Claim No. SCT 133/2020 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 LASZLO Claimant and LAZUSI SOLUTIONS LIMITED Defendant Hearing : 23 July 2020 Judgment : 28

Claim No. SCT 133/2020

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

LASZLO

Claimant

and

LAZUSI SOLUTIONS LIMITED

Defendant

Hearing **: 23 July 2020**
Judgment **: 28 July 2020**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant and the Defendant's Representative

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 sum of AED 37,084.91 in relation to the below:

   (a) Unpaid salary of December 2019, January 2020, February 2020, March 2020 and 4 days of April 2020;

   (b) Leave balance in lieu; and

   (c) Gratuity.

2. The Defendant shall pay the Claimant the Court fees in the sum of **AED 740.90**.

Issued by:
Nassir Al Nasser
SCT Judge and Registrar
Date of issue: 28 July 2020
At: 8am

THE REASONS

The Parties

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

2. The Defendant is Lazusi Solutions Limited (the Defendant), a company registered in the DIFC, located in DIFC, Dubai.

Background and the Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant. The Claimant's last working day was 4 April 2020.

4. On 19 April 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for various employment claims in the sum of AED 37,045.

5. On 18 May 2020, a Consultation was listed to be held before SCT Judge Maha Al Mehairi, however, the Defendant failed to attend. Pursuant to the Defendant's absence, the Judge issued a default Order in favour of the Claimant (the "Default Order").

6. On 9 July 2020, the Claimant filed an appeal notice seeking to set aside the Default Order.

7. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 15 July 2020 but were unable to reach a settlement. Therefore, in accordance with the Rules of the DIFC Courts, this matter was listed for a hearing held before me on 23 July 2020. Both the Claimant and the Defendant's representative were in attendance at the Hearing.

The Claim

8. The Claimant's case is that she was employed with the Defendant from 30 March 2019 to 4 April 2020, being her last working day.

9. The Claimant's salary as per the Employment Contract was AED 7,000 consisting of a basic salary of AED 5,000 and allowances in the sum of AED 2,000.

10. The Claimant filed her claim seeking unpaid salaries from December 2019 to 4 April 2020, payment in lieu of accrued but untaken annual leave in the sum of AED 4,660 and end of service gratuity in the sum of AED 3,452.

The Defence

11. The Defendant failed to file a defence, however, at the Hearing submitted that the parties agreed verbally amongst themselves to reduce the Claimant's salary from AED 7,000 to AED 5,000.

12. The Defendant also failed to provide the records of the Claimant's leave balance and gratuity.

Discussion

13. 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.

14. The Claimant's claim for the sum of AED 37,045 includes:

(a) December 2019 salary in the sum of AED 7,000.

(b) January 2020 salary in the sum of AED 7,000.

(c) February 2020 salary in the sum of AED 7,000.

(d) March 2020 salary in the sum of AED 7,000.

(e) 4 days of April in the sum of AED 933.33

(f) Annual leave payment in lieu in the sum of AED 4,660.

(g) Gratuity in the sum of AED 3,452.

15. At the Hearing, the Defendant admitted that the Claimant did not receive her salary for the months of December 2019, January 2020, February 2020 and 12 days of March 2020 alleging that the Defendant had asked its employees to not come to work due to the COVID-19 pandemic.

16. The Defendant also argues that the Claimant agreed to a reduced salary in January 2020 but has failed to present any evidence reflecting this agreement between the parties. Therefore, I will consider the Claimant's salary to be the amount set out in the Employment Contract.

17. The Defendant also failed to provide evidence demonstrating that the Claimant was on unpaid leave from 12 March 2020 onwards.

18. Therefore, I find that the Claimant is entitled to her salaries for December 2019, January 2020, February 2020, March 2020 and 4 days of April 2020 in the sum of AED 28,933.33

19. In relation to the payment in lieu of accrued but untaken annual leave in the sum of AED 4,660, the Claimant submits that she has a balance of 20 days and seeks payment in relation to those days.

20. Article 16(1) of the DIFC Employment Law stipulates the following:

"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 wage and the reason for it;

(g) The date of the national holidays taken by the employee; 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."

21. In the absence of any records submitted by the Defendant, I must find in favour of the Claimant. Therefore, I find that the Claimant is entitled to payment in lieu of accrued but untaken annual leave calculated as follows: AED 7,000/30 = 233.33 x 20 = AED 4,666.66.

22. The Claimant also submits that she is entitled to end-of-service gratuity in the sum of AED 3,452.

23. Article 66(2)(a) of the DIFC Employment Law stipulates the following:

"an employee's gratuity payment shall be calculated as follows: an amount equal to twenty (21) one days of the Employee's basic wage for each year of the first five (5) years of service prior to the qualifying scheme commencement date;"

24. In the absence of evidence that the parties are part of the Qualifying scheme, I will decide the gratuity based on the below calculations.

25. The Claimant's commencement date of employment was on 30 March 2019 to 4 April 2020. Therefore, the Claimant worked for a period of 1 year and 4 days, in which she is entitled to gratuity as per the DIFC Employment Law.

26. The gratuity shall be calculated as following:

Gratuity = AED 5,000 basic salary x 12 months / 365 days = AED 164.38 per day x 21 days = AED 3,452.05.

Gratuity for the 4 days of April = 1.75 days / 30 = 0.05 per day x 4 days = 0.2 days x AED 164.38 = AED 32.87.

27. Therefore, I find that the Claimant is entitled to her end-of-service gratuity in the sum of AED 3,484.92.

Conclusion

28. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of **AED 37,084.91** in relation to the below:

(a) Unpaid salary as set out in paragraph 18;

(b) Leave balance; and

(c) End-of-service gratuity.

29. The Defendant shall pay the Claimant the Court fees in the sum of **AED 740.90**.

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Nassir Al Nasser
SCT Judge and Registrar
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