

A Broker's capacity

March 2011

Claim

The Claimant, an individual, filed an action against a local broker (the First Defendant) and a Developer (the Second Defendant) (collectively referred to as "the Defendants"). The Claimant requested the Court to order the Defendants to jointly pay the amount of AED 165,710 plus 12% interest, calculated from the date the legal action was initiated until full payment.

Facts of the Claim

On 30 January 2008 the Claimant concluded a booking form with the Second Defendant, which related to the reservation of a unit in a certain project. The price of the unit was AED 828,500 (the total amount). The Claimant averred that he made three installment payments which amounted to AED 165,710, to the First Defendant. The Claimant contended that First Defendant provided signed receipts evidencing its receipt of the payments. The Claimant contended that after signing the contract applicable to the unit, the First Defendant signed an exhibit to the contract in its capacity as "seller" and requested the Claimant to deposit the installments in the First Defendant's bank account.

Finally, the Claimant contended the Second Defendant failed to start construction of the project and failed to register Claimant's unit in the Interim Real Estate Register (IRER). The Claimant contended this was a clear violation of the contract, and as a result it should be considered void.

Court of First Instance

The Court of First Instance ruled in favor of the Claimant and terminated the contract. In addition, the court ordered both Defendants to pay the amount of AED 165,710 plus 12% interest (calculated from the date of the legal action). The Second Defendant appealed the decision to the Court of Appeal.

Court of Appeal

The Court of Appeal amended the decision handed down by the Court of First Instance and directed both Defendants to pay jointly the amount of AED 165,710 to the Claimant, without interest. The First Defendant appealed to the Court of Cassation.

Court of Cassation

Before the Court of Cassation, the First Defendant argued that the Court of Appeal had erred in its decision, as it failed to rely on a fundamental defense concerning the First Defendant's purported lack of capacity. The First Defendant contended that the contract had been concluded between the Claimant and the Second Defendant only, and it was not binding on the First Defendant. Further, the First Defendant argued, that in the brokerage contract concluded with the Second Defendant, he had undertaken only to source a third party (the Claimant) to buy a unit in the project, and that his mission was limited to inviting the parties to negotiate the terms and conditions of the contract. The First Defendant further suggested his role in the transaction concluded with the execution of the contract, and he should not be held liable thereafter.

The Court of Cassation overturned the lower Court's decision. The Court held that the First Defendant's ambit, as a real estate broker, was, limited to sourcing potential brokers without him being liable to the parties during the contract execution stage. Essentially, the Court of Cassation concluded that the First Defendant should be considered as a broker only, and it lacked capacity with respect to the execution of the contract.

With respect to the Second Defendant, the Court of Cassation found it had failed both to commence construction work for the project and to register the Claimant's unit in the interim register. The Court of Cassation found this meant the Second Defendant had failed to adhere to its contractual obligations.

The Court of Cassation also determined that the lower Courts erred in considering the First Defendant as a party to the action. This was notwithstanding the fact the First Defendant had received payment from the Claimant - the Court of Cassation held this did not alter the First Defendant's capacity as broker.

The decision of the lower Court, which ordered the First and Second Defendants to pay the Claimant jointly, was overturned. The First Defendant was held not to be liable to the Claimant due to his lack of capacity.