Claim No. SCT 237/2018

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 MAHA AL MEHAIRI

BETWEEN

IRVEN

Claimant

and

IMAAR DIFC

Defendant

Hearing:**19 July 2018**

Further Submissions: **2 August 2018**

Judgment:**6 August 2018**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 13 June 2018;

AND UPON the Defendant indicating its intention to contest jurisdiction and defend all of the Claim on 8 July 2018;

AND UPON a Jurisdiction Hearing having been held before SCT Judge Maha Al Mehairi on 19 July 2018, with the Claimant's representative 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 Defendants' application to contest jurisdiction is denied.

2. The DIFC Courts have jurisdiction to hear and determine this claim.

3. Each party shall bear their own costs.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 6 August 2018

At: 9am

THE REASONS

Parties

1. The Claimant, Irven, is a British national who was employed as a "Business Development Manager" by the Defendant company.

2. The Defendant, Imaar DIFC, is licensed as an Investment Business Firm operating in the DIFC.

Background

3. The Claimant began working for the Defendant on February 2016 as per the employment contract between the parties. The Claimant was employed as a Business Development Manager and continued working there for almost 2 years. On 25 October 2017, the Claimant submitted his resignation letter marking 24 November 2017 as his last working day with the Defendant.

4. The Defendant provided the Claimant with a Final Settlement agreement pursuant to his Employment Contract. When signing the Final Settlement, the Claimant made a note at the end of the page that "*there are outstanding expenses which I will send to Itzel & appreciate if it can be paid along with the final settlement*". Since 2016 and as at the time of filing this claim, the Claimant has been requesting that the Defendant pay his outstanding business expenses, but the Defendant failed to do so.

5. On 13 June 2018 the Claimant filed a Claim in the DIFC Courts Small Claims Tribunal (SCT) against the Defendant. On 13 June 2018, the Claimant amended his Claim Form, in his Amended Claim Form the Claimant is seeking the amount of AED 265,785.02 with the following breakdown:

(a) AED 2,497.40 expense claim for the period of April to June 2016;

(b) AED 590 expense claim for the period of October to November 2016;

(c) AED 577 expense claim for the period of August to November 2017;

(d) AED 5,000 for his phone allowance for the duration of 20 months, i.e. duration of his employment;

(e) AED 9,187.50 expense claim to cover the costs of shipping of the Claimant's personal belongings from Dubai to his home country on termination of his employment;

(f) One-way ticket from Dubai to the nearest airport to his home country for the Claimant and his family;

(g) Penalty under Article 18 for failure to pay the above;

6. The Defendant responded on to the Claim Form on 8 July 2018 indicating its intent to contest the jurisdiction of the DIFC Courts. On 19 July 2018, I heard the parties' arguments at a Hearing.

The Hearing

Defendant's Submission

7. In the hearing the Defendant based his arguments on Rule 53.2 of the Rules of the DIFC Courts ("RDC"), which states:

"The SCT will hear and determine claims within the jurisdiction of the DIFC Courts:

(1) where the amount of the claim or the value of the subject matter of the claim does not exceed AED 500,000 or;

(2) where the claim relates to the employment or former employment of a party; and

all parties elect in writing that it be heard by the SCT (there is no value limit for the SCT's elective jurisdiction in the context of employment claims); or

(3) which do not fall within the provisions of sub-paragraphs (1) or (2) above, but in respect of which:

(a) the amount of the claim or the value of the subject matter of the claim does not exceed AED 1,000,000; and

(b) all parties to the claim elect in writing that it be heard by the SCT, and such election is made in the underlying contract (if any) or subsequent to execution of that contract"

8. According to 53.2 of the DIFC Courts Rules, the SCT has jurisdiction where the amount of the claim or value of the subject matter of the claim does not exceed AED 500,000 (53.2(1)); this is the general applicability of the rule and how it was intended by the legislator. However, the Rule continues in (53.2(2)) to talk about a specific area, which is related to employment matters, i.e. if the employment claims were to be included in (53.2(1)), the legislator would not have spelled a separate section for the employment cases, which requires the agreement of the parties. Therefore, as per the general principle in interpreting laws and regulations, whenever there is a general rule and another specific one related to same matter, the specific rule should override and hence be applicable;

9. The Defendant adds that the above arguments are further supported with the last part (53.2(2)) where it states `*there is no value limit for the SCT's elective jurisdiction in the context of employment claims'*, this clearly confirms that the legislator did not want the jurisdiction of the SCT over employment claims to be related to the value of the claim, but to the agreement of both parties, which is not the case here;

10. 53.2(3) and 53.2(4) are not applicable to this case, due to the fact that the Parties did not elect in writing to be heard by the SCT, nor is there an order or direction from the Chief Justice to that extent;

11. The Defendant also adds, that, since the Claim is employment related and above AED 500,000, it is outside the scope of cases to be heard in the SCT, requiring the Defendant's approval to the matter. The Defendant further adds that it never provided its consent to the employment case being heard in the SCT.

12. According to the above, the Defendant hereby confirms its position towards contesting the jurisdiction of the respectful SCT over this dispute,

which removes the Tribunal's competence, hence moves to dismiss the Claim raised by the Claimant, without prejudice to any other rights or claims that the Defendant might have thereof.

Claimant's Submission

13. In reply to the Defendant's application to contest jurisdiction, the Claimant confirms that its claim falls within the jurisdiction of the DIFC Courts pursuant to Clause 17 of the Employment Contract between the Claimant and the Defendant which states that:

"This Contract shall be governed and construed in accordance with the laws of the DIFC, and the DIFC Courts shall have exclusive jurisdiction with respect to any dispute arising out of or in connection with the Contract".

14. The Defendant argues in its Jurisdictional Objection that the SCT does not have jurisdiction to hear the Claimant's claim pursuant to Part 53.2 (2) of the DIFC Courts Rules. The Defendant places reliance on the fact that *"the Claim is related to employment and neither the Claimant nor the Defendant have elected or agreed in writing that the dispute to be heard by the SCT"*. The Claimant submits that the Defendant's objection is meritless and has no basis in law for the reasons set out below:

15. The Defendant relies on Part 53.2 (2) of the DIFC Courts Rules disregarding Part 53.2 (1) of the DIFC Courts Rules, which is applicable and must be read in conjunction with the entire rule. In fact, when quoting Part 53.2 of the DIFC Courts Rules, the Defendant only quotes Part 53.2 (2) ignoring Parts 53.2 (1) and (3) in an attempt to mislead the SCT. It is the Claimant's position that Part 53.2 of the DIFC Courts Rules must be read fully to understand its true meaning and interpretation.

According to Part 53.2 of the DIFC Courts Rules:

> "The SCT will hear and determine claims within the jurisdiction of the DIFC Courts:
>
> (1) where the amount of the claim or the value of the subject matter of the claim does not exceed AED 500,000 or;
>
> (2) where the claim relates to the employment or former employment of a party; and
>
> all parties elect in writing that it be heard by the SCT (there is no value limit for the SCT's elective jurisdiction in the context of employment claims); or
>
> (3) which do not fall within the provisions of sub-paragraphs (1) or (2) above, but in respect of which:
>
> > (a) the amount of the claim or the value of the subject matter of the claim does not exceed AED 1,000,000; and
> >
> > (b) all parties to the claim elect in writing that it be heard by the SCT, and such election is made in the underlying contract (if any) or subsequent to execution of that contract"
>
> (4) such other claims as may be ordered or directed by the Chief Justice to be heard by the SCT from time to time."

16. The Claimant places reliance solely on Part 53.2 (1) of the DIFC Courts Rules as the basis of its claim, i.e. the claim does not exceed the threshold of AED 500,000.

17. Contrary to the Defendant's assertions, Part 53.2 (2) of the DIFC Courts Rules only applies in the event Part 53.2 (1) of the DIFC Courts Rules is not applicable. In the case at hand, "the amount of the claim or the value of the subject matter of the claim does not exceed AED 500,000" the amount claimed by the Claimant being AED 265,785.02 and thus the SCT is competent to hear the claim pursuant to this rule. Therefore, the requirement of Part 53.2 (2) for "*all parties [to] elect in writing that [the claim] be heard by the SCT*" does not apply to the case at hand and in any event does not even need to be considered in such circumstances.

18. For the avoidance of doubt, interpreting Part 53.2 of the DIFC Courts Rules as suggested by the Defendant, i.e. by requiring the agreement of the parties even in the event Part 53.2 (1) is applicable, would not give proper effect to Part 53.2 (1) given that this situation would be covered by Part 53.2 (3) of the DIFC Courts Rules. The Claimant submits that in the event of ambiguity in the DIFC Courts Rules, Part 53.2 should be read as a whole so as to give effect to all of its provisions, i.e. the SCT should apply a purposive interpretation.

19. In light of the above, the Claimant submits that the SCT is competent to hear the claim brought by the Claimant.

Finding

20. Rule 53.2 of the RDC requires that the Small Claims Tribunal ("SCT") hears only cases that fall "within the jurisdiction of the DIFC Courts." The jurisdiction of the DIFC Courts is determined by Article 5(A) of the judicial authority law ("JAL"), Dubai Law No. 12 of 2004, as amended, which provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, which are, as relevant:

> "(1) (a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;
>
> (b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract;
>
> (c) Civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within DIFC and is related to DIFC activities; .

(d) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations.

(2) .civil or commercial claims or actions where the parties agree in writing to file such claim or action with [the DIFC Courts] whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

21. The Defendant is a DIFC registered or licensed entity and there is evidence from the Employment Contract under Clause 17 stating *"This Contract shall be governed and construed in accordance with the laws of the DIFC, and the DIFC Courts shall have exclusive jurisdiction with respect to any dispute arising out of or in connection with the Contract"*. As such the DIFC Courts have jurisdiction over the Claim, pursuant to Article 5(A) and (B) of the JAL.

22. For cases to be heard in the SCT, they must firstly fall within the DIFC Courts' jurisdiction, as addressed above, and secondly, the case must also be appropriate for the SCT.

23. I am of the view that the DIFC Courts does have jurisdiction to hear and determine this Claim because the claim value does not exceed AED 500,000. The Claim Form states that the total value of the claim is AED 265,785.02 which is within the AED 500,000 limit of the SCT. Accordingly, there is jurisdiction for the SCT to hear the dispute.

24. The Court is also satisfied with the arguments put forward by the Claimant and hold the view that Article Part 53.2 should be read as a whole so as to give effect to all of its provisions. The DIFC Courts accepts all employment cases up to AED 500,000, and if the amount exceeds AED 500,000, the parties would have to agree in writing for the matter to be heard in the SCT Tribunal.

25. Therefore, the Defendants' application to contest jurisdiction is denied and the merits of the case shall be considered.

26. The parties shall bear their own costs.



Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 6 August 2018

At: 9am