



ADGM COURTS

محكمة سوق أبوظبي العالمي

23 January 2024 05:55 PM



In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF FIRST INSTANCE
EMPLOYMENT DIVISION
BETWEEN**

SI YUAN WU
Claimant

and

MEPAY TECHNOLOGY LIMITED
Defendant

JUDGMENT OF JUSTICE SIR MICHAEL BURTON GBE



Neutral Citation:	[2024] ADGMCFI 0001
Before:	Justice Sir Michael Burton GBE
Decision Date:	23 January 2024
Hearing Date:	9 and 10 January 2024
Decision:	<ol style="list-style-type: none"> 1. The proceedings be dismissed. 2. There be an order <i>nisi</i> that the Claimant pay the Defendant's fixed costs pursuant to paragraph 9.6 of Practice Direction 9 in the amount of USD 36,759.70 and filing fees of USD 250.00, such order to become absolute in the absence of any application to vary the terms of the order <i>nisi</i> filed by 4.00 pm on 6 February 2024. 3. Liberty to apply to vary the terms of the costs order <i>nisi</i>.
Date of Order:	23 January 2024
Catchwords:	Two employers. Whether the Claimant an employee of the Defendant. Oral contract of employment. Implied contract of employment. Employment within a group of companies.
Legislation Cited:	ADGM Employment Regulations 2019
Cases cited:	None
Case Number:	ADGMCFI-2023-130
Parties and representation:	<p>Claimant Mr. Muhammad Ali Qureshi of Nasser Malalla Advocates and Legal Consultants</p> <p>Defendant Mr James Laddie KC of Matrix Chambers (instructed by Clyde & Co LLP)</p>

JUDGMENT

Introduction

1. This is a claim by the Claimant, Ms Si Yuan Wu ("**Ms Wu**") against the Defendant, an ADGM company, MEpay Technology Ltd ("**MEpay**"), for sums allegedly due pursuant to an alleged contract of employment between them. Ms Wu was employed by WebAdSpace FZ LLC ("**WAS**"), a Dubai company, under an employment contract dated 22 August 2021, as Commercial Director of MENA (Middle East North Africa) for an unlimited period. WAS is an associate company of MEpay, within a group known as the SHAREit Group (the "**Group**"). Ms Wu's case is that, in addition, as from 30 September 2022, she was employed as Senior Executive Officer ("**SEO**") of



MEpay. A claim made by her against MEpay for harassment was abandoned at the case management conference on 10 October 2023 (the “**CMC**”).

2. Ms Wu’s claim is unusual in a number of ways:
 - a. Though her position as SEO for MEpay ended in July 2023, Ms Wu is still employed by WAS, and therefore retains her employment relationship with a member of the same group of companies.
 - b. Ms Wu asserts that she had two employers:
 - (i) WAS, for which she earned a monthly salary of AED 76,100; and
 - (ii) MEpay, for which she claims an additional salary.
 - c. She has not signed or even agreed a written contract of employment with MEpay. Ms Wu asserts that she was employed:
 - (i) orally by agreement with Ms Dongbo Zhu (also known as Essay Zhu) (“**Ms Zhu**”) the Chief Operating Officer of Payermax, another associate company in the Group, her line manager; or
 - (ii) by implication, by her being tasked by MEpay with the role of SEO.
 - d. No salary was ever agreed for the alleged employment with MEpay, and Ms Wu’s claim is therefore for a sum to be assessed, or alternatively damages. At the CMC, the Court directed a split trial with a subsequent determination of what sum (if any) would be due if the Claimant succeeded on liability. Ms Wu claims US\$735,194.01 (AED 2,700,000) by reference to an allegation of average monthly salary for an SEO of AED 300,000 per month, for 9 months, although credit would obviously have to be given for her continuing salary and employment with WAS.
 - e. There was no contract of employment ever agreed for the alleged additional remuneration. There was discussion in the course of 2022–2023 about a new contract of employment with MEpay instead of her employment by WAS (for which she would need to be transferred to the Abu Dhabi Global Market (“**ADGM**”)), but this was never finalised. The negotiations came to an end in January 2023, where in a message on Dingtalk (a Chinese internal office messaging system) Ms Cherrie Zhang Yuan (“**Ms Zhang**”), the Human Resources Business Partner of Payermax, said that there would be no transfer of Ms Wu’s employment to MEpay, so “*we’ll remain [sic] your employment under [WAS]...*”. Ms Wu replied “*got it*”.
 - f. There was, as Ms Wu accepts, nothing in writing to evidence or support either any agreement that she was employed by MEpay, or that there would be or was any additional salary for her acting as SEO for MEpay on top of her continuing salary for WAS.

History

3. Ms Wu’s contract of employment with WAS was preceded by an employment offer of 25 June 2021, on SHAREit letterhead, from the Global CEO on behalf of WAS (described as “*the Company*”) saying:

“We are pleased to provide you with the offer of employment with the Company, as Commercial Director of MENA. In the event that you accept this offer, you will be mainly based at the Company’s premises in Dubai, or that as directed by the Company.”



4. Ms Wu accepted this offer by an email of the same date, stating that she was “*looking forward to joining the SHAREit family and making impact to build the MENA business.*” WAS was, as Ms Wu explains in her witness statement, primarily engaged in advertising and media activities, although she was told by Mr Alex Cheng, then her direct manager, of the proposed establishment by the Group of an ADGM entity, which would be operating a regulated money service business.
5. Ms Wu’s signed employment contract dated 22 August 2021, between her and WAS (as “*the Company*”) provided at Recital 2 that the “*Employee*” (described throughout as “*he*”) “*undertakes to work for the company as Commercial Director, MENA for a period of unlimited years*” and by Clause 3 that:

“3.1 The Employee shall during the continuance of this contract serve the Company to the best of his ability in the position stated above, or any other capacity as may be determined by the Company.

3.2 For the terms of this Contract, the Employee acknowledges that he shall be employed solely by the Company.

3.3 The Employee shall faithfully and diligently perform such duties and exercise such powers consistent with them as the Company may from time to time properly assign to or confer upon him.

...

3.5. The Employee will perform work for the Company at the Company’s office or such place within the Dubai Technology and Media Free zone as the Company shall from time to time require.”

By Clause 4.2, the employment contract provided that the normal working hours for Ms Wu would be eight hours a day or 48 hours per week.

6. Ms Wu describes in paragraph 3 to her Particulars of Claim that her “*excellent performance in this role led to the Group hiring her into additional job roles in its several affiliate entities in the MENA region*”, and she lists Digimax Middle East Portal LLC (where she served as managing director from 16 February 2022 until May 2023), MEMAX International DMCC (where she served as manager from 23 February 2022 until May 2023), WebAdSpace Smart for Information Technology LLC (Kingdom of Saudi Arabia) (“**WAS KSA**”) (where she served as general manager from 6 April 2022 until June 2023), and MEpay (where she served as SEO from 30 September 2022 until July 2023). Ms Wu asserts that she is entitled to extra remuneration for all these roles from the relevant companies, though there is nothing in writing supporting or evidencing this, and in fact, in relation to WAS KSA she accepts that something quite different occurred, namely that, because the Saudi Arabian authorities required a separate salary to be shown for WAS KSA, she was provided with a contract of employment recording SAR 1,000 per month as a salary from WAS KSA, and then gave credit for that amount by deduction from her salary for WAS: which is of course entirely inconsistent with the suggestion of an entitlement to extra salary for that role.
7. Ms Wu’s case is that on numerous occasions she was promised by her line manager Ms Zhu that she would be paid remuneration additional to her salary from WAS for all these roles – and relevantly for the purpose of this action – for her role as SEO of MEpay. There is, as she accepts, as referred to in paragraph 2(f) above, nothing in writing which either evidences or in any way supports any such agreement or promise, or even a request from Ms Wu in that regard, nor any complaint by her when it was not forthcoming. Her pleaded case in paragraph 21 of her Reply is that she was “*promised remuneration in some form or other by the Manager*”. She points to a Dingtalk message dated 28 June 2022 in which Ms Zhu said “*I also asked stock option for you*”. Ms Wu received a generous bonus in May 2022 of AED 333,000, after which Ms Zhu said in



Dingtalk messages of about 17 May 2022, “*Hope for more bonuses next year*” and “*There will be stocks in the future*”. But there was nothing more.

8. It is apparent from the bonus and from a 2022–2023 performance review that Ms Wu was regarded as having good prospects within the Group, and in June 2022, plans began in earnest about the Group establishing a payment business in ADGM. There were discussions with Ms Zhu and Ms Zhang of the HR department about the possibility of Ms Wu transferring her visa to ADGM and moving to Abu Dhabi for the purpose of starting up the new money services company. Ms Wu was heavily involved in the preparation of the necessary documents seeking regulatory approvals from ADGM. She was to be the “*Approved Person*” for the purpose of the ADGM application, and she signed on 30 September 2022 the relevant application form, which, she says, included wording heavily discussed between her and the HR department, but which included as to her own employment history, the fact that she was “*head-hunted by SHAREit Group to establish and grow PayerMax payment business.*”
9. It is quite clear from the Dingtalk messages between Ms Wu and Ms Zhang that the transfer of Ms Wu’s employment from WAS to MEpay was under consideration. Ms Zhang suggested a visa transfer for August 2022, but Ms Wu put it off: “*Can’t say when for now*”. An uncompleted draft employment contract was sent to Ms Wu, although as it turns out it does not look as though she opened it. She made her position quite clear in a message to Ms Zhang in June 2022:

“If MePay Insurance, salary payroll and agreed contract I am ok with it – then I’m happy to move from [WAS]. I had unlimited contract with [WAS] – I need the same from MePay & equal terms. So as soon as it’s ready MePay contract...please do share with me”.
10. The negotiations between Ms Wu and Ms Zhang continued in a somewhat on-and-off manner. Ms Wu made it clear that she would expect end of service gratuity that had accrued to be paid out so that service time from WAS would start from nought once she moved to MEpay. In further messages in October 2022, Ms Wu was insistent that before she would agree to transfer to MEpay, WAS would need to pay out her remaining annual leave and end of service gratuity.
11. In the event, agreement could not be reached for the transfer of Ms Wu’s employment to MEpay, and the situation was left unchanged. Ms Zhang sent a message to Ms Wu to say that she had talked with Ms Zhu, and so “*We’ll remain [sic] your employment under [WAS]...*”: to which, on 11 January 2023, Ms Wu responded “*got it*”.
12. Ms Wu continued to work on the start-up of MEpay, from Dubai, save for attending meetings in ADGM on 12 January 2023 and 15 February 2023, and had 2 virtual meetings from Dubai via Microsoft teams in March 2023 and April 2023, with no meeting in May 2023, and then what turns out to have been a last meeting in ADGM on 15 June 2023. After that, relations appear to have soured, and Ms Zhu notified Ms Wu at the end of June 2023 that she would take over the position of SEO herself. Amid considerable dispute and disappointment on the part of Ms Wu her position of SEO was withdrawn, and she was no longer to be operating with MEpay.
13. Significantly, however, it is obvious that, though the relationship was strained, it was not so significantly destroyed that it prevented what in fact occurred, namely Ms Wu remaining with the Group, continuing to live in Dubai and to work for WAS at the same salary. Mr Qureshi, Ms Wu’s counsel, has sought to draw support from the fact that her salary has not been reduced, contending that this supports Ms Wu’s case that she had an agreement to pay her additional salary for being an employee of MEpay. It seems to me, however, that such point gives no such support. The fact that Ms Wu’s salary has not been reduced is entirely consistent with MEpay’s case: that Ms Wu was employed by WAS at the originally agreed salary to do full-time work as they should require, including being SEO of MEpay, and that as from July 2023 they did not require her to do any work as SEO of MEpay, but to return to being full-time for WAS, at her originally agreed salary.



The issue and decision

14. Ms Wu's case is obviously made much more difficult by the absence of any supporting evidence in writing. Ms Wu asserts that she regularly orally requested and was orally promised remuneration from MEpay by Ms Zhu and orally followed up such requests and promises. But there is no complaint in writing of Ms Zhu's failure to make good on that alleged promise. It is apparent from her evidence that Ms Wu is a very determined person, and I am satisfied that if there was any failure by Ms Zhu, she would have made sure, particularly if her trust in Ms Zhu started to fall away, to have followed the matter up by complaint in writing to ensure that her entitlement to additional remuneration was in some way recorded.
15. Absence of documentation is not of course fatal to the establishment of an oral agreement. However, in this case there has not been any identification of any particular occasions or discussions or places when or where Ms Wu's requests for additional remuneration were made or agreed to, if such they were.
16. Further, there are other factors against which this disputed case of an oral agreement needs to be set:
 - a. The case put by Mr Ali is that Ms Wu was employed by WAS for AED 76,100 and was then additionally employed by MEpay as SEO for a further sum. As Mr Laddie KC for MEpay submitted, such an alleged agreement of unquantified remuneration is wholly lacking in certainty, particularly given the full-time nature of her employment by WAS. The additional remuneration claimed by Ms Wu was unspecified, the relationship with her simultaneous employment agreement with WAS and the AED 76,100 salary was unspecified, and no terms of her employment with MEpay were ever agreed. It does not assist Ms Wu's case that she was, as appears in the only relevant written documentation, promised stock or a bonus. Nor does the case pleaded in paragraph 21 of the Reply, set out in paragraph 7 above, assist in relation to establishing certainty.
 - b. There is however written evidence of the negotiations or discussions in June 2022 through to January 2023 as to her proposed employment with MEpay. I have set out a crucial passage in paragraph 9 above. There is there no assertion by Ms Wu of an entitlement to any additional remuneration beyond her salary with WAS. Indeed, on the face of it, the reverse appears to be true. Ms Wu sought to explain to me the meaning of the passage I have quoted in paragraph 9 above. She said that "*the same... & equal terms*" referred to terms other than remuneration, such as the unlimited duration of the contract. But that aspect was expressly dealt with, and it seems to me clear that the reference to "*equal terms*" must have been a reference to equal pay, i.e. that she was asking for the same salary from MEpay as she had had with WAS. But if it was not, then, on any basis, she was not asking for, nor asserting, an entitlement to greater remuneration than her salary from WAS.
 - c. Ms Wu's explanation to me was that she was not dealing with remuneration at all with Ms Zhang, since she was only a member of the HR team, and was not her line manager. But not only is that extremely unlikely, given the negotiations and discussions as to her proposed employment with MEpay that were taking place through Ms Zhang, Ms Wu further faces the problem that she specifically alleged in paragraph 15 of her witness statement that "*various attempts over Dingtalk chat with HR Cheri Zhang were made to put the promised remuneration from Ms Zhu for MEpay*". At trial, Ms Wu now said to me that this was a mistake and not correct. It seems to me plain that if Ms Wu believed she was entitled to additional remuneration over and above her WAS salary she would have made this clear in the course of the discussions as to her transfer of employment from WAS to MEpay.
 - d. Significantly, Ms Wu omitted the whole passage about her request for "*equal terms*" from the Dingtalk messages which she exhibited to her Particulars of Claim, for which omission she had no good explanation.



- e. The negotiations between Ms Wu and Ms Zhang regarding a transfer of employment to MEpay are inconsistent with an already existing contract (for additional remuneration) with MEpay:
- (i) it seems very difficult to see why Ms Wu did not say in the course of the negotiations that she was already employed by MEpay; and
 - (ii) when the negotiations came to an end, and Ms Wu's employment was not transferred to MEpay as had been discussed in those negotiations, her reaction was simply "got it". Those significant words "Got it" were again inexplicably omitted or redacted from the Dingtalk messages exhibited to Ms Wu's Particulars of Claim.
- f. Ms Wu's case that she was employed by WAS on a full-time contract for AED 76,100 and by MEpay for an additional sum is in any event unlikely without full explanation.
- g. Particularly given that Ms Wu alleges that the same or a similar agreement was made in respect of WAS KSA as for her position as SEO for MEpay, the arrangement with WAS KSA (to which I have referred in paragraph 6 above and is not in dispute) was wholly inconsistent with the suggested arrangement in respect of MEpay.
- h. Neither her (brief) predecessor as SEO, Mr Cheng, nor her successor Ms Zhu, were paid any additional remuneration over and above their salary from their relevant Group company to perform such duty.
17. As for the oral evidence, which is of course wholly significant in the absence of any documentary record, I prefer the evidence of Ms Zhu – that the agreement/promise never happened – to that of Ms Wu. The evidence of Ms Zhang, who also gave evidence for MEpay, was not in any material respect challenged. While Ms Zhang confirmed, when asked by Mr Ali, that Ms Wu had never agreed to work for nothing as SEO of MEpay, she also gave evidence that Ms Wu never complained of non-payment for her role as SEO, while she did make other complaints as to non-payment of days of annual leave.
18. I am satisfied that there was no express agreement by MEpay to employ Ms Wu as SEO for additional remuneration or at all.
19. I turn to the alternative way in which Mr Ali put Ms Wu's case, namely by reference to an implied agreement. He submitted that Ms Wu had an implied contract of employment with MEpay for additional remuneration because she was to and did take up appointment as SEO of MEpay, and although she never moved to ADGM or obtained a work permit from ADGM, Ms Wu did considerable work for the start-up of MEpay. Most of the difficulties which I have identified above would still apply to Ms Wu's alternative case of an implied agreement, including the uncertainty of the terms and the inconsistency between, on the one hand the existence of an implied contract of employment by MEpay from September 2022, and on the other, negotiations for her to transfer to MEpay on the terms of those discussions.
20. However, in addition, it seems to me that the implication of a contract of employment does not get off the ground. Mr Ali submits that the implication of employment and remuneration arises simply from Ms Wu having carried out substantial work as SEO, from time to time in Dubai and also in Abu Dhabi. But there is plainly no call for such implication when the position is already covered by her full-time contract of employment with WAS, set out in paragraph 5 above. I find that Ms Wu was simply performing her full-time 48 hour per week contract. She was employed solely (pursuant to clause 3.2) by WAS, and was carrying out the requirements of WAS (or, as she had recognised from the outset, the "SHAREit family"). She was obliged to "perform such duties and exercise such powers consistent with them as the Company may from time to time properly, assign to or confer



upon” her or which led her to take on, as she put it in her Particulars of Claim “*additional job roles in its several affiliate entities in the MENA region*”.

21. I am therefore satisfied there was no implied agreement by MEpay to employ Ms Wu as SEO for additional remuneration or at all.
22. I do not need to address Mr Laddie’s alternative and fallback submission that there cannot have been a contract of employment justiciable in this Court, because of the terms of Section 65 of the ADGM Employment Regulations 2019. This provides that “*Employee means an individual who [not only]: (a) works [...] in the service of another person under an express or implied Contract of Employment*”, but (b) holds an ADGM work permit and (c) “*is based within, or ordinarily working within or from*” the ADGM. Ms Wu did/was neither because, although she did work to some extent in the ADGM, she was based in Dubai, and she never had an ADGM work permit. If this were otherwise relevant, there would be some dispute (which is raised by Mr Ali) as to whether it was the obligation of MEpay to obtain such work permit, and reference would then be made to Ms Wu’s apparent reluctance to move to ADGM, referred to in paragraph 9 above. However, I am satisfied that this issue does not arise, as there was no such contract of employment, express or implied, as I have already found.
23. There is, of course, the further point that even if I were to have found that there was a contract of employment, which could arguably be said to have been breached by MEpay, that would avail Ms Wu nothing without proof of loss, namely additional remuneration on top of her salary from WAS (which she continues to receive). I am satisfied Ms Wu has no such entitlement.
24. The Claimant’s claim is dismissed. As to costs, normally these are to follow the event with costs to be awarded to the Defendant. Practice Direction 9 provides for fixed costs of USD 36,759.70 (equivalent to AED 135,000.00) for the Defendant (who is legally represented in an employment claim where judgment has been entered for the Defendant after trial), together with filing fees of USD 250.00, and I award these amounts to the Defendant. There is to be an order *nisi* that these costs be to the Defendant, the order to become absolute in the absence of any application to vary the terms of the order *nisi*. I also grant liberty to apply which shall be limited to any application to vary the terms of the costs order *nisi*.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
23 January 2024