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 MAHA AL MEHAIRI

BETWEEN

JAMARU GROUP HOLDING LTD

Claimant/Counter-Defendant

and

JASMINE

Defendant/Counter-Claimant

Hearing:**25 April 2019**

Further Submissions:**16 June 2019**

Judgment:**26 June 2019**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 4 March 2019;

AND UPON the Defendant acknowledging service on 11 March 2019;

AND UPONthe parties being called on 17 March2019 for a Consultation before SCT Judge Nassir Al Nasser.

AND UPON the parties not having reached settlement;

AND UPON the Defendant filing a Counterclaim on 4 April 2019;

AND UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 25 April 2019, with the Claimant's representative and the Defendant attending;

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 AED 15,000 for the one-month notice period not served.

2. The Claimant shall pay the Defendant AED 60,735.48 for sums due according to her Employment Contract.

3. The Claimant shall pay the Defendant's Court fees in the amount of AED 679.98.

Issued by:

Hayley Norton

SCT Judge

Date of issue: 26 June 2019

At: 12pm

THE REASONS

Parties

1. The Claimant is Jamaru Group Holding LTD ("Claimant"), a company registered in the DIFC located in theDIFC.

2. The Defendant is Ms. Jasmine ("Defendant"), an individual formerly employed by the Claimant company.

Background and the Preceding History

3. The Defendant's employment commenced on 13 July 2017 in accordance with a contract of employment dated 12 July 2017 ("Employment Contract") as "Assistant Project Manager". The Employment Contract was issued based on a total salary of AED 15,000 per month as set out below:

(a) basic salary in the sum of AED 9,000;/p>

(b) monthly housing allowance in the sum of AED 4,500; and

(c) transportation in the sum of AED 1,500.

4. On 3 February 2019 the Claimant sent the Defendant a final warning letter for unsatisfactory working performance.

5. On 17 February 2019 the Defendant resigned from the Defendant company with immediate effect and subsequently ceased attending work.

6. On 4 March 2019 the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal ("SCT") claiming reimbursement of AED 105,000 including housing allowance, certain payments in respect to the Defendant's apartment in Dubai and a loan enabling the Defendant to pay off her student loan.

7. On 11 March 2019 the Defendant filed an Acknowledgment of Service intending to defend all of this claim.

8. On 4 April 2019 the Defendant lodged a counterclaim and sought further articulation of the Claim from the Claimant.

9. On 11 April 2019 the Defendant filed an amended defence and counterclaim. On 17 April 2019 the Claimant submitted its reply to the defence.

10. The parties met for a Consultation with SCT Judge Nassir Al Nasser on 17 March 2019 but were unable to reach a settlement.

11. Both parties attended the hearing before me listed on 25 April 2019.

12. The Defendant filed further submissions on 5 May 2019.

The Claim

13. The Claimant alleges that the sum of AED 105,000 paid to the Defendant on 26 April 2018 is for housing allowance in lieu of the Defendant's employment with the Claimant company and seeks reimbursement since the Defendant resigned from the Claimant company on 17 February 2019.

14. The Claimant alleges that all sums paid to Defendant are inside the purview of the Defendant's employment contract with the Claimant company, notwithstanding the fact that the company is owed by the Defendant's ex-husband.

15. The Claimant alleges that all sums paid to the Defendant are outside the purview of the Defendant's divorce agreement.

16. Additionally, the Claimant claims 1 months' salary in lieu of the Defendant's notice period being served. The Claimant also claims damages in respect of an `ongoing furniture project'.

The Defence

17. The Defendant alleges that all payments are outside the purview of her Employment Contract with the Claimant company.

18. The Defendant alleges that the Claimant company is driven by her ex-husband who is attempting to circumvent the terms of the divorce agreement by claiming back the gifts given to her by hiding behind the corporate veil of the Claimant.

19. The Defendant alleges that the Claimant did not maintain a conducive work environment for the Defendant to perform the services under her employment contract and alleges that the Claimant has filed this Claim to harass her as a consequence of her divorce with the owner of the Claimant company.

The Counterclaim

20. The Defendant filed a Counterclaim on 4 April 2019 amounting to AED 58,000 and seeks damages as set out in the Counterclaim:

(a) payment in lieu of notice in the sum of AED 15,000;

(b) end of service gratuity in the sum of AED 9,000;

(c) penalty payment of AED 24,000 in accordance with Article 18 of the DIFC Employment Law; and

(d) damages in the sum of AED 10,000.

The Discussion

21. 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 relevant Employment Contract.

22. I will first establish whether or not the payment to the Defendant is inside the purview of her Employment Contract with the Claimant company. According to the underlying Employment Contract, the Defendant is entitled to AED 54,000 per year for housing allowance, this sum varies with the alleged housing allowance of AED 105,000 paid to the Defendant on 26 April 2018. In light of the underlying Employment Contract and given the fact that the Defendant's total salary of AED 15,000 has been paid monthly, including the AED 4,500 for housing allowance, I find that there are no grounds for additional payments within the purview of the underlying Employment Contract.

23. It is submitted before this Court that the Defendant's ex-husband is the owner of the Claimant company. This Court has the power to pierce the corporate veil of a company when a Claimant attempts to circumvent the terms of the divorce by claiming back payments or gifts given to the Defendant over the course of their previous marriage by hiding behind the corporate veil of the corporate entity. This is to prevent injustice to any party to a divorce agreement.

24. I must appreciate the Defendant's Witness Statement during the Hearing in which the Defendant contends that her ex-husband granted her certain gifts such as apartment rental, a vehicle and payment of education fees during the course of her marriage with the owner of the Claimant company. All of these gifts are entirely appropriate in a marriage. I therefore must conclude that these payments were not made consequent to any agreement between the Claimant and the Defendant. Furthermore, I can find no contractual duty other than the former marriage relationship between Defendant and her ex-husband, which forms the basis for these payments or gifts.

25. Upon reviewing the evidence submitted before this Court I am satisfied that the Defendant has demonstrated how these Claims, including the Claim in relation to the Defendant's apartment in Dubai, are outside the purview of the underlying Employment Contract.

26. In light of the aforementioned, I am satisfied to determine that the Claimant has failed to provide any contractual basis for all of its Claims, including the Claim for reimbursement of the alleged loan paid to the Defendant enabling her to pay off her student loan.

27. Furthermore, upon reviewing the terms of the divorce between the Defendant and her ex-husband, I conclude that the divorce agreement expressly states that there shall be no further claims between the parties, in other words the parties have reached full consensus over a final divorce settlement. Therefore, I find that the Claimant's claim for the housing allowance shall be dismissed.

The Claimant's Entitlements

28. I find that the parties owe each other sums due under the terms of the Employment Contract.

Salary of the termination Date

29. The Defendant resigned on 17 February 2019. Accordingly, the Claimant is entitled to remuneration for the first 17 days of February 2019:

AED 8,383.56 (AED 180,000 annual salary / 365 working days = AED 493.151 per day; (AED 493,151 x 17 days = AED 8,383.56) for salary of the termination date.

Payment in lieu of the notice period

30. The Defendant's resignation has an effective termination date of 17 March 2019. In accordance with the Employment Contract, the Defendant is required to serve a one-month notice period upon termination of the Contract. I find that the Defendant did not serve her one-month notice period and, therefore, she is obligated to make payment to the Claimant in lieu of the notice period in the sum of AED 15,000.

End of service gratuity

31. The Claimant is entitled to AED 9,941.92 in respect of end of service gratuity calculated in accordance with Article 64 of the DIFC Employment Law:

AED 9,941.92 (21 days for 2018 + 12.6 days for 2019 (219/365 x 21) x AED 295.890 basic wage per day (108,000/365) = AED 9,941.92

Article 18 Penalties

32. The Claimant is found to be in arrears as to wages or any other amounts owing to the Defendant. It is therefore appropriate to require the Defendant to pay to the Claimant the penalty articulated in Article 18(2) of the DIFC Employment Law.

33. In her Counterclaim and at the Hearing, the Defendant confirmed that she sought the penalty under Article 18 of DIFC Employment Law to be activated which provides that:

"(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."

34. Article 18 penalties are contingent upon "wages or any other amount owing" failing to be paid by the Defendant within 14 days of the termination date. As the Claimant's termination date was 17 March 2019, the Claimant has not shown any attempts to pay the Defendant 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 Defendant is entitled to Article 18 penalties running from 14 days after her official date of termination until the date payment is made. For the purpose of Article 18, the relevant date to calculate the 14 days from is that of termination. Accordingly, the Defendant has been in arrears since 1 April 2019 (14 days following termination on 17 March 2019) and the penalty began to accrue at the daily rate of AED 493.15 from this date.

35. As of the date of this Judgment, the penalty is owed for 86 days from 1 April 2019 until 26 June 2019, totaling AED 42,410 with the daily penalty of AED 493.15 continuing to accrue until the date of payment.

Damages

36. The Claimant is denied damages in respect of the `ongoing furniture project' as the Claimant failed to provide evidence to support their claim.

37. The Defendant is denied the requested amount of AED 10,000 for damages suffered by the Defendant during the course of her Employment with the Claimant company, as the Defendant failed to provide evidence to support her claim.

Court fees

38. I find that it is reasonable in this case, as the Defendant has been successful on most claims, to require the Claimant to reimburse the Defendant for her SCT Court fees in the amount of AED 679.98. The parties shall otherwise bear their own costs.

Conclusion

39. The Defendant shall pay the Claimant AED 15,000 for the one-month notice period not served.

40. The Claimant shall pay the Defendant AED 60,735.48 for sums due according to her Employment Contract.

41. The Claimant shall pay the Defendant's Court fees in the amount of AED 679.98.

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