Claim No. SCT 222/2020 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 MAHA AL MEHAIRI BETWEEN LUDIANA Claimant and LUCIAN RESTAURANT Defendant Hearing : 11 August 2020 Judgment : 25 August

Claim No. SCT 222/2020

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 MAHA AL MEHAIRI

BETWEEN

LUDIANA

Claimant

and

LUCIAN RESTAURANT

Defendant

Hearing **: 11 August 2020**
Judgment **: 25 August 2020**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 7 July 2020

AND UPON a Consultation being held before SCT Judge Delvin Sumo on 22 July 2020

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

AND UPON a hearing having been listed before SCT Judge Maha Al Mehairi on 11 August 2020, with the Claimant and the Defendant's representative in attendance

AND UPON reviewing the Claimant's submissions dated 3 August 2020

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

IT IS HEREBY ORDERED THAT:

1. The Defendant pay the Claimant the amount of AED 2,492.36.

2. The Defendant shall pay the DIFC Courts the Court fee in the sum of AED 367.25.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of Issue: 25 August 2020
At: 10am

THE REASONS

The Parties

1. The Claimant is Ludiana (the "Claimant"), an employee working for the Defendant.

2. The Defendant is Lucian Restaurant (the "Defendant"), a restaurant located in the DIFC, Dubai, UAE.

The Claim

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an Employment Contract dated 16 December 2019 (the "Employment Contract"). The Claimant was working in the position of `housekeeping' for the Defendant with a monthly salary of AED 1,800.

4. On 1 April 2020, the Defendant gave notice to the Claimant, and all of the employees working for the Defendant, that they would be placed on

unpaid leave until further notice due to the global crisis of Covid-19. All of the employees signed a document to that effect, agreeing to go on unpaid leave, apart from the Claimant, who refused to sign.

5. The Defendant requested that all of the employees report back to duty as of June 2020 with a reduced salary. Pursuant to this, the Claimant's salary was reduced to AED 1,500. The Claimant resumed working for 12 days in that month following which he did not attend work, citing the reason for doing so to be the unauthorised deduction of his monthly salary.

6. The Claimant was terminated and offered payment for the 12 days that he worked in June, reflecting the reduction in payment. On 7 July 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming the sum of AED 5,400, which includes payment for his monthly salary from April to June 2020 and compensation for the alleged exploitation of his visa.

7. The Defendant filed its response on 15 July 2020 and sought to justify its actions that were taken in the months of March to June as a result of Covid-19, and argues that their actions were carried out in accordance with the DIFC Presential Directive No. 4 of 2020 (the "Directive"). The Defendant restaurant was closed as the Directive was implemented and a memo was sent to all of the employees to explain that they were going to close the restaurant and that employees would be placed on unpaid leave.

Discussion

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

9. I shall set out below each of the Claimant's claims, the Defendant's defence to each Claim, and accordingly, the Court's reasoning and finding.

10. The Claimant is claiming payment of his outstanding salary for 3 months and compensation for the alleged exploitation of his visa.

11. The Court will first discuss whether the Claimant is entitled to 3 months' salary as claimed. This is a very straight forward matter. The Directive in respect of COVID-19 emergency measures states:

> "5. Rationale
>
> The President has the authority under the Founding Law to perform any action he considers necessary to ensure the proper management of the DIFC.
>
> 6. Emergency Employment Measures
>
> (1) An Employer may only during the Emergency Period implement any one (1) or more of the following Emergency Measures in respect of some or all of their Employees without such Employees' consent:
>
> (a) impose reduced working hours;
>
> (b) impose Vacation Leave
>
> (c) impose leave without pay;
>
> (d) reduce Remuneration on a temporary basis;
>
> (e) restrict workplace access; and
>
> (f) subject to Section 12 below, impose Remote Working conditions and requirements, inclusive of (but not limited to) imposing means of measuring Employee engagement and productivity during Remote Working."

12. As mentioned above, the Directive permits an employer to take certain measures without the consent of the employee, such as placing an employee on unpaid leave and reduced pay. The Emergency Period is defined as commencing from 21 April 2020 until 31 July 2020, therefore the Claimant is not entitled to any payment of salary during that period of time. The Claimant did not consent to being placed on unpaid leave as of 1 April 2020, therefore he is eligible to be paid for 20 days of April.

The Claimant was on his original monthly pay being AED 1,800, therefore for 20 days in April:

Daily pay 1,800 x 12 / 260 = 83.08 daily wage

20 Days x 83.08 = AED 1,661.6

13. As for the period from 21 April to his last working day, the Claimant is not entitled to any payments of salary with the exception of the 12 days he worked in June with the reduced salary. As such, I dismiss the Claimant's claim for remainder of the 3 months' pay and exploitation of his visa.

12 days in June with his reduced salary of AED 1,500

Daily pay 1,500 x 12 / 260 = 69.23 daily wage

12 days x 69.23 = AED 830.76

Conclusion

14. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 2,492.36.

15. I am of the view that, as the Claimant has been successful on some his claims, there should be recovery of the fee in respect of the successful claims. I note that the Claimant was granted a fee suspension for this claim, therefore, the Defendant shall pay the DIFC Courts the amount of AED 367.25.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of Issue: 25 August 2020
At: 10am