THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

TARIG H.A.G RAHAMTALLA

Claimant

and

EXPRESSO TELECOM GROUP LTD

Defendant

JUGDMENT OF JUSTICE SIR PETER GROSS

Introduction

1. The substantive issues between the parties were dealt with in my judgment dated 8 August 2021 (the **"Judgment"**). The Order of the Court, of the same date, provided:

(1) that the Defendant (**"ETG"**) pay the sum of USD 404,896.67, within 28 days of the date of the Judgment; and

(2) by way of a Declaration, that the Claimant (**"TR"**) was entitled to a daily payment of USD 1,052.30 for the period between 18 May 2021 and 8 August 2021 and ordered that the sum thus calculated be paid by ETG to TR within 28 days of 8 August 2021.

2. As foreshadowed in the Judgment, I now deal with interest and costs. I am grateful to the parties for their respective submissions which have been carefully considered.

Interest

3. Interest can be taken very shortly.

4. In the event that the judgment sum was paid by 5 September 2021 (28 days after the Judgment), no interest is or could be claimed.

5. If, however, the judgment sum was not paid by 5 September 2021, then I agree with TR and order that interest should be paid on that sum at 1% over the Emirates Interbank Offer Rate (**"EIBOR"**) of 3 months reference, from the date of the Judgment, 8 August 2021 until payment is made. That is a just and fair outcome and, of course, payment of interest will have been avoided if the judgment sum was paid within the 28 days stipulated in the Judgment.

Costs

6. My discretion as to costs is governed by the provisions of DIFC Courts Rules (**"RDC"**) 38 and, especially here, RDC r.38.6, r.38.7 and r.38.9.

7. Two considerations can at once be mentioned and then put to one side:

(1) First, having regard to the provisions of RDC r.38.28 and following, I proceed to a summary assessment of costs. As I understand it, the parties agree to such an assessment. In any event, neither party has submitted that there is a good reason for a detailed assessment.

(2) Secondly, there is not, nor could there sensibly have been, any suggestion that I should award indemnity costs. Therefore, and in accordance with RDC r.38.17, costs will be awarded on a standard basis.

8. TR claims costs in the amount of AED 398,416.76, comprised of legal fees (AED 317,460.00) plus disbursements/expenses (AED 80,956.76). TR submits that these costs were all reasonably and properly incurred and argues that the full amount of such costs should be awarded. ETG's conduct in producing voluminous and irrelevant submissions, together with irrelevant documents, had caused TR to incur unnecessary costs. Moreover, ETG's counterclaim had been exaggerated and ETG had (prior to the proceedings) failed to pay sums admittedly due.

9. ETG submits that each party succeeded in part and failed in part, on both the claim and counterclaim. An order should therefore be made on an issue-by-issue basis. ETG had been successful on the vast majority of the contested claims/counterclaims before the Court, in particular those which had taken the most time. The Court should further take into account that TR was found to have breached his fiduciary duties to his employer (ETG) - a serious matter. In the circumstances, I should make an order in favour of ETG for a percentage of its costs and/or decline to make any order of costs in favour of TR and/or apply such discount as is appropriate to TR's claim for costs. The total sum claimed by ETG in respect of its costs amounted to AED 282,765.00 - a significantly smaller sum than that claimed by TR.

10. My starting point is that costs follow the event (RDC r.38.7(1)) on the amounts in question, TR was plainly the successful party. Importantly, the Penalty Claim (as described in the Judgment) a strikingly large sum was only due because ETG had failed to make timely payment in respect of

the gratuity and accrued annual leave where liability was admitted.

11. However, this is not a case for the mechanistic application of RDC r.38.7(1); that would not do justice or properly reflect the issues before the Court. Notably, ETG enjoyed success on a significant number of issues, in particular, TR being in breach of his fiduciary duties. That issue was both serious and time-consuming. To my mind and in accordance with RDC r.38.7(2), this is a case where, in my discretion, any order must acknowledge that TR's overall success is to be qualified by these further matters.

12. In my judgment, the simplest order, doing justice between the parties, is to order ETG to pay TR's costs - but significantly discounted to reflect ETG's measure of success in the proceedings, very much including the issue on breach of fiduciary duty and the counterclaim. In all the circumstances, I order that ETG is to pay TR 50% of its costs as assessed below.

13. Turning to summarily assess TR's costs and taking a broad brush and realistic approach to the sum claimed, some reduction is to be made to arrive at a figure proportionately and reasonably incurred. In my judgment, the 100% figure for TR's costs on a standard basis should properly be fixed AED 360,000.

14. I therefore order that ETG pay TR 50% of AED 360,000 = AED 180,000. I further order that those costs are to be paid within 28 days of the date of this Judgment on interest and costs.

Issued by:
Nour Hineidi
Registrar
Date of issue: 22 November 2021
Time: 1.30pm