Claim No. SCT 549/2019

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 AYESHA BIN KALBAN

BETWEEN

LOSTON

Claimant

and

LIUNA MARKET RESTAURANT AND LOUNGE

Defendant

Hearing **: 5 March 2020**
Judgment **: 11 March 2020**

JUDGMENT OF SCT JUDGE AND DEPUTY REGISTRAR AYESHA BIN KALBAN

UPON the Claim Form being filed on 4 December 2019

AND UPON a Consultation being held on 21 January 2020 before SCT Judge Delvin Sumo with the Claimant attending and the Defendant failing to appear although served notice of the claim

AND UPON a Default Order being issued against the Defendant on 22 January 2020

AND UPON an Appeal Notice being filed by the Defendant on 30 January 2020 seeking to set aside the Default Order and this being granted by SCT Judge Delvin Sumo on 4 February 2020

AND UPON a Consultation being held on 11 February 2020 before SCT Judge Delvin Sumo with the Claimant and the Defendant's representative attending

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

AND UPON a Hearing being held on 5 March 2020 before SCT Ayesha Bin Kalban

AND UPON the Defendant failing to attend the hearing although served notice of the hearing date

AND UPON reviewing all documents and evidence submitted on the Court file

AND PURSUANT TO Rule 53.61 of the DIFC Courts

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the amount of AED 59,460.

2. The Defendant shall continue to pay the Claimant penalties under Article 18 of the DIFC Employment Law at a daily wage of AED 160 until the date of full payment.

3. The Defendant shall pay the Claimant the Court fees in the sum of AED 479.18.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 11 March 2020
At: 1pm

THE REASONS

The Parties

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

2. The Defendant is Liuna Market Restaurant and Lounge (the "Defendant"), a company registered in the DIFC located in DIFC, Dubai.

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 11 April 2018 (the "Employment Contract") with a joining date set out to be 15 April 2018.

4. The Claimant resigned and served her last working day on 21 April 2019.

5. On 4 December 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for various employment claims in the sum of AED 23,960 as well as penalties accrued under the DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 the ("DIFC Employment Law").

6. On 21 January 2020, a Consultation was listed before SCT Judge Delvin Sumo with the Claimant in attendance. The Defendant failed to appear although served notice of the claim.

7. On 22 January 2020, a Default Order was issued against the Defendant, however the Defendant filed an Appeal Notice on 30 January 2020, stating that it was not aware of the Consultation date. The Order was set aside on 4 February 2020.

8. The parties met for a second Consultation with SCT Judge Delvin Sumo on 11 February 2020 but were unable to reach a settlement.

9. On 5 March 2020, a hearing was listed before me, at which only the Claimant attended, and the Defendant was absent although served notice of the Hearing. I therefore ordered that this matter be determined on the papers, in light of the Defendant's habit of absence from previously listed court events.

The Claim

10. The Claimant's case is that she was employed with the Defendant as a `Hostess' from 15 April 2018. The Claimant resigned and served her last working day on 21 April 2019, and submits that she did not receive her end of service entitlements as owed to her pursuant to the DIFC Employment Law, in the amount of AED 23,960.

11. The Claimant seeks payment in the sum of AED 3,360 applicable to the 21 days in April 2019 in which she worked for the Defendant, the sum of AED 1,540 for 7 days of accrued but untaken annual leave, one month pay applicable to her notice period in the sum of AED 4,800, as well as penalties accruing on a daily basis in accordance with Article 18 of the DIFC Employment Law.

12. The Claimant does not make a claim for her end-of-service gratuity in the Claim Form, nor did she make a claim for this entitlement during the course of the Hearing.

The Defence

13. The Defendant failed to attend the hearing although provided notice of the hearing date. With the exception of the Appeal Notice dated 30 January 2020, the Defendant has not made any form of submissions in this Claim, and has not put forward any defence.

14. In reviewing the case file for any submissions made by the Defendant, it appears that the Appeal Notice dated 30 January 2020 contained a scanned image of a document that appears to be a cancellation form for the cancellation of the Claimant's visa. The form is set out to the effect that the Claimant's cancellation would be carried out with pending dues, however a written inscription contains wording to the effect that the Claimant had received her dues, accompanied with a signature. The Defendant relied on this document in applying to set aside a default order made against it, and appeared at a Consultation after the application to set aside was granted.

Discussion

15. The DIFC Courts and the SCT have jurisdiction over this case seeing as it relates to an employment relationship within DIFC and the amount in question is less than AED 500,000.

16. This dispute is governed by the DIFC Employment Law in conjunction with the relevant Employment Contract. It is prudent to note that the DIFC Law No. 3 of 2012 is the applicable law in this matter, seeing as the Claimant resigned in April 2019, i.e. prior to the issuing of the DIFC Law No. 2 of 2019.

17. In review of the file and in considering the Defendant's multiple recorded absence in these proceedings, I have had considerable difficulty in identifying whether the document submitted by the Defendant in support of the Appeal Notice dated 30 January 2020 can constitute a formal defence to the Claim. The Claimant, in her claim form, has submitted that she was forced to sign the cancellation document in order to proceed with the cancellation of her visa.

18. Furthermore, it is questionable that such a form carrying two contradictory statements by the Claimant would be taken into consideration by the authority that carries out visa cancellation. This fact, in addition to the fact that the Defendant did not appear to provide proof of payment of the Claimant's dues or to submit proof that the Claimant had signed the form of her own volition, leads me to conclude that the Claimant has not received her dues and therefore should be entitled to them.

19. In light of the above finding, I find that the Claimant be entitled to the sum of AED 9,700 for her 21 days' salary, 7 days of accrued but untaken annual leave and one month's notice.

20. In regards to the Claimant's claim for penalties pursuant to Article 18 of the DIFC Employment Law, I set out the relevant article which reads as follows:

> "18. Payment where the employment is terminated

(1) An employer shall pay all wages and any other amount owing to an employee within fourteen (14) days after the employer or employee terminates the employment.

(2) If an employer fails to pay wages or any other amount owing to an employee in accordance with Article 18(1), the employer shall pay the employee a penalty equivalent to the last daily wage for each day the employer is in arrears."

21. In accordance with the DIFC Courts precedent set by the judgment of Justice Roger Giles in Asif Hakim Adil v Frontline Development Partners Limited [2014] DIFC CFI 015 and the judgment of H.E. Justice Ali Al Madhani in Pierre-Eric Daniel Bernard Lys v Elesco Limited [2014] DIFC CFI 012, the Claimant is entitled to Article 18 penalties running from 14 days after her official date of resignation until the date payment is made. Accordingly, the Defendant has been in arrears since 5 May 2019 (14 days following the Claimant's last working day on 21 April 2019) and the penalty began to accrue at the daily rate of AED 160 from this date.

22. As of the date of this Judgment, the penalty is owed for 311 days from 5 May 2019 until 11 March 2020, totaling AED 49,760 (311 x 160), with the daily penalty of AED 160 continuing to accrue until the date of payment.

Conclusion

23. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 59,460.

24. The Defendant shall continue to pay the Claimant penalties under Article 18 of the DIFC Employment Law at a daily wage of AED 160 until the date of full payment.

25. The Defendant shall pay the Claimant the DIFC Court fee in the sum of AED 479.18.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 11 March 2020
At: 1pm