

Kuwait Court of Cassation Judgment- Termination of a renewable commercial agency agreement

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The Claimant also wanted the court to confirm that the Claimant was not in breach of the agency agreement. The Claimant claimed the amount of money it invested in order to achieve the purpose set out in the agency agreement, compensation for damages incurred as a result of the termination of the agency agreement, profit that the Claimant Company lost as a result of the termination, and other losses.

Pursuant to Article 282 Kuwait Commercial Agency law, the Principal shall pay compensation (determined by the judge) to the Agent in the event the Principal terminates or refuses to renew the agency agreement without justification. Article 282 applied in these circumstances as the Principal had not renewed the agency agreement without justification. However, the Principal argued that the courts did not have jurisdiction to hear the case because of the existence of the arbitration clause. Accordingly the case was dismissed by the courts.

BACKGROUND

The Claimant company entered into a contract (automatically renewable upon expiry of three years) with the Defendant company, whereby the Claimant would provide reservation services and complete the sale of passenger air transport within the territory of Kuwait onboard the defendant company's and, any other airlines on its behalf.

The Claimant company performed the work and services they had contractually agreed to, which contributed to the success and promotion of the Defendant company's business and increased its customer base, hence made profit.

The Claimant company was later surprised by the Defendant company's refusal to renew the commercial agency contract without legal justification. The basis of litigation was breach of article 7(1) of the agency agreement. The article provides that "this contract is valid for three years from the date of being signed, which may be renewed for another new period" The Claimant claimed the termination had caused moral and material damages without acceptable justification.

The court commenced to hear the case and appointed an expert to ascertain the amount of damages resulting from the termination of the commercial agency contract, without the existence of any fault caused by the Claimant. The Defendant submitted its defense, arguing that the court did not have jurisdiction to hear the case due to the existence of the arbitration clause and asked the expert to return the case again to the court to consider the arbitration clause. The expert complied with the Defendant's defense and as a result, the Court of First Instance ruled that the court had no jurisdiction to hear the case and ordered the Claimant to pay the expenses and the attorney's fees.

Thereafter, the Claimant challenged the same before the Appellate Court on the basis that the Appellant Company's manager, who signed the contract including the arbitration clause, was not legally authorized to approve the arbitration clause set out in the contract, consequently, the arbitration clause should be declared null and void because it violates public policy. The validity of the signature on the arbitration clause required a special power of attorney whereas the Appellant Company's manager signed the clause without the special power of attorney,

The Defendant had objected to the Appellant's defense on the basis that the Appellant Company is a company with limited liability and the signature on the contract is the general manager whose name is recorded in the memorandum of association. According to the companies' law in Kuwait, the general manager has extensive authority and he may sign such an arbitration clause without consulting the partners or obtaining a special power of attorney.

Accordingly, the court agreed with the Defendant's aforementioned defense and rejected the appeal filed by the Claimant Company.

CONCLUSION

As for limited liability companies, the manager may sign on agreements which contain Arbitration clause without having any Power of Attorney or delegations. However, said manager's name should be stated in the Articles of Association of the limited liability company. It should be noted that in order for a dispute resolution clause which contains Arbitration to be sufficient, the Chairman of the Board of Directors should have either a Power of Attorney or a delegation from the Board of Directors authorizing him to sign on agreements that contain Arbitration clause.