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 OF DIFC COURTS

BEFORE SCT JUDGE NASSIR AL NASSER

BETWEEN

IFRA

Claimant

and

IKSU

Defendant

Hearing: **1 April 2018**

Judgment: **11 April 2018**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON this claim having been called for a hearing, the Claimant and the Defendant's representative attended the hearing;

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the amount of AED 298,437.42.

2. All other claims are dismissed.

3. The Defendant shall pay the Claimant the Court Fees in the sum of AED 5,968.74.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 11 April 2018

At: 1pm

THE REASONS

The Parties

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

2. The Defendant is iksu (herein "the Defendant"), a company registered in the DIFC located at DIFC, Dubai.

Background and the Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant in the position of "Consultant". However, there is one employment contract presented by the Claimant, but without the Parties' signature. Therefore, I will refer to this contract in this Judgment (the "Employment Contract").

4. Pursuant to the Employment Contract, the Claimant's total salary was AED 240,000 per annum and 20 days annual vacation leave per annum.

5. The Claimant alleges that he was employed from 1 November 2016 up to the termination date on 14 December 2017.

6. On 1 February 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking the sum of AED 320,149.00 which consists of his salary for the period of one year, vacation leave, one month Notice and end of service benefits.

7. On 21 March 2018, the Claimant amended the Claim Form claiming the sum of AED 330,549.00 which consists of his salary for the period of one year in the sum of AED 240,000, one month notice and remaining 14 days of December 2017 in the sum of AED 28,930, end of service gratuity in the sum of AED 13,808, twenty days annual leave in lieu in the sum of 13,333.2, 6 days annual leave for the one month notice and 14 days of December 2017 in the sum of AED 3,945 and immigration visa penalty for him and 3 dependents for 104 days which calculates to AED 25 per person up to 26 March 2018.

8. On 8 February 2018, the Defendant acknowledged the claim with intention to defend all of the Claimant's claim.

9. The parties attended the Consultation with SCT Judge Ayesha Bin Kalban on 19 February 2018 but were unable to reach a settlement.

10. The Claimant and the Defendant's representative attended the hearing listed before me on 1 April 2018.

The Claim

11. The Claimant's case is that he was employed by the Defendant from 1 November 2016, he was terminated on 14 December 2017 being provided him with his salary for one year, notice period, vacation leave and end of service gratuity. The Claimant also claims visa penalties for himself and 3 dependants in the sum of AED 10,400.00.

12. The Claimant presented the Employment Contract, however, this Employment Contract presented is not signed by the parties. The Claimant alleges that this was identical to the Employment Contract signed during the issuance of his Employment visa, as the DIFC Government Services require a signed Employment Contract or Offer Letter to issue Employment visas in the DIFC.

13. The Claimant now claims his entitlement pursuant to his Employment as per the Employment Contract which is alleged to be the binding contract between the parties.

14. The Claimant also alleges that due to the delay by the Defendant, the Government Service Office is charging penalties of overstay on the Claimant and three of his dependents in the sum of AED 25 per person per day.

The Defence

15. The Defendant alleges that around October 2016 the Claimant, having been known to the Defendant previously, approached the Defendant to be sponsored. The Claimant disclosed to the Defendant that he was near the end of his current visa, and as a matter of some urgency for both himself and his family, he required a new sponsorship at the earliest possible date.

16. In addition, the Defendant alleges that the Claimant further disclosed that he was unable to secure sponsorship via Isav Bank, a DIFC Category licensed entity which was historically both a shareholder and director. Furthermore, the Claimant proposed that he cooperate with the Defendant in the area of business development and origination and assist the newly established Defendant in generating revenue opportunities.

17. The Defendant alleges that in response to the Claimant's request for sponsorship, they informed the Claimant that the Defendant was a start-up entity with very limited financial resources, it would be unable to sponsor and compensate the Claimant in any capacity other than performance based.

18. The Defendant alleges that it was agreed between the Defendant and the Claimant that the Defendant would therefore sponsor and compensate the Claimant solely on the basis of performance. The Defendant also adds that it was defined and agreed between the parties to mean that the Claimant would only be entitled to a negotiated percentage of any and all revenue and or commission generated or originated by the Claimant.

19. In addition to the above, the Defendant alleges that it was further agreed and understood by the Claimant that the Claimant would only be eligible for an additional AED 240,000 upon the successful conclusion of a revenue generating transaction. In the event the Claimant was unsuccessful in generating revenue then the Claimant would be ineligible for any compensation.

20. The Defendant then alleges that for the period of 12 December 2016 (when the visa was issued) until 13 December 2017 the Claimant was not present, at any time, in the registered offices of the Defendant. Furthermore, the Claimant was never issued nor received company identification and access credentials, independent desk, telephone and office space, the Defendant's mobile telephone or business card. The Defendant alleges that communication between parties was largely limited to external meetings and or via SMS and wapp electronic communication platform.

21. The Defendant also adds that an internal analysis of their company bandwidth consumption of online data and the websites accessed through the company's network revealed that the Claimant's computer was one of the highest consumer bandwidth. In more details, the Defendant alleges that it was clear due to the data flows that the Claimant habitually spent significant amount of company time on online personal shopping and excessive "surfing of the internet" for non-work related matters.

22. The Defendant also alleges that the Claimant was unable to secure or introduce viable transactions to the Defendant. The Defendant, then decided not to renew the Claimant's visa upon its expiry and notified the Claimant of such via SMS on 7 December 2017, and officially, in writing, on 14 December 2017.

23. On 10 December 2017, the Defendant alleges that the Claimant requested (via SMS) that the Defendant provide a copy of the Claimant's contract. The Defendant was unable to furnish the document at that time and suggested that the Claimant seek this from the Claimant's daughter as she had originally processed the associated paperwork for the visa.

24. On 15 January 2018, the Defendant alleges that they had contacted the Claimant via SMS requesting his cooperation to cancel his visa, the Defendant alleges that he responded by SMS "Yes, but when are you going to pay the AED 240,000 payment for 2017". This is the first time the Claimant mentioned payments as alleged by the Defendant.

25. On 16 January 2018, the Defendant adds that the Claimant via email contacted the Defendant to "remind" the firm that an amount of AED 240,000 was due and requested that this amount be paid before 20 January 2018. On 17 January 2018, the Defendant responded to the message stating that "As you are aware the agreement between Iselyn Limited was entirely performance based...there is no payment due". It was also requested that the Claimant sign the permit Cancellation document.

16. On 17 January 2018, the Claimant in response to the above, did not refute that the Contract in question was performance based and responded by stating that (in reference to declination for demand of payment)" . we will take the necessary steps required".

27. On 27 January 2018, the Claimant contacted the Defendant via email to serve "Final Notice" for payment of AED 240,000 before "legal Action" would be undertaken.

28. On 2 February 2018, the Defendant received notification from DIFC Courts that it was the named Defendant in a claim in an amount of AED 320,149.00

29. The Defendant alleges that the particulars of claim as filed by the Claimant on 1 February 2018 are not only without merits but fail to state the basis and nature of the claim, provide any evidentiary or testimonials support or clearly set out the exact nature of the claim. In addition, the Defendant alleges that the claim also fails to reconcile the amount sought from the Defendant with prior demands for payment (as initially made on 15 January 2018 by the Claimant).

30. The Defendant alleges that its position is that there is no payment due to the Claimant and that such claims are both frivolous and opportunistic in nature.

31. Moreover, the Defendant alleges that the Claimant, an experienced and seasoned businessman, clearly understood, without ambiguity, the parameters, terms and conditions surrounding his engagement with the Defendant as well as the financial limitations and constraints on the Defendant as a new, "sole entrepreneur" business.

Discussion

32. 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 relevant Employment Contract.

33. The parties did not file a signed Employment Contract. The Claimant at the hearing provided an unsigned copy and the Defendant alleged that he was not sure whether the contract provided is the contract filed with Government Services.

34. The Process of obtaining an Employment visa in the DIFC, is that an Employer should file a signed offer letter or Employment Contract with the person he wishes to employ. Therefore, there is an Employment Contract between the Claimant and the Defendant, which both failed to provide a copy of. In order to serve justice and pursuant to Rule 4.9 of the Rules of the DIFC Courts, I have issued a disclosure order to Dubai International Financial Centre Authority - Government Services Office ("DIFCA-GSO") to provide the Courts with a copy of the Employment Contract between the parties that is signed by both the Claimant and the Defendant.

35. Therefore, I will determine this claim based on the evidence before me. I will consider the Employment Contract filed with DIFCA-GSO is the official contract between the parties as there is no other contract that supersedes it. Although at the hearing the Defendant argued that the parties entered into a "Performance Contract" verbally, it has failed to present any evidence to support this argument.

36. Therefore, as the Employment Contract provided by DIFCA-GSO is the Official Employment Contract and used to obtain Employment Visa and Company Card, this will be the Contract I will rely on when determining this claim.

37. The Claimant is claiming the sum of AED 330,549.00 which consists of his salary for the period of one year in the sum of AED 240,000, one month notice and remaining 14 days of December 2017 in the sum of AED 28,930, end of service gratuity in the sum of AED 13,808, 6 days annual leave for the one month notice and 14 days of December 2017 in the sum of AED 3,945 and immigration visa penalty for him and 3 dependents for 104 days as calculated at AED 25 per person up to 26 March 2018.

38. The Defendant also argued that should the Employment Contract provided by the Claimant be binding, pursuant to Clause 3.1 of the Employment Contract states that: "Employee not being in breach of any terms of any pre-existing employment contracts or declarations." The Defendant argues that the Claimant is in breach and therefore he is also in breach of the Employment Contract. However, I am not satisfied with

this argument and I am also not satisfied with the evidence provided and how are they relevant to this case. In fact, the Claimant's visa was issued by the DIFC Government Services Office (which is a Government Entity responsible for issuing visas in the DIFC) therefore, the Claimant's visa was issued pursuant to the signed Employment Contract with the Defendant and the visa was issued officially by a Government Entity.

39. The Claimant claims his entitlements pursuant to the Employment Contract signed by both parties. However, the Defendant argues that the parties actually entered into a verbal contract which consists of the Claimant being paid on performance basis and not as per the Contract.

40. The Defendant failed to provide any evidence of this argument. Article 16(1) of the DIFC Employment Law states the following:

"(1) 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 date 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 amount paid by the employer and the days and amount owing; and

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

41. The Defendant failed to provide any evidence of a performance-based Employment Contract, also failed to provide proof of payment on a performance basis and failed to provide any evidence of the Claimant's absence. The Defendant also alleges that the Claimant did not have a DIFC ID Card, the Claimant at the hearing provided a copy of the DIFC Employment Card and the DIFC Employment Visa.

42. Therefore, pursuant to the signed Employment Contract between the parties (the one provided by Government Services), the Claimant is entitled to his one year salary in the sum of AED 240,000, the Claimant is entitled to one month notice in the sum of AED 20,000, the Claimant is entitled to the remaining 14 days of December in the sum of AED 9,444.24, end of service gratuity in the sum of AED 14,000.00, twenty days annual leave in lieu in the sum of 13,333.2 and finally the Claimant is entitled to 2.49 days of vacation in lieu for the one month notice and 14 days of December in the sum of AED 1,659.98. However, in regard to the visa penalty in the sum of AED 10,400.00 for himself and three dependents, the Claimant failed to provide any evidence of such penalties incurred.

Conclusion

43. In light of the aforementioned, I find that the Defendant is liable to pay the Claimant his dues in the amount of AED 298,437.42.

44. All other claims are hereby dismissed.

45. The Defendant shall pay the Claimant the Court Fees in the sum of AED 5,968.74.



Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 11 April 2018

At: 1pm