Claim No: CFI-012-2014

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

PIERRE-ERIC DANIEL BERNARD LYS

**** **** ****

Claimant

and

ELSECO LIMITED

Defendant

REASONS FOR THE ORDER OF H.E. JUSTICE ALI AL MADHANI MADE ON 7 MAY 2015

FURTHER TO the Order of H.E. Justice Ali Al Madhani dated 7 May 2015 granting the Claimant's Application Notice CFI-012-2014/3 dated 18 March 2014 and granting the Defendant's Application Notice CFI-012-2014/4 dated 2 April 2014;

These are the reasons to be interpreted as the Schedule to the Order of H.E. Justice Ali Al Madhani following the hearing of the Claimant's and the Defendant's Applications held on Tuesday 5 May 2015

REASONS:

1. The following are the reasons for the Order given on 7 May 2015 in the application no. CFI-012-2014/3 submitted by the Claimant seeking permission to adduce expert evidence.

2. It was agreed by the parties that the Order would be issued without reasoning in the interests of time, unless one of the parties sought to appeal, and in such case, the Court would provide written reasoning.

3. The Defendant wrote to the Court on 10 May 2015 seeking reasons for the said Order as they are considering to seek an appeal.

4. In summary, this is an employment case brought by the Claimant seeking employment entitlements based on unlawful termination.

5. The Defendant's central defence in their submissions is that the Claimant prepared 2013 accounts inconsistent with the accounting approach that was contractually agreed between the parties under the terms of the Sale and Corporation Agreement ("SCA") as well as with the approach to revenues recognition applied in the previous accounting years.

6. The Defendant further alleges that the Claimant's conduct in preparing the 2013 account in the manner described above accelerated the 2014 accounting revenues into 2013 and caused non-compliant inflation revenues which resulted in an account that did not show a true and fair profit.

7. The Defendant therefore accuses the Claimant of breaching his duties and obligations as a DFSA authorised individual which warranted his termination for cause.

8. In response, the Claimant submitted an application to adduce expert evidence after the case management hearing and denies the entire allegation against him in regards to the accounts preparation.

9. The Claimant believes that an expert in the field of accounting and auditing is required to assist the Court in determining the central disputed issue between the parties; in particular whether the revenue figures were prepared in an unlawful and non-compliant method.

10. The Defendant challenges the Claimant's application and alleges that an expert witness is unnecessary. The Defendant further submits that the documentary evidence, accounts and witness statements are sufficient to determine whether the Claimant's conduct warranted termination.

11. The Defendant also argues that the accounts inflation was not the only cause for termination in this case and that other issues, such as working for another company, also warranted the Claimant's termination.

12. The Defendant further challenges the application due to untimely submission which would, if the Court grants the application, jeopardize the trial dates and/or timetable.

13. The Defendant's final challenge is that if granted, the Claimant's application would lead to an increase in cost and complexity in the case.

14. I am in agreement with the Claimant that the principal issue in the case is whether or not the Claimant was lawfully dismissed for cause and whether that cause was inflating 2013 revenues.

15. Having given sufficient consideration to documentary evidence and parties submissions as well as the Defendant's amended submission, I found that the question of whether the Claimant's conduct in preparing the 2013 accounts was in breach of the SCA and previous years established practice, or in any event in breach of his duties, is difficult to be answered by the Court without expert opinion.

16. Therefore, I find that the administration of justice would be better served if the Claimant produced expert evidence as was instructed in my Order of 8 May 2015.

17. Additionally, I do not see how granting permission to the Claimant to adduce expert evidence in the manner prescribed in my Order poses any risk or jeopardizes the trial dates or timetable.

18. The Claimant is denied the costs of his application due to late submission.



Issued by:**Natasha Bakirci**Assistant RegistrarDate of issue: 20 May 2015At: 2pm