Claim No. SCT 131/2016

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 MARIAM DEEN

BETWEEN

GENISIS

Claimant

and

GRIAME LLC

Defendant

Hearing:**31 October 2016**

Judgment:**16 November 2016**

JUDGMENT OF SCT JUDGE MARIAM DEEN

UPON the Claim Form being filed on 17 August 2016;

UPON a Jurisdiction Hearing having been held before SCT Judge Natasha Bakirci on 5 September 2016;

UPON an Order being issued by SCT Judge Bakirci on 21 September 2016 finding the Small Claims Tribunal of the DIFC Courts to have jurisdiction to hear the dispute and giving leave to the Claimant to amend her Claim Form to reflect her Claim against the Defendant rather than the Defendant's Chief Executive Officer Jonathan James Anderson in his personal capacity;

UPON the parties being called on 6 October 2016 for a Consultation with SCT Officer Ayesha Bin Kalban and the parties not having reached settlement;

UPON the Counterclaim being filed on 6 October 2016;

UPON a Hearing having been held before SCT Judge Mariam Deen on 31 October 2016, with the Claimant's representative Mr Gentry and the Defendant's representative Ms Genoveva in attendance;

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

IT IS HEREBY ORDERED THAT:

1.The Defendant shall pay the Claimant a final settlement of AED 92,354.72 owed by the Defendant for unpaid salary.

2. The Defendant shall pay the Claimant AED 22,684.80 in lieu of providing the Claimant 30 days' notice of termination.

3. The Defendant shall cancel the Claimant's visa without delay, such procedure to be completed no later than 28 November 2016.

4. The Defendant shall reimburse the Claimant's Court fee in the amount of AED 1,380.84.

5. The Counterclaim is dismissed in full.

THE REASONS

Parties

6. The Claimant is Genisis (the "Claimant"), an individual filing a claim against the Defendant regarding her employment.

7. The Defendant is Griame LLCGriame LLC (the "Defendant"), a DIFC registered company.

Background

8. The underlying dispute arises over the employment of the Claimant by the Defendant as a Personal Executive Assistant pursuant to an employment contract dated 3 January 2016 (the "Employment Contract").

9. On 17 August 2016, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of unpaid salary.

10. The Defendant responded to the claim on 24 August 2016 by contesting the jurisdiction of the DIFC Courts and the SCT over the dispute.

11. Following a Jurisdiction Hearing on 5 September 2016 an Order was issued by SCT Judge Natasha Bakirci on 21 September 2016 finding the Small Claims Tribunal of the DIFC Courts to have jurisdiction to adjudicate the case and giving leave to the Claimant to amend her Claim Form to properly identify the Defendant rather than the Defendant's Chief Executive Officer in his personal capacity.

12. The parties met for a Consultation with SCT Officer Ayesha Bin Kalban on 6 October 2016 but were unable to reach a settlement.

13. On 31 October 2016, I heard submissions from the Claimant's representative Mr Gentry and the Defendant's representative Ms Genoveva following which the case was reserved for judgment. Both parties were provided the opportunity to submit further documentation based on the arguments made at the Hearing by no later than 3 November 2016. The Defendant submitted additional evidence on 3 November 2016 and the Claimant requested that her further observations received on 7 November 2016 be taken into consideration, despite being submitted late.

The Claim

14. The Claimant's case is that she was employed by the Defendant from 3 January 2016 onwards and her employment has not been terminated by the Defendant, nor has she offered her resignation to date.

15. The Claimant submitted that she was paid her full monthly salary of AED 23,000 by the Defendant for her work from January to March 2016 only. She alleged that she was not paid for her work over the subsequent months but acknowledges receipt of an additional payment from the Defendant of AED 12,500 for May 2016. Accordingly, she seeks payment of her unpaid salary and requests that her employment be terminated in accordance with Clause 6.1(b) of the Employment Contract which requires the Defendant to provide a 30-day period of notice if the Claimant's period of continuous employment exceeds 3 months.

16. Furthermore, the Claimant requests that her employment visa, which is still active and in the Defendant's name, be cancelled with immediate effect.

The Defence and Counterclaim

17. In its written submissions and at the Hearing, the Defendant confirmed its employment of the Claimant, stating that this is not a fact in dispute between the parties.

18. In summary, the Defendant alleges that the Claimant did not dedicate herself to working solely for the Defendant as she was also performing services for other employers throughout the term of her employment. A number of emails have been submitted into evidence in support of these allegations; the Defendant relies on the different titles the Claimant appears to attribute to herself in her email signature as well as the different company names she has corresponded on behalf of. Accordingly, the Defendant submitted at the Hearing that the Claimant was only employed by the Defendant until the end of March as it is asserted she began working for other employers after this time. It is denied that there are any unpaid wages owed to the Claimant by the Defendant.

19. As part of its Counterclaim the Defendant alleged that by working for other companies whilst simultaneously working from the Defendant's offices until they were vacated on or around 23 July 2016, the Claimant breached Clauses 8 and 9 of the Employment Contract regarding confidentiality and non-competition respectively. In its most recent written submissions dated 3 November, the Defendant summarised its Counterclaim in which it seeks the following:

(i) Repayment of AED 12,500 paid to the Claimant in June 2016 as she was no longer working for the Defendant at this time;

(ii) Indemnity of AED 7,110, being the cost of arranging the Claimant's visa in addition to the cost of cancelling the visa;

(iii) Damages for loss of opportunity as the Claimant is accused of defamation. It is alleged that she interfered with the Defendant's LinkedIn page by deleting information and updating its status to `Out of Business' and its location to Tanzania and Angola;

(iv) Interest to be payable on any award of this Court and for reimbursement of the Court fee and legal costs and expenses.

20. The Claimant responded to the Defendant's allegations by denying she worked for any third parties during the term of her employment with the Defendant. She submitted that in her role as Personal Executive Assistant she did only what she was asked to do and sometimes this involved acting on behalf of other companies which she understood to be affiliated or in partnership with the Defendant. With respect to the allegations regarding defamation, the Claimant submitted that she did not have exclusive access to the Defendant's LinkedIn page and denied responsibility for wrongful interference with it.

Discussion

21. This dispute is 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 Employment Contract.

The Claim

22. I have found the Defendant's submissions to be convoluted and contradictory with respect to the Claimant's claim for unpaid wages. In its submissions of 3 October 2016, the Defendant stated `we deny that the Claimant has any wages outstanding from the Defendant, the Claimant was paid all wages up to and including the month of June 2016' and alleges that the Claimant started working for 3rd parties on or around 2 July 2016. Yet in its submissions of 3 November 2016 the Defendant asserted that `the Claimant ceased to work full time, in accordance with the terms and conditions of her Employment Contract, for the Defendant on 1st March 2016' and seeks repayment of AED 12,500 (approximately half of the Claimant's salary) for the month of June. Even more confusingly, the Defendant's CEO clearly and unconditionally appeared to confirm

that the Claimant is an employee of the Defendant and stated `we will attend to the payment of her salary' in an email dated 13 July 2016.

23. In the Hearing the Defendant's representative submitted that it was for the Claimant to prove she was not paid for her employment and it was denied that any salary was due and owing. In fact, it was submitted that there had been an overpayment of salary in the sum of AED 12,500. However, DIFC Employment Law unequivocally places the duty of keeping adequate payroll records upon the employer; Article 16(1) states:

"For each employee, an employer shall keep records of the following information:

(a) the employee's name, date of birth, occupation, telephone number and contact address (both residential and postal);

(b) the date employment began;

(c) the employee's wages (gross and net, where applicable), and the applicable pay period;

(d) the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis;

(e) the benefits paid to the employee by the employer;

(f) each deduction made from the employee's wages and the reason for it;

(g) the dates of the national holidays taken by the employee and the amounts paid by the employer;

(h) the dates of the vacation leave taken by the employee, the amounts paid by the employer and the days and amounts owing; and

(i) sick leave and other special leaves of absence."

24. Therefore, it is for the Defendant to satisfy the Court through production of the relevant payroll records that the Claimant has been paid appropriately. I have had sight of payslips, provided by the Defendant, made in favour of the Claimant for the following dates: 3 January 2016 - 1 February 2016; 1 February 2016 - 1 March 2016 and 1 March 2016 - 1 April 2016. Accordingly, I am satisfied and the Claimant's representative at the Hearing agreed that the Claimant has been paid in full for the months of January, February and March. In addition, both representatives for the parties agreed that an additional payment had been made to the Claimant in the sum of AED 12,500 and in the Hearing this was attributed to the month of May. Although some written submissions relate this payment to April and others to June, I do not find the month to be of great significance and will defer to the consensus at the Hearing by associating it to May 2016. Therefore, the Claimant has not been paid her full salary for April, a portion of her salary is outstanding for May and full monthly salaries thereafter until the employment was terminated (to be considered below).

25. Unusually, the Defendant denies that any salary payments are outstanding, yet it appears to put forward a justification for non-payment of the Claimant's wages in the form of its allegations that the Claimant worked for third parties from March onwards. Although this is not presented as a direct defence to the claim for unpaid wages I will consider the submissions in that context.

26. It is worthy of note that the Defendant has not submitted or produced any evidence to demonstrate that the Claimant was ever warned against her behaviour or that any disciplinary action was taken against her regarding her alleged work for third parties. To the contrary, the Defendant's CEO confirmed the Claimant's employment in his email of 13 July 2016 which is some months after the Defendant alleges that the Claimant had begun working for other companies (from 1 March 2016).

27. One of the alleged employers of the Claimant is named as Mr Gander and I have had sight of several documents on the Defendant's letterhead which attribute to him the title `Head of Griame LLCGriame' as well as `CEO of GessicaGeneral Trading L.L.C' ("GessicaGessica"). In the Hearing, the Defendant's representative contended that Mr Gander had misrepresented the Defendant by using its letterhead and his title as `Head' of the Defendant and stated that there was no partnership or affiliation with Gessica (being one of the Claimant's alleged employers), or any of the other alleged employers. However, the Claimant asserted that she and the Defendant's CEO worked closely with Mr Gander during her employment with the Defendant and that she was also asked to undertake work for other companies such as Gessica, which she understood to be closely linked with the Defendant. She claimed to be unaware of how the companies were linked and stated she had always worked solely for the Defendant and completed work she was asked to by her superiors.

28. Although there is evidence of the Claimant corresponding on behalf of other companies, one of which was Gessica, I find it unreasonable that the Defendant would not have reprimanded or even terminated the Claimant upon discovering she was working for third parties without its consent. On the contrary, the Defendant's representative was adamant in the Hearing that there had not been any termination. Therefore, in the absence of evidence to demonstrate the Defendant's disapproval of the Claimant's behaviour upon finding out about it, I am inclined to believe that her work for any companies or persons other than the Defendant was done with the Defendant's knowledge, if not with its approval.

29. To clarify, I have found no conclusive evidence of the Claimant's alleged breach of the Employment Contract and accept (particularly in relation to Gessica) that the Claimant believed her work for this company to coincide with her work for the Defendant as she reported to Mr Gander in his capacity as Head of Griame LLC. The allegations regarding Mr Gander's misrepresentations about his authority within the Defendant company are a matter for the Defendant to deal with separately in an appropriate legal action against him should they see fit; the Claimant's case should not be burdened with the Defendant's legal disputes with third parties.

30. There remains the question of when the employment was terminated. Both parties agreed at the Hearing that the Claimant had not resigned, nor had the Defendant terminated her employment, therefore it is for the Court to determine the effective date of termination from the facts before it. The Claimant's representative stated in the Hearing that the Claimant continued to report to Mr Gander following the closing of the Defendant's offices in July and this points towards her still being employed by the Defendant, particularly as her employment visa was and is still active. The Claimant contends that she was aware of the existence of problems being faced by the Defendant's management and claimed that Mr Gander reassured her that these would be resolved shortly and provided her with a personal loan to assist her financially until her wages had been paid.

31. It was accepted by the Claimant's representative that she drew a line under her employment with the Defendant on or around the time that she filed her claim with the SCT. Conversely, the Defendant's representative submitted that the Claimant had effectively stopped working for it in March 2016 when she is accused of working for third parties. As mentioned above, I have found the Defendant's accusations to be unproven. If the Defendant had suspected that the Claimant was acting in breach of the Employment Contract it should have taken the appropriate action against her at that time, rather than raising these arguments in response to her claim for unpaid wages. No evidence of any warnings or disciplinary action against the Claimant have been produced, nor has the Defendant demonstrated any attempt to cancel the Claimant's employment visa or made submissions regarding a termination date after March 2016. Therefore, in the absence of any definitive evidence, I deem termination of the Claimant's employment to have taken place on 17 August 2016, the date her SCT Claim was filed. Accordingly, the Claimant is entitled to receive payment of her unpaid wages to this date.

32. Furthermore, as there was no clear termination with or without cause, the Claimant shall be entitled to receive a payment in lieu of her entitlement to a 30-day notice period, pursuant to Clause 6 of the Employment Contract:

> "6.1 This contract can be terminated:
>
> In writing, by either party at any time the termination notice shall be in a written form and must be presented in a certain minimum termination period prior to the termination date, as follows:
>
> (a) With not less than seven (7) days' notice during the first three (3) months of continuous employment;
>
> (b) With not less than thirty (30) days' notice if the period of continuous employment is three (3) months or more but less than five (5) years of continuous employment;
>
> (c) With not less than ninety (90) days' notice after five (5) years of continuous employment."

33. The Claimant was continuously employed by the Defendant from 3 January 2016 until 17 August and has been paid in full to March 2016. The Claimant seeks payment of her unpaid wages and submits in her Claim Form that she is `to accumulate wages until the appropriate notice is given'. It is my view she is entitled to unpaid wages until the effective date of termination, being 17 August 2016. Therefore, it follows that the Claimant is entitled to receive a full salary for the months of April, June and July, in addition to the outstanding portion of her salary for May, 17 days' salary for August and an additional 30 days in lieu of notice.

34. The Claimant is owed her monthly salary of AED 23,000 for April, June and July, which amounts to AED 69,000 (23,000 x 3). As AED 12,500 has already been paid with respect to May, AED 10,500 remains outstanding for that month (23,000 - 12,500). An additional 17 days' salary is owed for August; as the Claimants, annual salary was AED 276,000 her daily wage is equivalent to AED 756.16 (276,000/365) and she is owed a further payment for the 17 days of August in the sum of AED 12,854.72 (17 x 756.16). Therefore, the total amount owed to the Claimant for unpaid wages is AED 92,354.72.

35. An additional sum of AED 22,684.80 (30 x 756.16) is owed to the Claimant as payment in lieu of a 30-day notice period.

The Counterclaim

36. The Defendant sought repayment from the Claimant in the sum of AED 12,500 which it claims is an overpayment of salary as the Claimant was no longer working for the Defendant after March 2016. As I have determined that the Claimant's employment was effective until August 2016, it follows that the Defendant is not entitled to recover this amount.

37. No breach of the Employment Contract has been proven and as the Claimant was never terminated by the Defendant with cause, it is my view that there is no reason for the Claimant to be made responsible for the cost of arranging or cancelling her own employment visa. These costs would have ordinarily been borne by the Defendant and shall remain its responsibility.

38. With respect to the defamation allegation, I have had sight of the screenshot of the Defendant's LinkedIn page naming the Claimant and Mr Gian (an employee of the Defendant) as administrators of the page. At the top of the page it states that the Claimant was responsible for the last edit on 24 July 2016 and the screenshot displays the Defendant's status as `Out of Business' and its location in different countries. The Claimant denied being responsible for `defamation' of the Defendant through use of the page, claiming she did not have exclusive access to it; however, the emails between Mr Gian and LinkedIn (Defendant's Exhibit 22) show that Mr Gian only began the process of becoming administrator of the page on 23 August 2016, 1 month after the Claimant's edits were made. However, even if I was to find that the Claimant wrongly interfered with the Defendant's LinkedIn page, there is absolutely no evidence to suggest the changes to the Defendant's location or status on LinkedIn have caused any real element of loss to the Defendant. The Defendant has failed to prove that it has lost any business or `opportunity' for business as a direct result of wrongful interference to its page, particularly as the Defendant recovered administration of the page shortly thereafter (approximately 1 month after the edits were made) and I assume, would have corrected the misrepresentations at that time. Accordingly, I dismiss the Defendant's claim for damages.

39. Considering the above, there shall be no order for reimbursement of the Defendant's Court fee or legal costs.

Conclusion

40. I find that the Claimant was employed by the Defendant until 17 August 2016 and is therefore liable to pay the Claimant's unpaid salary between April to August in addition to payment in lieu of a 30-day notice period. The Claimant's Court Fee is also to be reimbursed. Furthermore, the Claimant's employment visa must be cancelled by the Defendant within 14 days. The Defendant's Counterclaim is dismissed in full.

Issued by:

Mariam Deen

SCT Judge

Date of issue: 16 November 2016

At: 11 am