The Defendant therefore claims the following:

(a) Damages for breach of contract;

(b) Damages for conspiracy contrary to Article 36 of the DIFC Law of Obligations (DIFC Law No. 5 of 2005);

(c) Damages for breach of duty under chapter 2 of the DIFC Law of Obligations;

(d) Damages for unlawful interference under Article 34 of the DIFC Law of Obligations;

(e) Damages for intentional interference with economic relations;

(f) A direction requiring the Claimant to account for his profits arising out of his unlawful conduct;

(g) An Order for the conduct of an inquiry into the Claimant's secret profits;

(h) Damages stipulated under clause 8(7) of the Consultancy Agreement;

(i) Damages of reputation;

(j) Such further or alternative reliefs as the SCT directs to remedy the reputational damage suffered by the Claimant.

17. The Defendant alleges that with reference to Clause 8(7) of the Agreement which states that: "in the event that the consultant breaches any of the provisions in clause 5 or clause 8 the parties agree that the consultant shall be liable to pay the company 25,000 Euros for every individual breach for every breach which remains unresolved for two (2) weeks. The parties agree that it would be impossible to quantify loss in the case of a breach of clause 5 or clause 8 and this amount is a reasonable estimate of the loss the company would incur for such a breach". Therefore, the Defendant wishes to claim EUR 60,000 which represents damages payable pursuant to clause 8(7) of the Agreement in respect of several disparaging posts published by the Claimant about the Defendant via online social media services.

18. The Defendant alleges that if the Claimant's claim succeeds as set out in his Claim Form dated 21 November 2018, the Defendant requests that the claim amount be set off against the losses the Defendant has suffered as a result of the Claimant's breach of Contract.

The Claimant's response to the Defendant's defence and counterclaim

19. The Claimant alleges that the Agreement was terminated on 25 July 2018, and that the Defendant failed to pay the Claimant the monthly fees from 1 April 2018 to 25 July 2018 in the sum of USD 23,233 and the annual bonus for the year 2017 in the sum of USD 18,000.

20. The Claimant alleges that the Defendant has accepted its debt to the Claimant in its submission dated 26 December 2018 but argues that the Claimant committed a fundamental breach of the Agreement, and therefore it should not be obligated to pay this amount to the Claimant on the basis of DIFC Contract Law.

21. The Claimant also asserts that in addition to his Consultancy Agreement with the Defendant, he was an employee of Jien Company LTD (hereafter "Jien LTD"), a duly established corporation based on Iranian Laws and Regulations under Registration No. XXXXX, from the period of 11 April 2015 to 25 July 2018 based on an Employment Agreement No. 1/94-0172.

22. The Claimant also adds that Jien LTD is a subsidiary of the Defendant, in which the Defendant holds a part of the shares of Jien LTD and is the owner of Jick.com.

23. The Claimant alleges that within this period of 11 April 2015 to 25 July 2018 he had certain responsibilities towards Jien LTD as the employee based on an employment agreement between himself, as an Iranian individual and a corporation governed by the Iranian Labour Laws and Regulations.

24. Furthermore, the Claimant alleges that the Defendant's counterclaim is only related to the Claimant's employment agreement with Jien LTD while his Claim in the SCT is restricted to the Consultancy Agreement with the Defendant which is governed by the DIFC Courts Jurisdiction and the Rules and Regulations of the DIFC.

25. The Claimant adds that if Jien LTD were seeking to file a claim for damages following a breach under the Claimant's employment agreement, such a claim would have to be filed in accordance with the governing law stated in that agreement and in the Iranian Courts.

26. The Claimant asserts that the Defendant's counterclaim is entirely based upon the Claimant's employment agreement with Jien LTD which does not fall within the jurisdiction of the SCT.

Discussion

27. I will first have to deal with the counterclaim in order to be able to decide the claim.

28. The Claimant argues that the there are two contracts at hand, one is related to the consultancy agreement signed by the Claimant and the Defendant (the Agreement), the second contract is an employment contract related to a company incorporated in Iran and has no relevance to the Agreement signed in the UAE. However, it is argued by the Defendant that in compliance with the Iranian Law, it was necessary to have a second contract in Iran, however, the main contract is to be noted as the Agreement signed by the Claimant and the Defendant.

29. The Defendant confirmed that the alleged breaches occurred by the Claimant are related to the employment contract signed in Iran and to the company incorporated in Iran. However, it is argued that the Agreement is related to the parent company (being the Defendant) and it is explicitly stated that the terms cover the subsidiaries around the Middle East.

30. Further to both parties' confirmation that there are two contracts, one being an Employment Contract related to a company incorporated in Iran and the other being the Agreement signed by the Claimant and the Defendant, I find that the company in Iran is an independent entity incorporated in Iran and is subject to an entirely different jurisdiction. I also find that the Claimant's relationship with the company incorporated in Iran is an employment relationship. In addition, I find that the alleged breaches claimed by the Defendant are in relation to breaches with the Company incorporated in Iran, although I note that this is a subsidiary of the Defendant, it is an independent entity.

31. Therefore, I am satisfied to dismiss the Defendant's counterclaim as the counterclaim is founded upon alleged breaches occurred in relation to a company located and incorporated in Iran under Iranian Laws and Regulations and pertains to an employment relationship under an Employment Contract governed by the Laws and Regulations of Iran.

32. I also find that in the Agreement, the parties opted into the Jurisdiction of the DIFC Courts pursuant to Clause 10 of the Consultancy Agreement which states the following:

"any dispute arising out of or in connection with this agreement, including questions regarding its existence, validity or termination, shall be

subject to exclusive jurisdiction of the Courts of the Dubai International Financial Centre.

This agreement shall eb governed by and construed in accordance with the law of the Dubai International Financial Centre."

33. In relation to the Claim, the Claimant argues that pursuant to the Consultancy Agreement and the amended salary letter, he is entitled to the sum of USD 8,200 per month. The Claimant argues that he terminated the Consultancy Agreement on 25 July 2018, however, the Defendant failed to pay him the dues owed from 1 April 2018 to 25 July 2018 in the sum of USD 23,233.

34. The Defendant has sought to allege that the Claimant breached a number of terms implied by the DIFC Law, including the duty to perform the services faithfully, in good faith and to avoid conduct calculated to damage the business and interests of the Defendant. However, I find that the Defendant failed to provide sufficient evidence to demonstrate the breaches of the terms of the Agreement. Therefore, I find that the Claimant is entitled to the sum of USD 23,233 which is the monthly consultancy fee pursuant to the Agreement.

35. In relation to the Claimant's claim for a bonus payment for the year 2017, the Claimant argues that pursuant to Clause 3 of the Consultancy Agreement, he is entitled to a bonus in the sum of USD 18,000. However, the Defendant argues that in the normal course of business, the annual bonus is a performance-based bonus which is measured on key performance indicators set by the Defendant and discussed with the Claimant annually. In addition, in or around December 2017, the Defendant discussed the Claimant's performance and determined that the Claimant was not entitled to annual bonus.

36. In his position, the Claimant relies upon Clause 3 of the Agreement which states the following:

"1. In consideration for carrying out the services, the consultant shall receive a monthly fee of USD 6,500 (net of VAT) (the "Consultancy fee")

Additional: USD 18,000 Annual Bonus".

37. In addition, the Claimant argued that the sum of USD 18,000 is considered and agreed as a fixed and final amount for an annual bonus and not as the maximum amount of annual bonus. The Claimant also argues that the parties did not agree in the Agreement that the bonus is based on Claimant's performance or that the Defendant has the right to determine Claimant's entitlement to an annual bonus. Furthermore, the Claimant argues that on 6 June 2017 the Defendant issued a letter which stated that the amount of the Claimant's consultancy fee equal to USD 8,200 is agreed, but that all other terms shall remain unchanged as per the original offer letter and contract.

38. I find that the Defendant failed to provide evidence of the Claimant's poor performance in 2017 and also failed to provide the Defendant's policy in relation to discretion in awarding a bonus, if any. I also find that Clause 3 of the Consultancy Agreement indicates a fixed annual bonus of USD 18,000. In my opinion, the wording of Clause 3 suggests that in consideration for carrying out the services, the consultant shall receive a monthly fee of USD 6,500 (net of VAT) (the "Consultancy fee") Additional: USD 18,000 Annual Bonus". The wording of the Clause fails to mention the word "discretion" and in fact, the wording indicates that the annual bonus is additional to the monthly consultancy fee.

39. Therefore, I am satisfied that the Claimant is entitled to bonus in the sum of USD 18,000 as per Clause 3 of the Consultancy Agreement.

40. The Claimant also claimed interest of the unpaid amount as per the Law.

41. Pursuant to Practice Direction No. 4 of 2017 dated 20 November 2017, the Claimant is entitled to 9% interest from the date the Judgment is entered, at the rate of 9% or such other rate as the judge may prescribe.

Conclusion

42. In light of the aforementioned, I find that the Defendant is liable to pay the Claimant the sum of USD 41,233 plus 9% interest from the date the Judgment is entered.

43. The Defendant's Counterclaim shall be dismissed.

44. The Defendant shall also pay the Claimant the Court fee in the sum of USD 2,061.65.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 6 March 2019

At: 2pm