Claim No. SCT 276/2017

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 NATASHA BAKIRCI

BETWEEN

HOLLY INTERNATIONAL (UAE) LIMITED

Claimant

and

HAMISH MIDDLE EAST

Defendant

Hearing:**28 February 2018**

Judgment:**12 March 2018**

JUDGMENT OF SCT JUDGE NATASHA BAKIRCI

UPON the Claim Form being filed on 9 October 2017;

AND UPON a Jurisdiction Hearing having been held on 13 November 2017 before SCT Judge Nassir Al Nasser, who found that the DIFC Courts had jurisdiction to hear the claim;

AND UPON a Consultation having been held on 22 November 2017 before SCT Judge Lema Hatim and the parties having failed to reach settlement;

AND UPON a Hearing having been held before me, SCT Judge Natasha Bakirci on 28 February 2018, with the Claimant's representative attending and the Defendant's representative participating via telephone;

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 220,039 in respect of unpaid invoices.

2. The Defendant shall pay the Claimant's court fee.

Issued by:

Natasha Bakirci

SCT Judge

Date of issue: 12 March 2018

At: 4pm

THE REASONS

The Parties

1.The Claimant, Holly International (UAE) Ltd, is a licensed company in the DIFC specialised in recruitment consultancies ("the Claimant").

2. The Defendant is a licensed company in the DIFC, specialised in financial services ("the Defendant").

The Claim

3. The Claimant claimed that the Defendant owed it 220,039 AED in respect of 7 invoices, maintaining that it had entered into a contractual relationship with the Defendant company to provide it with sales executives, which it fulfilled.

4. The Claimant relied in particular on a document entitled "Assignment Confirmation" dated 01/02/2016 which was signed by a Mr Hari and stamped on behalf of Hamish Limited. They further relied on emails sent by Mr Hari to them from a Hamish Middle East email address concerning the recruitment candidates required, as well as a Board Resolution which they argued authorised both Mr Hari and Harlee to act as signatories on behalf of Mr Hajrah, CEO of Hamish Middle East. That Board Resolution is addressed to Dubai and is dated 11 January 2016 (received 12 January 2016).

5. The Claimant further averred that the Defendant's representative, its CEO Mr Hajrah had personally been involved in the recruitment of their proposed candidates, as well as their subsequent performance reviews. Furthermore, the Claimant alleged that its name was clearly visible on the CVs of candidates, so it was difficult to believe that the Defendant company's CEO was not aware of its involvement.

The Defence

6. The Defendant company denied that it had entered into any such contractual arrangement with the Claimant, asserting that it was a separate company which had contracted with the Claimant, namely "Harvir General Trading".

7. The Defendant's representative and CEO alleged that the first time he became aware of the Claimant's claims against the Defendant company was in June 2016, which was a number of months after which the Claimant asserted that it had entered into a contract with the Defendant company.

8. As regards a Variation Agreement dated 23 November 2015, which the Claimant had referred to in support of its claim, the Defendant asserted that Mr Hari who purported to sign on behalf of the Defendant Company as CEO, was never in fact CEO of any Hamish entity and the Defendant denied that they were aware of that Agreement. Moreover, the Agreement between the Claimant and Hamish Middle East was dated 23 November 2015, whereas Hamishs Middle East was not approved by the DFSA until 1 January 2016.

9. As regards the "Board Resolution" dated 11 January 2016, the Defendant highlighted that the document was addressed to DIFC (DIFC) and not the Claimant. Furthermore, the Resolution explicitly required two signatories - both Mr Hari and a Mr Harlee. That document was signed by the Defendant's CEO to facilitate the installation of telephones in the DIFC building, that is why it was addressed to DIFC and required two (and not one) signatures.

10. As for the Assignment Confirmation signed by Mr Hari dated 1 February 2016, this was a proposal which was signed and not a contract and had no terms and conditions. The validity of the stamp was disputed and the Defendant informed the Court that there was a criminal case ongoing against Mr Hari for *inter alia*, fraud, fraudulent misrepresentation and theft of a company stamp.

11. In sum, the Defendant stressed that there was no valid agreement between the Claimant and Hamish Limited, or Hamish Middle East. The contract was between the Claimant and Mr Hari's company Harvir. In fact, Harvirhad used the Claimant to recruit Mr Hari's Personal Assistant on 3 January 2016. That invoice was issued to and paid by Harvir, who paid the Personal Assistant's salary. Moreover, the people that Mr Hari recruited via the Claimant were issued Harvircontracts and paid by the latter. Harviroperated under an outsourced service agreement with the Defendant company, the candidates had been employed by Harvirto promote and develop a business on behalf of the Defendant company. That service agreement dated 1 February 2016 did not permit Mr Hari to enter into any contracts on behalf of the Defendant.

12. This was a damage limitation/ recovery exercise by the Claimant as they had not been able to get Mr Hari to pay them. The Claimant should have done its due diligence and checked the company license for the authorised signatories of the Defendant company before entering into any contractual arrangements.

13. Lastly, as regards the Claimant's allegation that the Defendant's CEO was personally involved in the recruitment process, Mr Hajrah averred that he had been invited to assist with recruitment and appraisals by Mr Hari but did not know how those candidates had been shortlisted.

DIFC Courts Jurisdiction

14. Rule 53.2 of the Rules of the DIFC Courts ("RDC") requires that the Small Claims Tribunal ("SCT") hears only cases that fall "within the jurisdiction of the DIFC Courts." The jurisdiction of the DIFC Courts is determined by Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended ("Judicial Authority Law"), which provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, which are, as relevant:

> "(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;
>
> (b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract;
>
> (c) Civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within DIFC and is related to DIFC activities; .

(e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations.

(2) .civil or commercial claims or actions where the parties agree in writing to file such claim or action with [the DIFC Courts] whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

15. As SCT Judge Nassir Al Nasser found in his Order of 16 November 2017, as both parties are DIFC registered entities, the DIFC Courts would have jurisdiction to consider this claim pursuant to Article 5(A) of the Judicial Authority Law.

16. Based on the above and given the value of the claim at 220,039 AED, I am satisfied that the DIFC Courts SCT has the jurisdiction to hear this case.

Discussion

17. I have considered the documents submitted in the case-file, together with the oral submissions I heard during the Hearing carefully.

18. I have come to the following conclusion. I would disagree with the Defendant's assertion that the Assignment Confirmation dated 1 February 2016 is not a contract as it does in fact contain terms and conditions regarding recruitment fees and advertising fees, as well as making reference to the Claimant's standard terms and conditions.

19. As regards the Board Resolution which is dated 11 January 2016 and shortly precedes the Assignment Confirmation which formed the basis of the alleged contract between the Claimant and the Defendant, although the Resolution is indeed addressed to Emirates Financial Towers, it is clearly signed by the Defendant's CEO, Mr Hajrah, and states "In future, any momentous document that require(s) signature from CEO of HME can be signed by Mr Hari & Harlee." I take the view that on the plain meaning of the words, the Claimant could not be faulted for taking this document in good faith to be an authorisation by the Defendant's CEO for both Mr Hari and Mr Harlee to act as signatories, not necessarily simultaneously.

20. The "Variation Agreement" dated 23 November 2015 is indeed signed by "Mr Hari" as CEO of Hamish, and seems more problematic as one might ask why the Claimant did not notice that there appeared to be two individuals signing as "CEO" of the Defendant company, namely Mr Hari and Mr Hajrah. I note that the Variation Agreement is dated 23 November 2015 whereas the Defendant company appears to have been registered in the DIFC two days later on 25 November 2015 but make no final decision in this connection.

21. Although the Defendant's representative spoke eloquently and convincingly and made reference to the employment of a Personal Assistant by Harvir (invoice number 0007691 which does not appear to form part of the Claimant's claim for unpaid invoices), the invoices which form the basis of the Claimant's claim are addressed to Hamish.

22. Having taken the view that it was the Assignment Confirmation dated 1 February 2016 which constituted a *prima facie* contract between the Claimant and the Defendant, I now must decide whether that contract was validly binding on the Defendant, given its protestations as to Mr Hari's authorisation to sign on their behalf and the allegations that he in fact fraudulently made use of the company stamp.

23. I have seen no evidence in the file of an ongoing criminal complaint against Mr Hari for fraud, and having given the matter ample consideration I am of the opinion that the Claimant should not be penalised for relying on the Board Resolution signed by the Defendant's CEO, Mr Hajrah, authorising Mr Hari as well as Mr Harlee to sign on Hamish Middle East's behalf, together with the company stamp as evidence that they had a contract with the Defendant company. I further note the relevant emails which emanated from the Defendant's company email address to the Claimant, Mr Hajrah's participation in the process, as well as the invoices addressed to Hamish.

24. It is open to the Defendant to bring a separate claim against Mr Hari regarding its allegations of fraudulent misrepresentation, but on the balance of the evidence that was put before me - I find that the Claimant operated on the *bona fide* belief that it had contracted with the Defendant company and is justified in bringing a claim against them under that contract. The Defendant has failed to substantiate its allegations that Mr Hari had no such authority to enter into such a contractual arrangement on its behalf.

Conclusion

25. For the reasons discussed above, I find that the Defendant should pay the Claimant AED 220,039 in respect of unpaid invoices, as well as their court fee.

Issued by:

Natasha Bakirci

SCT Judge

Date of Issue: 12 March 2018

At: 4 pm