

Real Estate Brokerage Contract And The Requirement For Registration

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IN SUMMARY

In a recent case concerning a property broker (the "Claimant") and a retail company (the "Defendant"), the Court of Cassation held that in order to have a valid Real Estate Brokerage contract, it must be registered at the Dubai Land Department. In this case, the Claimant filed an action before the Dubai Court of First Instance seeking an order to compel the Defendant to pay AED 14,400,000 (as commission fee) with statutory interest at the rate of 9% per annum from the date of filing the action until full satisfaction.

The Defendant had commissioned the Claimant to act as broker and find the Defendant a buyer for its plot. The Defendant did not pay the Claimant its commission when a buyer was found. The Defendant argued that the action filed against it, should be dismissed on the basis that there was no written and registered property brokerage contract and the deal was actually concluded between the Defendant and a third party. It was also argued that the sale contract was registered at the Land & Property department without a property broker.

The Court of Cassation confirmed (and this was verified by the documents submitted to the courts) that the Claimant did not file a written property brokerage contract registered under the sold property section at the Land and Property Department, as required by law. As a result, the Court of Cassation ruled that a property brokerage contract cannot be proven by witness testimony and the Claimant failed to comply with Articles 15 and 26 of Regulation 85 of 2006 concerning the Register of Real Estate Brokers in Dubai. The Defendant was therefore not obliged to pay the Broker commission to the Claimant.

COURT OF FIRST INSTANCE

The Court of First Instance appointed an expert in the case who issued a report concluding that the deal was made between Defendant Company as Seller and a third party for a total price of AED 720,000,000 and a sale contract was registered at the Land & Property Department on 05.06.08 without any mention that the deal was made through a property broker, with a commission rate of 2% of the total price i.e. AED 14,400,000

On 28.04.10, the Court dismissed the Claimant's action on the ground that there was no written and registered property brokerage contract on record and no reference to same in the relevant column of the register of sold property at the Land & Property Department.

COURT OF APPEAL

Claimant appealed before the Court of Appeal (in Property Appeal No. 285-2010) and the Court of Appeal referred the matter for investigation. After hearing witnesses from both sides, the Court ruled on 13.04.11 that the Court of First Instance decision would be reversed and the Defendant Company would be required to pay the sum of AED 14,400,000 with statutory interest at the rate of 5% from the date of filing proceedings until paid.

The Defendant appealed to the Court of Cassation in Property Appeal No. 131-2011 seeking reversal of the appealed decision.

COURT OF CASSATION

The Defendant argued that the lower Court erred in law and reasoning. The Defendant had maintained before the trial court that the case record does not include a written property brokerage contract registered with the Land & Property Department under the sold property column as required by Law No. 7 of 2006 and Article 26 of Regulation No. 85 of 2006 concerning the Register of Real Estate Brokers. The deal was concluded between the Defendant and a Third party and a contract was registered with the Land & Property Department without a property broker. Furthermore, a property brokerage contract cannot be proven by witness testimony. The Defendant had raised this point before the Court of Appeal but the Court did not examine this issue, reversed the lower Court's decision and ordered the Defendant to pay the claimed fee on the strength of the statement of the Claimant's witness which it took as proof of the existence of the alleged property brokerage contract, contrary to the law. The appealed decision was thus flawed and ought to be reversed.

According to Articles 15 and 26 of Regulation No. 85 of 2006 concerning the Register of Real Estate Brokers in Dubai and the settled practice of this Court, brokers shall maintain a special register to record all transactions concluded through them and keep the relevant documents and papers. The brokerage contract shall be in writing and shall state the names of the parties, the specifications of the property and the brokerage conditions. The contract shall be recorded in the property register as proof of the property brokerage contract and of the related processes. Operations and other evidence shall in no event be received as a substitute for written evidence.

The Court of First Instance had granted Defendant its request and dismissed the action but the Court of Appeal, referred the matter for investigation for Claimant to prove the alleged property brokerage contract by witness testimony. After hearing Claimant's witness, the Court of Appeal, in reliance on his testimony, reversed the first instance decision and ordered Defendant to pay the claimed commission. It is clear from the record and exhibits that the Claimant did not file a written property brokerage contract registered under the sold property column at the Land & Property Department, as required by law. Accordingly, the lower Court erred in allowing witness testimony concerning the existence of a property brokerage contract and awarding the broker the fee he claims and its decision will be reversed for this reason without an examination of the other grounds of appeal.

Based on the foregoing, and in view of the fact that the Court of First Instance dismissed the action due to lack of evidence on the alleged property brokerage contract and the fact that the deal had been concluded and a sale contract registered at the Land & Property Department without property broker involvement, the Court's decision must be upheld.