

Judgment of the Abu Dhabi Federal Civil Court of Appeal

Hassan Arab - Partner, Regional Head of Dispute Resolution - Litigation / Arbitration
h.arab@tamimi.com - Dubai International Financial Centre

Suzanne Abdullah
s.abdullah@tamimi.com

March 2011

The Respondent filed a case in the Abu Dhabi Federal Court in which it sought an order that the Appellant be directed to appoint an arbitrator. The Respondent also sought confirmation of an arbitral award.

The facts of the case are that the Appellant had leased a plot of land from the Respondent, but did not use the land in the manner agreed upon in the Contract. The Appellant's purported misuse of the land had ruined it. Owing to an arbitration clause in the contract, the Respondent asked Appellant to appoint an arbitrator in accordance with the contract to determine the damage the Appellant had purportedly caused to the land, along with any monetary amount due as compensation. In view of the Appellant's failure to appoint an arbitrator the Respondent applied to Court.

The Abu Dhabi Federal Court of First Instance appointed three arbitrators from the Ministry of Justice roll, who, following the conduct of arbitration proceedings, ordered the Appellant to pay AED 1,708,360 to the Respondent. All other claims were dismissed.

The Respondent sought enforcement of the arbitral award. The Appellant filed a cross-action seeking:

- an order requiring the Respondent to pay the sum of AED 200,000 plus interest to the Appellant; and
- an order setting aside the arbitral award.

On 23 February 2010, the Abu Dhabi Federal Court of First Instance declared itself to be without jurisdiction to hear the matter and referred it to the local Abu Dhabi Court of First Instance.

Both parties appealed this decision. On 25 February 2010 the Abu Dhabi Federal Court of Appeal held that the Abu Dhabi Federal Court of First Instance had jurisdiction in the matter, which was referred back to that Court again. The Appellant appealed this decision to the Federal Supreme Court.

Article 151 of the Civil Procedure Code, confirms that decisions conferring jurisdiction on a court that did not have original jurisdiction, are among the types of decisions that are excluded from the general rule. The general rule being, that decisions made during the course of proceedings, which do not ultimately end the dispute, can be reviewed only after a final decision concluding dispute in its entirety has been issued.

Decision 185, issued by the Head of the Abu Dhabi Judicial Department on 19 August 2007, prescribed that local courts in Abu Dhabi are a judicial authority independent from the Federal judicial authority. Therefore, the lower Court's decision to confer jurisdiction on the Abu Dhabi Federal Court (thus excluding the local courts) was held to be a decision capable of direct appeal.

The Appellant's sole point of appeal was the lower Court had contradicted the law by ruling that the Abu Dhabi Federal Court of First Instance had jurisdiction to determine the enforcement application. The Appellant argued that:

- as the arbitration had been conducted out of court, the Respondent had to file a primary action to enforce the award; and
- that jurisdiction to hear such an action belonged to the local Abu Dhabi Court of First Instance.

The Federal Supreme Court has held on a number of occasions that the Emirate of Abu Dhabi has retained judicial authority over its local courts. Therefore, the allocation of competence in court cases is an issue of jurisdiction, related to public policy and which precludes individual parties from agreeing to the contrary.

The dispute in question revolved around determining which court has jurisdiction to entertain the request to enforce an arbitral award.

The Federal Supreme Court referred to Article 204 of the Civil Procedure Law:

204: "If a dispute arises and the parties have not agreed on the arbitrators, or if one or more of the agreed arbitrators refrains from acting, resigns, or is discharged or removed or if an impediment to him so acting arises, and there is nothing agreed between the parties in this regard, then at the request of any of the parties the Court originally competent to hear the dispute shall appoint whatever arbitrators are required by normal litigation procedures."

Hence, an award made by an arbitrator appointed by the Court, either appointed in a dispute before the Court or appointed at the request of one of the parties is classified as a court administered arbitration, to which the above rules would apply. In other words, the Court can hear the application for enforcement without a new action having to be filed. New actions must be filed when enforcement of awards issued in an out of court arbitration is sought.

In the subject case, the record confirmed that the Abu Dhabi Federal Court of First Instance had appointed an arbitrator to resolve the dispute in question, and that the arbitrator had then handed down his award. Accordingly, the arbitration was court administered. This meant that the Abu Dhabi Federal Court of First Instance was competent to hear the enforcement action, as long as it was filed prior to the taking of effect on 1 September 2007 of Decision 185.

It was ultimately determined that the lower Court had correctly applied the law. Accordingly, the Appellant's appeal was dismissed with AED 2,000 legal fees.