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 H.E. JUSTICE MAHA AL MHEIRI

BETWEEN

LONOD

Claimant

and

LACINI

Defendant

Hearing : **23 August 2021**
Judgment : **20 September 2021**

JUDGMENT OF H.E. JUSTICE MAHA AL MHEIRI

UPON this Claim being filed on 1 August 2021

AND UPON the Defendant filing an Acknowledgment of Service intending to defend all of this Claim dated 8 August 2021

AND UPON a Consultation being held before SCT Judge Hayley Norton on 11 August 2021

AND UPON the parties failing to reach a settlement at the Consultation

AND UPON a hearing having been listed before H.E. Justice Maha Al Mheiri on 23 August 2021, with the Claimant and the Defendant's representative attending

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

IT IS HEREBY ORDERED THAT:

1. The Claimant's Claims are dismissed.

2. No order as to costs.

Issued by:
Nassir Al Nasser
SCT Registrar
Date of issue: 20 September 2021
At: 1pm

THE REASONS

The Parties

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

2. The Defendant is Lacini, a company registered in the DIFC, DIFC, Dubai, UAE (the "Defendant").

Background and the Preceding History

3. The parties entered into two legal agreements, an independent contractor agreement (the "First Contract") and an employment agreement (the "Second Contract"), collectively referred to as the contracts (the "Contracts").

4. The parties entered into the First Contract on 8 March 2021, pursuant to which the Defendant was contracted as a Manager performing the duties of Chief Investment Officer with an agreed monthly remuneration of AED 12,500 as reimbursement of the Claimant's monthly personal expenses.

5. The parties entered into the Second Contract on 1 April 2021, pursuant to which the Defendant was hired as an Investment Manager, with an agreed monthly remuneration of AED 9,000, and, in addition, the Defendant was required to pay 50% commission of monthly generated income from the Claimant's portfolio/business.

6. On 8 March 2021, the Claimant started to work for the Defendant remotely from his home located in Canada, and he interacted with banks and financial institutions in the role of Chief Investment Officer.

7. On 26 March 2021, the Claimant travelled to Dubai and started to work from the Defendant's office. On 1 April 2021, the Claimant signed the Second Contract with the Defendant.

8. On 28 April 2021, the Defendant renewed the Claimant's visit visa at the Defendant's expense. On 24 May 2021, the Claimant submits that Lutin ("Mr. Lutin") who is a Shareholder, Licensed Director, Senior Executive Officer at the Defendant, met with the Claimant inside his office in relation the Claimant's remuneration payments but Mr. Lutin refused to pay and threatened the Claimant.

9. On 31 May 2021, the Claimant sent an email to Mr. Lutin to confirm that he had not received his outstanding money despite his several requests, and therefore he informed Mr. Lutin that he will file a claim with DIFC courts to resolve this dispute.

10. On 7 June 2021, the Claimant sent an email to lLuban who is a Licensed Director of the Defendant, informing him that he would like to give two days to the Defendant in order to resolve this dispute in person rather than going to courts. He also informed Luban that he would be filing a claim with DIFC courts if no response was received from the Defendant.

11. On 9 June 2021, the Claimant received an email containing a written notice from a law firm on behalf of the Defendant. The Claimant submits that, within the email, the Defendant threatened that the Claimant would not receive his money unless he withdraws his claim.

12. On 1 August 2021, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming the amount of AED 84,000, comprising of the following claims:

a) AED 52,900 reimbursement of personal expenses from 8 March 2021 to 15 July 2021; and

b) AED 31,500 salary for the period from 1 April 2021 to 15 July 2021; and

c) In addition, costs for issuance of this claim and aggravated damages in an amount to be determined by the court.

13. On 8 August 2021, the Defendant filed an Acknowledgment of Service intending to defend all of the claim.

14. The parties met for a Consultation with SCT Judge Hayley Norton on 11 August 2021 but were unable to reach a settlement. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 23 August 2021.

The Claim

15. The Claimant's case is that he was hired by the Defendant under two Contracts, under which he held two positions, from 8 March 2021 until 15 July 2021.

16. The Claimant argues that, to date, he has not been terminated by the Defendant and he is seeking to be paid his remuneration for that period.

17. The total sum claimed by the Claimant as set out in the Claim Form is AED 84,400, in addition to payment of the court fees. The Claimant also seeks aggravated damages in an amount to be determined by the court.

The Defence

18. The Defendant argues that the Claimant has tried to misrepresent and mislead this Court with his false allegations and averments. The Defendant argues that the Claimant sought association with the Defendant by presenting false educational and professional credentials.

19. The Defendant submits that the Claimant approached the Defendant on 30 November 2020 through LinkedIn by misrepresenting himself as willing to be a business partner, whereas, now he is claiming to be a service provider. The Defendant submits that this shows that his intention was never genuine.

20. The Defendant maintains that the First Contract has not been executed as per the law and does not have signature of the other shareholder of the company, Mr. Linin, and, thus, is not binding on the Defendant.

21. In addition, the Defendant submits that the First Contract has been initiated based on false claims and misrepresentations on part of the Claimant by presenting forged or false educational documents, including a Masters Degree certificate issued by Ladya University that has now been confirmed by the University as not being conducted by them at all.

22. In addition, at the time of execution of the Second Contract, the Defendant suggests that it was discovered that the Claimant's signatures were presented differently on the First Contract and that found on his passport. The Defendant informed the Court that when the Claimant was confronted about the difference in signatures, he stopped reporting to work. The Defendant submits that this amounts to "fraud" as per section 40 the DIFC Contract Law - DIFC Law No.6 of 2004.

23. The Defendant also argues that the conduct of the Claimant throughout the period of interaction with the Defendant had been unprofessional and of a dubious nature. The Defendant submits that soon after onboarding the Claimant, he went ahead to misrepresent himself as a "Chief Investment Officer of Linti" (a sister concern company) on "LinkedIn", while he was never in any way associated with the said Company. After being confronted with the same, the Claimant corrected the false details presented on his LinkedIn page.

24. The Defendant submits that when the Claimant was asked about his suggestions in relation to a business plan for the Defendant, the Claimant stopped all forms of communication with the Defendant. He then approached one of the partners of the Defendant's sister concern in Saudi Arabia and went on to threaten the Defendant and their partners in Saudi Arabia, bringing ill repute to the Defendant's company so as to affect its

reputation and businesses.

25. The Defendant contends that as the Second Contract was signed, and after such signing, the Defendant came to know that the credentials of the Claimant were fake, the Defendant decided not to process the Claimant's visa.

26. Furthermore, at the time of association of the Claimant with the Defendant, the intention of the parties was limited to certain specified works to be developed by the Claimant, which never came forth from the Claimant. Within one month of engagement, the Claimant, considering himself exposed, tried to suggest a new/alternate business approach, and when requested for a business plan or model, the Claimant failed to produce any such model.

27. Hence, the Defendant submits that it cannot be held liable to pay any fee for the work that was never carried out by the Claimant. The Defendant contends that it would be evident from all of the communications and conduct that the Claimant had no intention to provide any services.

28. The Defendant's defence to each of the Claimant's claims are set out in the Discussion below.

Discussion

29. The First Contract signed between the parties is governed by the DIFC Law of Contract, and the relevant case law and principles concerning a breach of contract. Clause 17 of the First Contract states as follows:

> "17. Governing Law and Jurisdiction:
>
> The Parties agree that this Agreement shall be governed by the laws and regulations of the United Arab Emirates the Emirate of Dubai and the Dubai International Financial Centre."

The validity of the Claimant's First Contract

30. Although the Defendant submits that the Claimant drafted the First Contract, the Defendant failed to provide any evidence to negate the validity of the First Contract. Although the Defendant seeks to argue that the Claimant falsified his educational credentials, I also note that the Claimant provided a rebuttal to that argument by providing emails, and a confirmation of an award letter from the University. In addition, the Claimant provided evidence to show that the Claimant's degree had been testified by a lawyer and by the UAE Consulate.

31. Moreover, I find that the First Contract was signed by an authorised signatory of the Defendant's company. The Defendant's internal authority delegation processes regarding approvals for contracts are therefore irrelevant to this case and do not impact the validity of this Contract. The Court is of the view that if Mr. Lutin had to obtain any internal approvals from a higher body it is not material to this case, nor is this by law invalidating a valid agreement that was signed by the two parties.

32. As such the Court accepts the validity of the Claimant's First Contract and the contractual obligations that fall under it.

33. The Claimant is claiming the amount of AED 52,900 reimbursement of personal expenses for the period between 8 March 2021 to 15 July 2021. To determine whether the Claimant would be entitled to this sum, the Court must determine whether the Claimant satisfied his obligations towards the First Contract for any payment to be triggered. Clauses 4 to 8 of the First Contract deals with this issue, and reads as follows:

> **"4. Personal Expenses:**
>
> The parties mutually agreed that the Manager's monthly personal expenses is twelve thousand five hundred UAE dirhams (AED 12,500).
>
> 5. .
>
> **6. Lalit Terminal Costs:**
>
> The parties mutually agreed that the managing partners and shareholders shall be bringing new clients to the Company every month in order to deduct the monthly cost of Lalit terminal from the monthly gross generated money.
>
> The parties mutually agreed that the monthly cost of Lalit terminal shall not be deducted from the monthly gross generated money if the managing partners and shareholders could not bring new clients to the company every month.
>
> **7. The monthly net generated money:**
>
> The parties mutually agreed that the monthly net generated money is equal to the monthly gross generated money minus the Manager's monthly personal expenses and minus the monthly Lalit terminal cost subject to clause 6.
>
> **8. Compensations and Reimbursements:**
>
> The parties mutually agreed that the Manager shall be compensated and reimbursed as follows:
>
> a) The Company shall pay to the Manager fifty Percent (50%) of the monthly net generated money within maximum thirty (30) calendar days of the money generation date.
>
> b) The Company shall every month twelve thousand five hundred UAE dirhams (AED 12,500) to the Manager in order to reimburse him for his monthly personal expenses.
>
> **For example:**

Assuming the following:

a) The monthly gross generated money = AED100,000

b) The Manager's monthly personal expenses = AED12,500

c) The monthly Lalit terminal cost= AED 7,500 (subject to clause 6)

The compensation and reimbursement shall be paid as the following:

1) The first payment to the manager = 12,500 (reimbursement)

2) The second payment to the manager = AED40,000 (compensation) as per the following calculation

AED100,000 - AED12,500 - AED7,500 =AED 80,000 *50%= AED40,000"

34. In review of the First Contract, I note that the mechanism for payment is rather ambiguous and confusing, and only presents the situation where the Claimant generates revenue. In the hearing, the Defendant confirmed that there was no profit generated by the Claimant for the entire period of the First Contract.

35. The Court also relies on the discussions between the parties before the contract was signed, and an email from the Claimant to Mr. Lutin stating the below:

"Hi Lutin,

The discussed structures are as following:

70/30 is okay with Liki would be responsible for paying Lalit and required software if need it.

or

50/50 all direct expenses would be deducted before revenue distribution such as my cost of living, wealth managers cost, Lalit, travel. etc. However, the amount for my cost of living should be AED 125000 payable to me by the company every month and would be deducted from the revenue.

Regards,

Lanod"

36. As such, payment is linked to the revenue generated by the Claimant, which the Defendant confirmed did not take place. I further note that the Claimant did not provide any evidence to support the `generated revenue'. Therefore, the Court shall dismiss the Claimant's claim for the amount of AED 52,900.

The validity of the Claimant's Second Contract

37. The Claimant is also requesting the amount of AED 31,500 as salary for the period from 1 April 2021 to 15 July 2021. As stated above, the Court accepts the validity of the First Contract and the contractual obligations that fall under it. The Claimant added a clause in the First Contract that deals with the validity of the Second Contract. The Claimant added a clause that suggests that the Second Contract is not legally binding as stipulated under Clause 18 of the First Contract which states the following:

"18. Independent Contractor Relationship:

a) The Parties agree that this Agreement does not constitute a contract of employment.

b) The Parties also agree that the Manager shall be providing the Services solely under this Agreement and representing the Company in public as Chief Investment Officer and acting as an independent Contractor but not as an employee and nothing in this Agreement shall be deemed to create in any way whatsoever any employer/employee relationship.

c) The Parties acknowledge and agree that they must enter into an employment agreement solely for the purpose of satisfying and fulfilling the requirements of the work permit, employment and immigration laws and regulations of the United Arab Emirates, the Emirate of Dubai and the Dubai International Financial Centre.

d) The Parties acknowledge and agree that any employment agreement signed by both parties after the Effective Date shall not replace or terminate this Independent Contractor Agreement and shall not deem this Independent Contractor Agreement invalid or unenforceable, in whole or part.

e) The Parties acknowledge and agree that any employment agreement signed by both parties after the Effective Date shall not be legal and binding between the Parties."

38. The Clause stipulates that the Second Contract is considered null and void, because, in essence, it was only entered into for reasons of satisfying formalities for the issuance of a work visa for the Claimant. As cleared in the email between the parties:

"Dear Lutin,

As requested, I changed the title of the agreement and I added one more clause 19 to confirm that this agreement is not an employment agreement and since we have to sign an employment agreement for formalities in order to issue a work permit in dubai and since we have to indicate a salary in that agreement, I made any signed employment agreement between us illegal and not binding as a protection for Liki.

.

Regards,

Lanod"

39. Clause (e) read in conjunction with the email leads the Court to conclude that the Second Contract is to be deemed a sham contract between the parties, and, as such, the Court shall dismiss the Claimant's claim for unpaid remuneration under the Second Contract

Aggravated damages in an amount to be determined by the court

40. The Claimant seeks payment from the Defendant of an unquantified amount as compensation for the aggravated damages that had fallen upon the Claimant as a result of the Defendant's actions.

41. The circumstances that have fallen upon the Claimant, while unfortunate, do not meet the burden that the Claimant would have to prove in order to demonstrate that he has suffered undue damage at the hands of the Defendant. I do not find it appropriate to order any compensation to be paid to the Claimant as it is my view that the Claimant failed to provide evidence to demonstrate the damages that he has been subjected to by the Defendant.

42. Accordingly, I dismiss the Claimant's claim for compensation for aggravated damages in an amount to be determined by the court.

43. The Claimant seeks to recover the fee that he has paid to the Court for the filing of this Claim. I am of the view that, as the Claimant has been unsuccessful on his claims, he should not be entitled to recover the fee in respect of the claims.

Conclusion

44. In light of the aforementioned, I find that the Claimant's claims shall be dismissed.