Claim No. SCT 086/2017

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

BEFORE SCT JUDGE AYESHA BIN KALBAN

BETWEEN

HALSTON

Claimant

and

HAZEL (DIFC BRANCH)

Defendant

Hearing: **11 May 2017**

Judgment: **18 May 2017**

JUDGMENT OF SCT JUDGE AYESHA BIN KALBAN

UPON the Claim Form being filed on 17 April 2017

AND UPON the parties being called on 30 April 2017 for a Consultation with SCT Judge Nassir Al Nasser and the parties not having reached settlement

AND UPON a Hearing having been held before SCT Judge Ayesha Bin Kalban on 11 May 2017, with the Claimant and the Defendant's representative in attendance

AND UPON reviewing the documents and evidence submitted in the Court file

IT IS HEREBY ORDERED THAT:

1. The Claimant's claim is dismissed in full.

2. There be no order as to costs or the Court fee.

Issued by:

Ayesha Bin Kalban

SCT Judge

Date of issue: 18 May 2017

At: 12pm

THE REASONS

Parties

1. The Claimant is Halston (the "Claimant"), an individual filing a claim against the Defendant regarding his employment.

2. The Defendant is Hazel (DIFC Branch) (the "Defendant"), a DIFC registered company.

Background

3. The underlying dispute arises over the termination of the Claimant's employment by the Defendant for the reason of redundancy. Neither party has submitted a copy of the Claimant's employment contract, however the dispute arises over a comprise agreement entered into between the parties dated 6 December 2016 (the "Compromise Agreement"), which contains provisions relating to the Claimant's exit from the Defendant company, including setting out the payments owed to the Claimant pursuant to his termination from the company.

4. On 17 April 2017, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for the payment of a sum from his pension

plan, offered by the Defendant as a replacement for the End of Service Gratuity owed under the DIFC Employment Law, DIFC Law No. 4 of 2005 (the "DIFC Employment Law").

5. The Defendant responded to the claim on 20 April 2017 indicating its intention to defend the claim in full.

6. The parties met for a Consultation with SCT Judge Nassir Al Nasser on 30 April 2017 but were unable to reach a settlement.

The Claim

7. The Claimant's case is that he entered into the Compromise Agreement, which included a provision for the payment in respect to contributions made by the Claimant and the Defendant to Pension Fund International ("PFI"). The provision reads as follows:

> "1. Termination Payments
>
> 1.1. Following the termination of the employment of the Employee by the Company by reason of redundancy on 28th February, 2017, (the "Termination Date") the Company will as part of the next available payroll run..
>
> ..
>
> (F) Payment in respect of both Employee and Employer contributions to Hearn Fund International totalling approximately AED 147,452.71 made up of AED 73,726.35 approximately in Employer contributions to Pension Fund International.."

8. The amount quoted of AED 147,452.71 comes to USD 40,123.19. The Claimant submits that on 18 March 2017, upon receiving an amount of USD 26,000, he wrote to the Defendant company stating that the amount received from PFI was less than the amount that was set out in the Compromise Agreement. The Defendant company then reached out to PFI to investigate and were informed that the correct amount owed to the Claimant was USD 26,000, and therefore the amount quoted in the Compromise Agreement was incorrect, due to an error in calculating the sums owed to the Claimant.

9. The Claimant further submitted that PFI offered an amount of USD 4,000 as compensation for the error that occurred on their part, but this offer was not acceptable to the Claimant and was henceforth denied.

10. The Claimant alleges that, as all parties signed the Compromise Agreement, the Defendant is obligated to fulfil its undertaking to the Claimant for the payment of the USD 40,000 amount, and therefore seeks that the outstanding amount of USD 13,500 be paid to him by the Defendant.

The Defence

11. In its written submissions and at the Hearing, the Defendant confirmed that it employed the Claimant, stating that this is not a fact in dispute between the parties. The Defendant also confirmed that the Compromise Agreement was indeed signed by the Defendant, and that the mistake in calculating the amount owed to the Claimant for the contributions paid to PFI was not performed in bad faith and was a result of a human error in calculation.

12. The Defendant submitted that, due to the fact that the USD 40,000 figure was only offered mistakenly by PFI and forwarded on to the Claimant by the Defendant, the Defendant should not be liable for the payment of an amount that is not owed to the Claimant.

13. The Defendant submitted that, upon receiving the Compromise Agreement, the Claimant also received a contribution sheet that reflected the pay-out amount owed to the Claimant, from which he could have calculated the correct amount that he was owed. The Defendant further submitted that the Claimant was provided with sufficient time to review the Compromise Agreement and could have identified the mistake at the time.

Discussion

14. This dispute is governed by the DIFC Employment Law in conjunction with the Compromise Agreement. The DIFC Employment Law is meant to govern contracts of employment in the DIFC and the application of it over employment disputes is prioritized over the application of other laws. However, I find that, as the DIFC Employment Law does not contain provisions on mistakes within an agreement entered into by the parties, it is appropriate to refer to the DIFC Contract Law, DIFC Law No. 6 of 2004 (the "DIFC Contract Law"), and to apply the articles that pertain to this dispute.

The Claim

15. The Claimant has met his burden of proof in proving that he was an employee of the Defendant company until his last working day of 28 February 2017. The Defendant does not contest this.

16. The main question is whether the Defendant should be liable to pay an amount that was not owed to the Claimant pursuant to the employment relationship, but became due pursuant to an error that occurred on their part and was included in the Compromise Agreement entered into by the parties.

17. Article 37 of the DIFC Contract law states that:

"37. Relevant mistake:

> (1) A party may only avoid a contract for mistake if, when the contract was concluded, the mistake was of such importance that a reasonable person in the same situation as the party would not have concluded it at all if the true state of affairs had been known, and

(a) the other party made the same mistake, or was also mistaken, or caused the mistake, or knew or ought to have known of the mistake and it was contrary to reasonable commercial standards of fair dealing to leave the mistaken party in error; or

(b) the other party had not at the time of avoidance acted in reliance on the contract.

(2) However, a party may not avoid the contract if:

(a) it was grossly negligent in committing the mistake; or

(b) the mistake relates to a matter in regard to which the risk of mistake was assumed or, having regard to the circumstances, should be borne by the mistaken party."

18. It is clear from the Defendant's submissions that it would not have entered into the Compromise Agreement in its final form had it been aware of the true state of affairs. Furthermore, it is clear to me that no reasonable person would have entered into the Compromise Agreement having knowledge of the miscalculation contained therein. Therefore, the miscalculation included in the Compromise Agreement qualifies as a "mistake" under Article 37 of the DIFC Contract Law. The question then remains whether the Defendant will be entitled to avoid the mistaken provision of the Compromise Agreement pursuant to the other terms of Article 37.

19. In the course of the Hearing, the Claimant was asked whether he agreed that the Defendant committed an error in calculating the pension pay-out owed to the Defendant. He acknowledged that it was a mistake, however it is not clear whether he committed the same mistake at the time, or only became aware of the mistake at a later stage. However, the Claimant has not submitted evidence to suggest that he acted in reliance on the contract. Additionally, from his admission that the included amount was mistaken, it becomes clear that the Claimant either "was also mistaken" at the time of contracting or "knew or ought to have known of the mistake" from the contribution sheet.

20. Should the Claimant have been similarly mistaken at the time of contracting, and considering that he has not submitted that he relied upon the mistaken provision, it is appropriate to void the provision pursuant to Article 37(1) of the DIFC Contract Law. Should the Claimant have been aware of the mistake at the time of contracting, I find that the Claimant, in admitting that the calculation provided in the Compromise Agreement was a mistake and yet attempted to claim the amount from the Defendant has sought to take advantage of the mistake. Such an act would, along with failing to point out the mistake, be contrary to reasonable commercial standards of fair dealing and thus, under this theory, the mistaken party cannot be left in error. Thus, under either possibility, the provision should be voided pursuant to Article 37(1).

21. Furthermore, with reference to Article 37(2), I find that the Defendant was not grossly negligent in committing this error as it relied upon a trusted service provider, nor has it acted in bad faith. This is evidenced by the fact that the contribution sheet submitted to the Claimant contained the correct payment amounts owed to the Claimant. As regards Article 37(2)(b), it is the case that an employer, the party usually preparing an employment contract or in this case the Compromise Agreement, would usually assume the risk of mistakes included therein. However, "having regard to the circumstances" relevant to this case, I do not find it appropriate to assign the risk of this particular mistake to the Defendant, given that the Claimant admitted to committing the same mistake and ought to have known of the mistake. Therefore, in light of the above, this provision of the Compromise Agreement is to be voided due to mistake, pursuant to Article 37 of the DIFC Contract Law.

Conclusion

22. I find that it is not appropriate to award the Claimant the payment of USD 13,500 allegedly owed to him, and therefore the claim is dismissed.

23. There shall be no order as to costs or the Court fee.

Issued by:

Ayesha Bin Kalban

SCT Judge

Date of issue: 18 May 2017

At: 12pm