IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

LUFITHI

Claimant/Respondent

and

LARTIES

Defendant/Appellant

JUDGMENT OF H.E. JUSTICE SHAMLAN AL SAWALEHI

UPON reviewing the Order of H.E. Justice Shamlan Al Sawalehi dated 23 June 2022 granting the Defendant's application seeking permission to appeal the Amended Judgment of H.E Justice Nassir Al Nasser dated 24 May 2022 (the "Amended Judgment") (the "Permission to Appeal Order")

AND UPON the reviewing the Claimant's Application No. CFI-044-2022/2 dated 12 October 2022 seeking to introduce new evidence on Appeal (the "Application")

AND UPON hearing the Claimant and Counsel for the Defendant at the Appeal Hearing held on 26 October 2022 (the "Appeal Hearing")

AND UPON reviewing the relevant documents on the Court's file

IT IS HEREBY ORDERED THAT:

1. The Appeal is dismissed in its entirety.

2. The Amended Judgment shall remain upheld, and the Claimant shall be entitled to a sum of AED 18,330.

3. Costs shall be awarded to the Claimant on a standard basis, to be assessed by the Registrar, if not agreed.

4. The Application is granted.

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue: 15 November 2022
At: 11am

SCHEDULE OF REASON

1. The scope of this Appeal was limited to focus on four different issues being the start date, the working days between December 2021 to February 2022, the Contract and the Shareholding issues, and finally the gratuity entitlement (the "Appeal Issues"), as outlined in paragraph 1 of the Permission to Appeal Order.

2. The Amended Judgment issued on 24 May 2022 was in favour of the Claimant. On 3 June 2022, the Defendant applied for permission to appeal this Order on the basis that the Judge had made an error in his decision. On 23 June 2022, Permission to Appeal was granted by me. It was therefore incumbent on the Defendant to provide this Court with proof demonstrating that the SCT Judge had made an error in his Order. Instead, I found the Defendant reiterating the same arguments that were put forward before the SCT Judge.

My reason for dismissing this Appeal is primarily based on the Defendant's inability in discharging its burden of proof and providing reasons concerning the error that had been made in the Amended Judgment. Also, the Defendant failed to address the factual or legal issues the SCT Judge erred in reaching his decision.

3. I should make it clear that in addition to the oral submissions made at the Appeal Hearing, I have read carefully through the evidence submitted by both parties. The fact that I may omit some reference to some arguments does not mean that I have overlooked it.

DIFC Law or onshore UAE Law

4. I will deal with the issue raised by the Defendant in the Appeal Hearing surrounding the question whether the DIFC Court would have jurisdiction over this Application, I will then turn to deal with the Appeal Issues.

5. The Employment Law Amendment Law - DIFC Law No.4 of 2021 (the "DIFC Law") governs all employment related matters within the DIFC. Article 4(1) of the DIFC Law indicates that the DIFC Law will be applicable to: (i) any person having a place of business in the DIFC

(including a body, authority, registry, or entity established by or pursuant to the DIFC Founding Law) (e.g., Limin) (ii) who employs one or more individuals; and (iii) any individual employed by way of an employment contract by a person having a place of business therein.

6. Based on Article 4(1) of the DIFC Law, Limin would fall under the definition of a DIFC Company. Accordingly, this dispute would be governed under the DIFC Employment Law, instead of UAE Labour Law, as it has been mentioned under paragraph 18 of the employment offer letter dated 7 February 2021 signed by the Claimant and Mr Stuart Coles (the "Employment Offer Letter").

Start Date

7. With respect to the start date, the Claimant continued to rely on the Employment Offer Letter during the Appeal Hearing. Further, as part of the Claimant's submissions, I was also referred to Exhibit 5, the Salary Transfer Letter [SAB252] that was issued by Limin on 15 March 2021 confirming the Claimant's starting date being 3 January 2021, the letter was signed by Stuart Coles, and it bears the Company's stamp with its license number of CL4360. The Claimant also relied on Exhibit 4 [SAB250] an email from Luvat to the Claimant dated 21 February 2021 which provides a breakdown value of the Claimant's entitlements from the Company, and it reflects that the start date of employment was 3 January 2021.

8. The Defendant refuted the Claimant's submissions contending that (i) the Employment Offer Letter is a poorly constructed letter prepared by an ex-director of the Company (ii) the "anticipated date" mentioned in the Employment Offer Letter was based on the happening of certain events e.g. visa certificate from the relevant governmental bodies and (iii) the Company was not incorporated before the Claimant's commencement date, therefore the employment of the Claimant could not have started on 3 January 2021.

9. The Defendant provided this court with (i) the Claimant's sponsorship visa indicating a starting date on 8 February 2021 (ii) Employment Offer Letter signed and dated 7 February 2021 (iii) the Company's Certificate of Incorporation reflecting its incorporation date on 5 January 2021 and (iv) an invoice of the Company's establishment issued on 21 February 2021, to support its argument that the Claimant's employment could not have commenced on 3 January 2021.

10. I do not think the evidence relied by the Defendant has any consequential impact on the question of why the Amended Judgment should be overturned. I will explain this in detail, the Employment Offer Letter states that the anticipated start date of 3 January 2021 will only become effective pending documents received from the Claimant *"and certificates for the visa application. In the event, [the Claimant is] refused a visa and such refusal is full and final this contract may be terminated by the [Company] without notice".* Therefore, the anticipated start date is based on the provision of documents from the Claimant and approval of his visa application which both seem to have been satisfied and successful, which triggers the start date of 3 January 2021. This is further corroborated with the salary certificate letter issued by the Company and the month of January salary payment credited to the Claimant's bank account in April.

11. It was incumbent on the Defendant to provide this court with a coherent satisfactory argument on why this appeal should be overturned, however when the Defendant was asked to provide an explanation on the salary payment paid to the Claimant's account for the month of January 2021 in the amount of AED 25,000 credited in April 2021, a clear satisfactory answer was not forthcoming.

12. By virtue of section 11 of the Employment Offer Letter which expressly states that *"this Contract may only be varied in writing, and duly authorised by signatures of the employee and [the] supervisor]".* In the absences of any evidence which supersede or prevail the contractual terms of the Employment Offer Letter, I am inclined to uphold paragraph 31 of Amended Judgment as I do not believe the SCT Judge had made an error in respect of this issue.

Salary and Unauthorised Leave

13. The Defendant argued that the Claimant took unauthorised leave from 16 December 2021 - 4 February 2022, therefore the Claimant is not entitled to his full paid salary. The Claimant contends these allegations and submits that the Company nor any of its directors objected to his leave and if in fact there was an issue, this should have been raised with the Claimant. The SCT Judge ruled in favour of the Claimant.

14. The Claimant was unable to refer me to any proof that the Claimant requested annual leave from the Defendant, however I was referred to WhatsApp messages indicating that the Claimant was working remotely during parts of that period and contactable by the Defendant, if needed. It does not seem from the evidence that the Defendant had objected to this leave or lodged a complaint against the Claimant pertaining its alleged unauthorised leave. It seems that the leave was authorised by way of conduct.

15. Accordingly, I will uphold the Amended Judgment dealing with the unpaid salary in paragraph 42 and 43. The Claimant will be entitled to a payment of AED 53,796.66.

Shareholding and Equity

16. The Defendant relied on the Sale and Purchase Agreement (the "SPA") contesting the award in favour of the Claimant of $50,000 within Lekhah ("Lekhah") granted in the Amended Judgment. The Defendant questioned the validity of the SPA based on the fact that it bears two signatures of the Claimant with no counter signature of the seller.

17. Whilst I agree that the SPA 000 would be difficult to execute for the purposes of validating or enforcing the sale of the Claimant's shares. However, Clause 2 of the Employment Offer Letter clearly stipulates that the Claimant is entitled to *"a stock equity of 1% of any stock that is given to the firm for resell from the date of joining (excluding Essentially Health Food LLC). By prior agreement, equity will be provided within Essentially Health Food LLC at an agreed market valuation of USD 50,000 that will be provided at the point of listing to Capital Markets." [sic].*

18. The Claimant's Counsel acknowledged this issue, indicating that the parties would be required to formulate another SPA. The Claimant does not rely on the SPA and refuted the Defendant's allegation claiming that Michael Nugent ("Mr Nugent") was aware of this document and the Claimant was using the Company's Docusign application on Mr Luvat's computer. The Claimant instead relies on Clause 2 of the Employment

Offer Letter.

19. Further, the Defendant queried the SCT Judge's understanding of the surrounding issues pertaining to the Claimant's equity in EHF, asserting that the issues were not discussed in detail, and it was only brought to the SCT Judge's attention few moments before the end of the SCT Hearing. I disagree with this observation, and I will explain the reasons as to why the SCT Judge had not erred in his decision.

20. The Claimant signed the Employment Offer Letter on the basis of various prospective entitlements, one being the receipt of stock equity of 1% shares, equity would have been provided within EHF at an agreed price of USD 50,000. The Defendant alleges that the Company has never owned any shares in EHF or Essentially Juices Manufacturing LLC [SAB 002] which renders clause 2 of the Employment Offer Letter false representation and a breach of Article 12 of the DIFC Employment Law, which expressly states that an employer (Coworth Fintech) shall not induce or influence a person to become an employee (Claimant) by way of misrepresentation whether or not that was the intention of the employer (Coworth Fintech). The Defendant misrepresented the availability of stock equity to the Claimant.

21. The remedies of this breach are contained under Article 23 the Law of Obligations DIFC Law No.7 of 2005 which confers a right in damages for a breach of an "obligation", the injured party (the Claimant) would be entitled to damages for the losses sustained as a result of the breach. Since, the use of the SPA to execute the sale of the shares may prove to be difficult, awarding the Claimant the amount of USD 50,000 was the correct approach applied by the SCT Judge.

22. Based on the above, the Amended Judgment pertaining to equity shares contained under paragraph 47 of the Amended Judgment will be upheld.

Gratuity

23. As I have determined that the Claimant's employment commenced on 3 January 2021, the Claimant would therefore be entitled to gratuity between the period of 3 January until 24 February 2022, being the resignation date.

24. I will be upholding the Amended Judgment dealing with the breakdown of the gratuity payment contained under paragraph 52 and 53. The Claimant would therefore be entitled to a payment of AED 19,905.70.

Flight tickets

25. With respect to the flight tickets awarded to the Claimant in the Amended Judgment under paragraph 61 based on the clause 2 of the Employment Offer Letter, stating *"the Claimant and his spouse are entitled to one return economy class ticket from Dubai to any global destination"* [sic]. I do not agree with the notion of "any global destination", a monetary amount must be quantified for the purposes of enforcing this Court Order against the Defendant. Therefore, during the Appeal Hearing, I requested the Claimant's legal counsel to provide the Registry with an estimated amount of two adult return tickets to the Claimant's country of citizenship. The Claimant is a dual-national (British-Australian) and his spouse is an Australian citizen.

26. On 28 October 2022, the Claimant's Counsel emailed the Registry confirming that two return economy tickets on 12 December 2022 would be in the sum of AED 18,330. Therefore, the Claimant shall be entitled to a sum of AED 18,330 from the Defendant relating to the costs of the flight tickets including his spouse.

Conclusion

27. The Appeal is dismissed.

28. The Amended Judgment will be upheld save as the Flight Ticket paragraph which will be overturned. Therefore, the Claimant shall be entitled to a sum of AED 18,330.

29. Costs shall be awarded to the Claimant on a standard basis, assessed by the Registrar, if otherwise not agreed.