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

JASI

Claimant

and

JOON INVESTMENT (DIFC) LIMITED

Defendant

Hearing:**26 May 2019**

Judgment:**17 June 2019**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON hearing the Claimant and the Defendant's representative at the hearing on 26 May 2019

AND UPON reading the submissions and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1. The Claimant's claim of USD 60,000 is denied.

2. The Claimant's request to obtain interest is denied.

3. The Claimant's request to seek indemnity declarations are denied.

4. Each party shall bear their own costs.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 17 June 2019

At: 11am

THE REASONS

The Parties

1. The Claimant is Jasi (the "Claimant"), an individual filing a claim against the Defendant company.

2. The Defendant is Joon Investment (DIFC Limited) (the "Defendant"), a company formerly known as Jadud Investment Limited, described on the DIFC Register under number xx as an `Investment Holding Company'.

Background

3. The Claimant was employed by the Defendant from the period of 25 March 2009 until 12 April 2018. The Original Employment Contract is

dated 25 March 2009, in which the Claimant holds the title `Director'; however a varied Contract was entered into between the parties dated 1 March 2012 (and later amended by letter dated 17 July 2013) (the "Varied Contract") in which the Claimant is given the title `Chief Executive Officer'.

4. The circumstances surrounding the termination of the Claimant's employment by the Defendant was subject to a separate claim in the DIFC Courts (SCT-272-2018).

5. This dispute does not concern the Claimant's employ per se, but rather arises from the alleged `regulatory/governmental/judicial' investigations into Mr Jafer Jadud and Mr Jabyn Jadud concerning the Jafer Jadud Group ("Jadud") in the Kingdom of Saudi Arabia (KSA) and the consequent legal fees incurred by the Claimant, which on the Claimant's account, were promised to be paid by the Defendant.

6. The Claimant alleges indemnities were provided by the Defendant in relation to the legal fees for the extradition cases brought against the Claimant in the UAE and Jordan, pursuant to requests from the KSA.

The Claim

7. The Claimant seeks the following:

    a. an indemnity for legal fees in any jurisdiction in connection with regulatory/governmental/judicial investigations into Mr Jafer Jadud and Mr Jabyn Jadud, relating to the floatation of the Jadud in KSA;

    b. an indemnity for any and all legal fees he incurs going forward in any jurisdiction in connection with investigations into Mr Jafer Jadud and Mr Jabyn Jadud, relating to the flotation of the Jadud; and

    c. any interest and/or costs in the case. ���

8. In relation to the alleged extradition cases brought against the Claimant in the UAE and Jordan, pursuant to requests from the KSA, the Claimant asserts that there are three arrest warrants in his own name, and others in the names of both Mr Jafer Jadud and Mr Jabyn Jadud, the two founders and beneficial owners of the Defendant company.

9. On the Claimant's account, the warrants were issued in connection with proceedings brought by the KSA authorities against the Jadud in relation to the Jadud and that due to these proceedings, the Claimant has incurred significant legal costs.

10. The Claimant makes an argument pertaining to the indemnities supposedly provided by the Defendant. On the approximate date in late 2017 (around September - December), the Defendant `made several representations confirming that it would indemnify its directors and employees, including the Claimant, for any costs they might incur arising from the Jadud Investigations' in the future.

11. In sum, the Claimant asserts the representations are as follows:

    a. the Defendant company supplied monies required for the Claimant to post bail in September 2017, with the Defendant having instructed the UAE law firm Juke to act for the Claimant in UAE proceedings;

    b. the Defendant paid AED 605,000 to Juke law firm in connection with the Jadud Investigations on 11 October 2017;

    c. the Defendant provided legal representation to the Claimant with regards to the Jadud Investigations in November 2017;

    d. the Defendant paid SAR 1,000,000 pursuant to agreements dated 4 and 7 December 2017 with Jabid on account of legal representation; and

    e. the Defendant paid USD 60,000 on account, to a Jordanian lawyer Dr Jafir for fees for the Claimant's legal representation in connection the Jadud Investigations on 25 January 2018 and later dis-instructed Dr Jafir for unsatisfactory services.

12. The Claimant provides various documents annexed to its claim, seemingly evidencing to the Court the above payments.

13. On the reliance that the Claimant placed on the Defendant's representations and promises that it would indemnify the Claimant, the Claimant states he has since incurred further legal fees in the KSA, the UAE and Jordan.

14. On the Claimant's account, the Defendant promised to make the sum of USD 60,000 in cash to assist the Claimant to pay for legal fees, as per an email from the Defendant dated 25 January 2018.

15. The Claimant claims that its solicitors, Jamin LLP ("Jamin") have failed to obtain a response from the Defendant regarding the indemnity and that the Defendant has failed to honour its promise to indemnify the Claimant in relation to the aforementioned investigation.

16. Therefore, the Claimant claims the sum of USD 60,000 for legal fees and a declaration that the Defendant is to indemnify the Claimant for all future legal fees the Claimant may incur in connection with the Jalil Investigations.

The Defence

17. The Defendant rejects the Claimant's claims in their entirety and denies the vast majority of the Claimant's assertions. On the Defendant's account, the Claimant has "unashamedly" misled the Small Claims Tribunal ("SCT") as to the facts of the circumstances of the investigation.

18. Firstly, the Defendant does not accept the Claimant's definition of the Jadud Investigations. The Defendant alleges that the Claimant was previously employed by Jubi in KSA as an investment banker and was closely connected with the listing of Jadud. The Defendant states that, in 2013, the Jafan ("Jafan") in KSA started an investigation into the Jadud and its directors, and consequently appointed a company

called Joo to conduct reports. According to the reports, the Claimant was an elite (i.e. integral) member of the Jubi team who was involved in advising Jadud at times relevant to the investigation and misled the Jafan by providing false information.

19. On the Defendant's account, the Claimant was detained in Dubai on approximately 20 September 2017, when the Claimant attempted to travel out of the country on a holiday. The extradition request was made by the KSA authorities regarding the Jadud floatation and due to the Claimant's lack of cooperation with the regulatory bodies. The Defendant contends that the Claimant was released in November 2017, with the request for extradition still pending. After obtaining his passport, the Claimant promptly fled to Jordan, in or around January 2018.

20. In their defence of the claim, the Defendant states it was entirely unaware of the nature of the investigation and only subsequently became aware after the `demand' for the payment of legal fees and for the assistance in securing the Claimant's bail was required.

21. Furthermore, on the Defendant's account, there have been investigations dating as far back as 2008, a date which is indeed prior to the Defendant's employ of the Claimant. It can therefore not be fair nor just that the Defendant company should be held liable for the Claimant retrospectively.

22. With regards to the alleged indemnities, the main point made by the Defendant is that the Claimant relies *inter alia*, on the Articles of Association of 24 April 2017, and yet the Claimant omits to attach a copy of this document to the Claim Form. On its account, this document does not constitute a *contract* between the company and its employees, but rather is a generic document that sets out the basic management structure of the company. In the document there is no mention of indemnity whatsoever.

23. In any event, the Defendant argues that it is totally `incomprehensible' that one would even attempt to interpret Article 8 of that document in the way as is put forth by the Claimant, and indeed it is a well-known fact that any company's insurance policy incorporating indemnity for legal fees would not cover an investigation relating to enquiries made by financial regulators or criminal investigations.

24. Furthermore, the Defendant suggests that the behaviour of the Claimant is in direct breach of the standard of care required by the Claimant, as an employee of such seniority and as that of a CEO.

25. With regards to the alleged representations, the Defendant argues that AED 600,000 in fact equates to approximately four months of the Claimant's salary at that time. It is the Defendant's contention that irrespective of any payments made in good faith to assist the Claimant, such actions were not representations as stated by the Claimant, and definitely not indicative of a legal obligation.

26. In sum, the Defendant argues that the Claimant seeks to mislead the court and has submitted various misinterpretations of the facts. The Defendant contends it made no promises to indemnify the Claimant for his legal fees.

Discussion

27. It must first be noted that it is simply not within the scope of the SCT to decide matters of fact within the clearly complex history of this case and the various investigations. There have been many documents and assertions submitted to the Court and I shall not address them all, as this is not within the remit of this Court. Addressing every point muddies the waters, and is unnecessary when the matter before me is very clear; to decipher the weight of the claim, and to ask: does the Defendant owe the Claimant monies for legal fees, or indeed provide any indemnities?

28. This dispute is largely governed by DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 (the "DIFC Employment Law") in conjunction with the relevant Varied Employment Contract, however, it does not relate to the employment relationship *per se*, but rather the alleged indemnity agreement between the parties, which are all subject to the relevant case law in this area of contract law.

29. Firstly, with regards to establishing whether there is an indemnities obligation on behalf of the Defendant, I find that there is no such proof of the indemnity clause alleged by the Claimant. Having reviewed the exhibits to the Claimant's claim, I do not find that invoices and letters of engagement evidence that the Defendant provided indemnities nor that they are indeed liable to pay the legal fees relating to the aforementioned contentious investigation.

30. I agree with the Defendant insofar as the Claimant relies *inter alia*, on the Articles of Association dated 24 April 2017, and yet he fails to attach a copy of this document to the original Claim Form. On review of the document, I find that there is no explicit mention of indemnity and that the alleged `representations' are not substantial enough to amount to an obvious, clear cut, legal obligation of the Defendant to pay the Claimant's legal fees for all costs incurred in relation to the investigations.

31. In any event, the Defendant did not instruct the law firm which the fees relate to and did not grant permission or indeed even have knowledge of the instruction. The Defendant cannot be held responsible for the costs incurred and should not be required to reimburse the Claimant for fees that he incurred directly.

32. The Claimant alleges that he should be entitled to declarations on a full indemnity basis for future proceedings and costs incurred. I find this is not the case. Having reviewed the Defendant's exhibits in support of their defence, there is clear evidence before this Court that would point to the fact that the investigation commenced prior to the Claimant's commencement of employment. Thus, the Defendant's argument that it should not be held responsible for payment of legal fees relating to retrospective investigations is indeed valid.

33. I find that the Claimant has failed to make a credible case that he is owed monies by the Defendant; there is no evidence before this court of an indemnity clause, nor explicit contractual obligation of the Defendant company to pay the legal fees associated with this contentious investigation. Especially considering the circumstances of the Claimant's undisputed fleeing to Jordan, it is incomprehensible to assert that the Defendant company pay all the Claimant's legal fees that is a) in a different jurisdiction; b) was not instructed by them; c) was not agreed explicitly by them beforehand.

34. One simply cannot become embroiled in criminal investigations in another country and then foot the bill to one's previous employer in

another.

Conclusion

35. The Claimant's claim for an indemnity for legal fees `*in any jurisdiction*' in connection with regulatory/governmental/judicial investigations into Mr Jafer Jadud and Mr Jabyn Jadud relating to the floatation of the Jadud in KSA are dismissed in their entirety.

36. The Claimant's claim for an indemnity for all legal fees going *forward in any jurisdiction* in connection with investigations into Mr Jafer Jadud and Mr Jabyn Jadud, relating to the flotation of the Jadud are dismissed in their entirety, as are any interest and/or costs in the case.

37. Each party shall bear their own costs.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 17 June 2019

At: 11am