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

GENAGER

Claimant

and

GREET LIMITED

Defendant

Hearing: **22 November 2016**

Judgment: **30 November 2016**

JUDGMENT OF SCT JUDGE MARIAM DEEN

ORDER

UPON the Claim Form being filed on 4 October 2016

AND UPON the parties being called on 18 October 2016 for a Consultation with SCT Officer Mahika Hart and the parties not having reached settlement

AND UPON a Hearing having been held before SCT Judge Mariam Deen on 22 October 2016, with the Claimant and the Defendant's representative in attendance

AND UPON reviewing the documents and evidence on the Court file

IT IS HEREBY ORDERED THAT:

1.The Defendant shall pay the Claimant a final settlement of AED 18,410.84 with respect to unpaid salary from 1 June 2016 to 28 June 2016.

2. The Defendant shall pay the Claimant AED 92,711.73 as a penalty pursuant to Article 18(2) of DIFC Employment Law and an additional AED 657.53 per day from the date of this Judgment, until payment is made.

3. The Defendant shall pay the Claimant AED 890 as reimbursement of visa fines incurred by the Claimant.

4. The Defendant shall reimburse the Claimant's Court fee in the amount of AED 1,685.32.

THE REASONS

Parties

5. The Claimant is Granger (the "Claimant"), an individual filing a claim against the Defendant regarding her alleged employment.

6. The Defendant is Greet Limited, trading as Greet Middle East (the "Defendant"), a DIFC registered company.

Background

7. The underlying dispute arises over the alleged employment of the Claimant by the Defendant and the subsequent termination of her employment.

8. On 4 October 2016, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of certain employment entitlements in the sum of AED 85,952.04 (equivalent to USD $23,388.31). On 19 October 2016, the Claimant amended her claim form to remove certain officers as defendants in their individual capacity, leaving Greet Limited as the sole Defendant in the case.

9. The Defendant responded to the claim on 12 October 2016 indicating its intention to defend the claim in full.

10. The parties met for a Consultation with SCT Officer Mahika Hart on 18 October 2016 but were unable to reach a settlement.

11. On 22 November 2016, I heard submissions from the Claimant and Ms Representative, the Defendant's authorised representative, following which the case was reserved for judgment. The Claimant was provided additional time to submit further evidence relating to the value of the visa fines for which reimbursement was being sought; these were provided on 23 November 2016.

The Claim

12. The Claimant's case is that the Defendant employed her as `Head of Compliance' under the terms of an employment agreement dated 3 April 2016 (the "Greet Limited Employment Agreement"), with the Defendant's CEO and Head of Middle East, Mr CEO and Mr SAM respectively, being present at the time of her job offer. She submits that both were also present at a meeting on 28 June 2016, in which she was told by Mr CEO that her employment was being terminated. At the Hearing the Claimant stated that she had worked with Mr CEO on several occasions but understood that she was to report to Mr SAM as her line manager and `Supervisor' as he was referred to in the Greet Limited Employment Agreement, but that the Defendant company, run by Mr CEO, was her ultimate employer.

13. A second employment contract entered into evidence by the Defendant names General Trading LLC ("Gen Trade") as the Claimant's employer and is also dated 3 April 2016 ("Gen Trade Employment Contract"). The Gen Trade Employment Contract appoints the Claimant `Head of Compliance Middle East but under Greet LLC. In the Hearing the Claimant sought to clarify that the Gen Trade Employment Contract preceded the Greet Limited Employment Agreement and that she had queried the employer being named as Gen Trade with Mr SAM's Personal Executive Assistant. The Claimant was informed that the wrong contract template had been used and was subsequently provided the Greet Limited Employment Agreement on 19 April 2016, which named the Defendant as her employer. The Claimant signed and post-dated the Greet Limited Employment Agreement to 3 April 2016, being the date her employment had commenced; she submitted that it superseded the original Gen Trade Employment Contract and she had always considered the Defendant to be her employer.

14. The Claimant claims that the Defendant paid her salary for April and May 2016 but the month of June 2016 is still outstanding. Furthermore, the Claimant seeks Article 18 of DIFC Employment Law be applied, which would impose a daily penalty upon the Defendant, to be paid to the Claimant in the amount of her daily wage until the arrears are satisfied.

15. In addition, the Claimant has applied to recover the cost of visa fines in the sum of AED 890 from the Defendant. It was submitted that the Defendant represented that it would secure a DIFC employment visa for the Claimant and was in possession of her passport for approximately 6 weeks for this purpose, before she was terminated. The Claimant, therefore, holds the Defendant responsible for the fines being incurred and seeks to be reimbursed.

The Defence

16. In summary, the Defendant denied employing the Claimant at any time, alleging that she was in fact employed by Gen Trade and seconded to the Defendant, working under the instruction of Mr SAM. It was submitted that the relationship between the Defendant and Gen Trade was governed by a Service Provider Agreement dated 1 February 2016 ("Service Provider Agreement") and it was pursuant to this that Mr SAM provided his services to the Defendant. The Defendant denied knowledge of the Greet Limited Employment Agreement and submitted that the Gen Trade Employment Contract governed the Claimant's employment relationship with Gen Trade and accordingly, Gen Trade should be liable for the Claimant's unpaid wages.

17. The Defendant submitted that the salary payments claimed to have been received by the Claimant from the Defendant were in fact a loan arranged between Mr CEO and Mr SAM. The Defendant asserted that following a request made by Mr SAM, the Defendant had arranged to pay the salaries of Gen Trade staff members for the month of May 2016. The Defendant did not submit any documentation to evidence this loan agreement.

18. With respect to the Claimant's submissions regarding her employment visa, it was asserted that it was Mr SAM who engaged with Visa Co LLC ("VISA CO") on behalf of Gen Trade, to process a visa for the Claimant; a 3-month Service Contract between Gen Trade and Visa Co, commencing in March 2016 has been produced in support of this argument. The Defendant denied that it was in the process of arranging the Claimant's employment visa and as it was Gen Trade that instructed Visa CO, the Defendant should not be liable for any visa fines incurred by the Claimant.

Discussion

19. This dispute is governed by DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 ("DIFC Employment Law") in conjunction with the Greet Limited Employment Agreement and/or Gen Trade Employment Contract, in so far as they are found to be valid.

20. The Claimant confirmed in the Hearing that she was seeking payment from the Defendant of unpaid salary for the 28 days she worked in June 2016. In order to determine whether the Defendant is liable to pay any unpaid salary to the Claimant, an employment relationship between the parties must first be established.

The Employer

21. The existence of two employment contracts in this case complicates the issue of who was employing the Claimant at the relevant time and I will consider the evidence before the Court to determine which, if any, is valid. The Claimant sought to support her arguments as to why the Greet Limited Employment Agreement was valid and superseded the Gen Trade Employment Contract using the following email correspondence:

(i) On 2 March 2016, the Claimant was sent an offer of employment from Ms Assistant using her title of `Executive Assistant, Greet Limited' from an `@Greet Limited.ae' email account stating -

"We are delighted to make you the following job offer. The position we are offering is that of Head of Compliance at a salary of 20,000

dirham's.This position reports to Mr SAM.Benefits Information relevant to the position: Health care, Visa."

(ii) On 18 April 2016, the Claimant was sent an email from Ms Assistant stating -

"A Greet Limited employment contract has now been created.Your commencement date should be noted as the first date you started working here at Greet. Also today I should have everyone's passport and photos as your visas are being processed quickly and these are the final steps before your medical."

(iii) On 19 April 2016, the Claimant was sent a further email from Ms Assistant with an attachment titled `Granger Contract - Greet Limited.docx' and was instructed to "*please see attached contract*". The Claimant stated that following her signing of the Gen Trade Employment Contract she had queried the employer being named as Gen Trade and was subsequently sent the correct Greet Limited Employment Agreement as an attachment to this email.

(iv) On 4 April 2016, Ms Assistant had sent an email with the title `Greet Introduction' to 2 individuals and copied to the Claimant and Mr SAM stating -

"Ms Granger has just joined the Greet Limited team"

(v) On 21 April 2016, Mr Manager using the title `General Manager, Greet Limited' sent an email to Mr CEO, copied to the Claimant containing a `staff list with job titles and roles of our staff here' which included Mr SAM as Head of Middle East and the Claimant as Process Consultant. Mr CEO responded stating -

"I am comfortable with this"

(vi) On 6 April 2016, Ms Secretary using the title `Executive Assistant to Mr CEO (CEO)' sent an email to the Claimant arranging her business trip to the United Kingdom, stating -

"I hope you are well and enjoying your time at Greet Limited"

22. The Claimant relied on the above emails as evidence of her being treated as an employee of the Defendant, as opposed to Gen Trade. She also submitted that she used an `@Greet Limited.ae' email account and attended the registered offices of the Defendant throughout her employment.

23. The Defendant relied on the existence of the Gen Trade Employment Contract to establish an employment relationship between the Claimant and Gen Trade rather than the Claimant and Defendant. It was submitted that the Claimant worked for the Defendant but was `seconded' to it by Gen Trade just as another employee, Mr Example, is alleged to have been. At the Hearing, the Defendant's representative claimed that Mr Example had a Gen Trade employment contract and visa and was paid by Gen Trade while providing services to the Defendant pursuant to the Service Provider Agreement but reporting to Gen Trade at all times and the Claimant had been providing services to the Defendant in the same way.

24. However, the Claimant denied having any knowledge of the Service Provider Agreement. At the Hearing she asserted that Mr CEO was present in several of her meetings, at her interview and termination and had permitted Mr SAM to correspond with her using the title `Head of Greet Limited Middle East', giving her the impression that the Defendant employed Mr SAM. The Claimant submitted that she could at no point have been expected to believe she was working pursuant to the terms of a Service Provider Agreement.

25. At the Hearing the Defendant's representative stated that the Claimant had signed the Gen Trade Employment Contract before the Greet Limited Employment Agreement and, therefore, she had already entered an employment relationship with Gen Trade which would preclude her from entering a second with the Defendant. The Claimant's representative also questioned why the Claimant would have signed the Gen Trade Employment Contract at all, as it was on Gen Trade letterhead and clearly named the employer as being Gen Trade. The Claimant responded that she hadn't initially realised this when she signed it, she wasn't familiar with Gen Trade and always understood the Defendant to be her employer which was the reason for her querying the Gen Trade Employment Contract with Ms Assistant and it being replaced by the Greet Limited Employment Agreement.

Finding

26. I am inclined to believe that the Claimant perceived the Greet Limited Employment Agreement to be a `corrected' version of the original Gen Trade Employment Contract, rather than a second contract, as the Defendant suggests. Even in the Gen Trade Employment Contract itself, the Claimant's position was specified as being `Head of Compliance Middle East but under Greet Limited Middle East' so I do not find it unreasonable for the Claimant to have signed it initially; however, her questioning of the contract which lead to her being provided the Greet Limited Employment Agreement naming the Defendant as the employer is indicative of the Claimant's understanding of who her employer was to be.

27. Furthermore, the clear difference between the circumstances of Mr Example's and the Claimant's employment is, as the Claimant's representative acknowledged at the Hearing, that Mr Example did not have an equivalent of the Claimant's Greet Limited Employment Agreement. The very fact that the Claimant sought clarification regarding her employer's identity and was provided with the Greet Limited Employment Agreement supports her assertion that she intended to be entering an employment relationship with the Defendant. Instructions from Ms Assistant in her email of 18 April 2016 appear to request employees to date the contracts with the date they commenced employment. Therefore, I find the Claimant's post-dating of the Greet Limited Employment Agreement to 3 April 2016 to be reasonable in the circumstances.

28. Mr SAM, Ms Assistant, Mr Manager, Ms Secretary and Mr Example all appear to have held themselves out as being Greet Limited staff in their correspondence with the Claimant by the use of their job titles, `@Greet Limited.ae' email accounts and representations made regarding the procurement of an employment visa, Greet Limited abbreviations and attachments and references to the Claimant being part of the Defendant's `team'. Irrespective of whether the Defendant employed these individuals in reality, the form and nature of their emails with and about the Claimant

support why she reasonably understood herself to be working for the Defendant. The above-mentioned observations, together with the fact that the Claimant was using an `@Greet Limited.ae' email address rather than a Gen Trade one, indicate that the Greet Limited Employment Agreement was intended to and should supersede the Gen Trade Employment Contract.

29. It is not untenable for the Defendant to have genuinely intended for the Claimant to have provided services to it under a secondment relationship from Gen Trade. However, the burden of proving this defence lays squarely with the Defendant and I am not satisfied that it has shown, on the balance of probabilities, that it had anything other than an employment relationship with the Claimant. It was claimed that Mr Example had been successfully seconded to the Defendant by Gen Trade and that the Claimant had a similar relationship, but in the absence of evidence proving this arrangement I must find there to be a valid employment relationship between the Claimant and Defendant. Particularly, I am satisfied that the Claimant's salary for April and May 2016 had been paid by the Defendant on 3 and 31 May 2016 respectively, strengthening the proposition that it was the Claimant's employer.

30. At the Hearing, the Defendant's representative initially questioned the authenticity of the Claimant's bank account screenshots which showed payments of AED 15,000 and AED 20,000 had been received from `by Greet Limited'. Upon the Claimant's production of her original bank statement corroborating the payments and an email dated 4 September 2016 from Bank LLC confirming payments had been made by `Greet Limited', it was accepted that the payments came from the Defendant's United Kingdom office. However, it was submitted that this was in the form of a loan arrangement from the Defendant's United Kingdom office to Mr SAM and not intended as a payment of wages. Again, in the absence of evidence corroborating the `loan' arrangement or documenting what had been agreed between the Defendant/Mr CEO and Gen Trade /Mr SAM, these payments simply appear as wages paid directly from one of the Defendant's offices to the Claimant, as would be expected from an employer to its employee.

31. The Defendant asserted that it had no knowledge of the Greet Limited Employment Agreement which was signed by Mr SAM using the title `Head of Middle East' of the Defendant. The Defendant maintained that Mr SAM worked with it pursuant to the terms of a Service Provider Agreement which would not have entitled him to employ staff members on its behalf, hold himself out as having authority to bind the Defendant or incur any expenditure in the name of the Defendant. Therefore, the next question to address is whether Mr SAM had the requisite authority to sign the Greet Limited Employment Agreement on the Defendant's behalf.

Doctrine of Apparent Authority

32. Following the approach taken by the Court of First Instance in *Ginette PJSC v Geary Middle East FZE & Geary Limited* [2015] DIFC ARB 012, although the Defendant claims that Mr SAM did not have express authority to enter into the Greet Limited Employment Agreement on its behalf, he can be found to have `apparent authority' under DIFC law if the Court is satisfied that the conduct of the Defendant, reasonably interpreted, caused the Claimant to believe that the Defendant consented to having the Greet Limited Employment Agreement signed by Mr SAM, purporting to act for the Defendant.

33. The Doctrine of Apparent Authority (the "Doctrine") is set out in Articles 130 and 131 of DIFC Contract Law, No. 6 of 2004:

> "130. Apparent authority
>
> Apparent authority is the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's conduct towards such third persons.
>
> 131. Creation of apparent authority
>
> Except for the conduct of transactions required by statute to be authorised in a particular way, apparent authority to do an act is created as to a third person by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him."

34. From the Claimant's submissions, it would appear that Mr SAM clearly held himself out as having the requisite authority to sign the Greet Limited Employment Agreement as he signed using the title `Head of the Middle East' of the Defendant. In addition to Mr SAM being present at the Claimant's interview, he is also named at Clause 1.6 of the Greet Limited Employment Agreement as the Claimant's "Supervisor". Mr CEO's alleged presence at the time of the Claimant's interview and termination would have also supported the Claimant's understanding that Mr SAM had authority to hire her and that she was ultimately working for the Defendant as Mr CEO, CEO of the Defendant company appeared to approve of Mr SAM's dealings with the Claimant. Despite the job title being incorrect in Mr Manager's email of 21 April 2016, Mr CEO's response to the staff list looks to confirm that the Claimant was a member of his `staff'. I have also had sight of an email written by Defendant's representative himself dated 26 June 2016, with his `thoughts on staffing' in which he lists the reasons to retain or dismiss employees, including the Claimant, further indicating that he had influence over her employment.

35. As mentioned above, it would have been perfectly reasonable for the Claimant to have been seconded to the Defendant, but no corroborating evidence has been produced. If the Claimant had been seconded, as Mr Example allegedly was, this should have been clearly documented to avoid the current legal dispute. In the absence of clear or persuasive evidence to the contrary I do not believe it is far-fetched for the Claimant to have believed that she was employed by the Defendant and that Mr SAM had the requisite authority to sign the Employment Agreement on behalf of the Defendant.

36. I am satisfied that Mr SAM had `apparent authority' under the Doctrine, even if actual authority was lacking. There may be no evidence of Mr SAM being expressly authorised to sign the Greet Limited Employment Agreement, however this is obviously distinct from any evidence being furnished proving he was not authorised to sign on behalf of the Defendant.

37. To summarise, the Claimant brings this case and the burden of proving it rests with her. It is my view that her explanation regarding the existence of two employment contracts is convincing. The Greet Limited Employment Agreement, taken in light of the multitude of emails produced by the Claimant and the apparent promise of an employment visa made at the time of her job offer and thereafter, as well as salary payments being

made directly by the Defendant, all evidence a valid employment relationship between the parties. The Defendant has failed to substantiate its defence that the Claimant was not, in fact, employed by the Defendant company. It follows that, in the absence of evidence to the contrary, the Defendant is responsible for unpaid salary owing to the Claimant up to the date of termination, which I will consider below.

38. If the Defendant believes Mr SAM to have fraudulently misrepresented it and/or acted beyond his authorised scope under the Service Provider Agreement, this is a separate matter between the Defendant and Mr SAM and/or Gen Trade, for which it may be appropriate to take legal action. However, it would not be in the interests of justice to consider legal issues between the Defendant and third parties in the context of this dispute.

The Effective Date of Termination

39. The Claimant stated that she received oral and written notification of redundancy from Mr CEO and Mr SAM on 28 June 2016. The written notice is signed by Mr SAM and contains reference to `warnings' given to the Claimant, however it is denied that these were given. The Claimant accepts that she was terminated on 28 June 2016.

40. Pursuant to Article 59(2)(b) of DIFC Employment Law the Claimant would have been entitled to a 30-day period of notice as she was continuously employed for more than three months but less than five years. However, Article 59(3) states:

> "This Article will not prevent an employer and employee from agreeing to a longer or shorter period of notice nor shall it prevent either party from waiving notice or accepting a payment in lieu of notice."

41. Therefore, as Clause 19.1.1 of the Employment Agreement states that there shall be zero days' notice if the period of continuous employment is less than six months, the parties have agreed that the Claimant is not entitled to any notice and no objection to this has been raised.

42. Ordinarily it would be for the employer to prove that the employee's entitlements have been paid, however, considering the Defendant's denial of its employer status I rely on evidence produced by the Claimant in the form of her BANK LLC account statements confirming the following payments from `Greet Ltd':

> "3 April 2016 AED 15,000
>
> 31 May 2016 AED 20,000"

43. The Claimant confirmed in the hearing that she is satisfied she has been paid in full for her work up to and including 31 May, as she was given an additional AED 5,000 in cash to make up for the deficit in her first salary instalment. As I have found the date of termination to be 28 June 2016 she is entitled to a further 28 days of salary. The Claimant's agreed monthly wages were AED 20,000; thus, the daily wage can be calculated as follows: (20,000 x 12) / 365 = AED 657.53. Accordingly, I find that the Claimant is owed AED 18,410.84 (657.53 x 28) for the 28 working days she was not paid.

Article 18 of the DIFC Employment Law

44. In her Claim Form and at the Hearing, the Claimant confirmed that she sought the penalty under Article 18 of DIFC Employment Law to be activated. It provides:

> "(1) An employer shall pay all wages and any other amount owing to an employee within fourteen (14) days after the employer or employee terminates the employment.
>
> (2) If an employer fails to pay wages or any other amount owing to an employee in accordance with Article 18(1), the employer shall pay the employee a penalty equivalent to the last daily wage for each day the employer is in arrears."

45. The Defendant has not shown any attempts to pay the Claimant what she was owed within 14 days of her termination. Therefore, in accordance with the DIFC Courts precedent set by the judgment of Justice Roger Giles in *Asif Hakim Adil v Frontline Development Partners Limited* [2014] DIFC CFI 015 and the judgment of H.E. Justice Ali Al Madhani in *Pierre-Eric Daniel Bernard Lys v Elesco Limited* [2014] DIFC CFI 012, the Claimant is entitled to Article 18 penalties running from 14 days after her official date of termination until the date payment is made. The Claimant had been informed that she would be paid her final salary on 1 July 2016, however, for the purposes of Article 18, the relevant date to calculate the 14 days from is that of termination. Accordingly, the Defendant has been in arrears since 13 July 2016 (14 days following termination on 28 June 2016) and the penalty began to accrue at the daily rate of AED 657.53 from this date.

46. As of the date of this Judgment, the penalty is owed for 141 days from 13 July 2016 until 30 November 2016, totaling AED 92,711.73 (141 x 657.53), with the daily penalty of AED 657.53 continuing to accrue until the date of payment. The Claimant has made submissions to the effect that she had tried to recover her unpaid wages from the Defendant and instructed lawyers for this purpose but due to her employment being denied, was not successful in recovering the owed sums. Therefore, I am satisfied that there has been no unreasonable delay in the bringing of the Claim.

Visa fines

47. As the Defendant's employer status has been established, it follows that it would be the Defendant's responsibility to obtain an employment visa for the Claimant, as its employee. I am satisfied that the visa had been promised to the Claimant in several emails, including from Ms Assistant on 2 March 2016 and 18 April 2016. The contents of an email chain dated 17 May 2016 from Mr Example regarding `Visa Cancellation Paper' further support that the process of arranging the Claimant's employment visa had commenced and the Claimant submitted that she had physically handed her passport to Ms Assistant for this reason.

48. There is no conclusive evidence regarding why the visa was not obtained but an email dated 10 July 2016 from Visa Co points to the

Defendant being its client. Moreover, although I've seen that the Service Contract between Visa Co and Gen Trade supports the Defendant's assertion that it did not engage Visa Co's services, invoices from Visa Co are addressed to the Defendant rather than Gen Trade. Regardless of who engaged Visa Co, it seems unlikely that the Defendant would be paying (or at least invoiced to pay) for visa procurement services that it was not aware of and responsible for. If this was not the reality, better business practices needed to be implemented to provide clarity and avoid this type of confusion and potential liability.

49. I am satisfied that the Claimant mitigated the fines by personally recovering her passport from Visa Co after approximately 6 weeks and should be entitled to recover the value of the fines as they were incurred as a direct result of the Defendant's failure to procure the appropriate visa for the Claimant. The Claimant produced evidence of the value of the fines in the form of penalty notices 27543 and 27544 in the sums of AED 670 and AED 220, respectively; these corroborate that the sum of AED 890 is due and owing to her.

Conclusion

50. In light of the aforementioned, I find that the Defendant was the Claimant's employer and the Greet Limited Employment Agreement to be valid. The Defendant is liable to pay the Claimant's unpaid salary and a penalty for every day that it has been in arrears, pursuant to Article 18 of DIFC Employment Law. Furthermore, the Defendant is liable to reimburse the Claimant for visa fines incurred and with respect to the Court Fee.



Issued by:

Mariam Deen

SCT Judge

Date of issue: 30 November 2016

At: 4 pm