

Dubai: The principles that apply when bringing an Order for Payment claim

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This article shall apply if the right of the creditor and circumstances for payment are confirmed in writing, and where all that is requested is a specific debt of money. This rule is an Ordre Public rule and once violated the court shall be obligated *Sua sponte* (i.e. on its own initiative) to dismiss the case.

Facts of the case

A commercial action was filed in 2009 by a Bank before Dubai Court of First Instance (“the Claimant”) against a partner (in his capacity as the Manager) (hereinafter “the Respondent”) in a Limited Liability Company.

The Claimant argued that a Murabaha Agreement (“Murabaha agreement”) was concluded with the limited liability company and accordingly the Respondent issued cheques amounting to AED 609,525 (“Total Amount”) for the benefit of the Claimant. However, the Claimant submitted further that these cheques bounced as a result of insufficient funds. The Claimant argued that the Respondent should be held liable for the payment of the cheque amounts particularly in view of the fact that he refused the bank’s repeated request to settle the matter amicably.

In light of the above, the Claimant initiated legal proceedings against the Respondent and requested the Court to direct him to pay the Total Amount.

The Court of First Instance

The Court of First Instance dismissed the case as the application was not filed according to the procedures stipulated under Article 143 of the Civil Procedure Law. Consequently, the Claimant appealed to the Court of Appeal.

The Court of Appeal

The Court of Appeal upheld the Court of First Instance decision. Consequently the Claimant appealed to the Court of Cassation.

The Court of Cassation

Before the Court of Cassation, the Claimant argued that the Court of Appeal erred in its decision to uphold the decision of the Court of First Instance who dismissed the case against the Respondent based on the following grounds:

- the bank filed this lawsuit against the Respondent requesting him to pay the Total Amount resulting from the Murabaha agreement concluded with the Limited Liability Company;
- this application is based on article 4 (a) of the Murabaha agreement which stipulates that: “In case of the failure of the Buyer (Respondent) to pay any due installment, all remaining installments shall become due”;
- that the Total Amount claimed in this case is confirmed by the Murabaha agreement and the postdated cheques;

- there are cheques that were due since October, November and December of the year 2008 in addition to other postdated cheques due in 2009 and 2010. Accordingly the Claimant submitted that the conditions stipulated by law to file a Direct Payment Order with the court were not met in this case."

The Court of Cassation overturned the Court of Appeal's decision and held that the procedure stipulated under Article 143 of the Civil Procedure Law ("CPL") must be complied with and an application for a Direct Payment Order was mandatory. Article 143 of the said law stipulates that:

"By way of exception from the general rules governing the bringing of actions at first instance (as stated under article 42), the rules set out in articles 144-149 of the same law shall apply:

1- if the debt owing to the creditor is confirmed in writing and is immediately due for payment, and if the only thing he is claiming is a money debt of specified amount or a moveable of specified type or amount; and

2- these rules shall apply if the person having the right is a creditor under a commercial paper and his recourse is limited to the drawer or maker or acceptor or the precautionary guarantor. However, if he wishes to have recourse against any person other than the above, he must follow the usual rules for the bringing of actions set out in Article 42 of the same law."

According to the Court of Cassation the legislator mandated that where the conditions set out in Article 143 are met, it is compulsory for the creditor to lodge his application for a Direct Payment Order.

Furthermore, according to previous court rulings this rule is an *Ordre Public* rule and in the event it is breached, the court must on its own initiative dismiss the case. Article 143 shall be applicable in the event the Claimant is claiming the Total Amount from the issuer himself since he is the signatory of the cheque.

In its interpretation to Article 143 of the CPL and its applicability to the facts of the case, the court decided that the Murabaha Agreement was concluded with an LLC company (and not the partner/Respondent) and the Respondent is its legal representative who issued the aforementioned cheques in the name of the LLC company and signed them on behalf of the LLC company for the benefit of the bank. The Claimant filed its action against the Respondent before the competent court pursuant to the general rules set out in Article 42 of the CPL as the issuer of the cheques on behalf of the LLC. As the Claimant's recourse was not against the drawer, the writer, the recipient or the precautionary guarantor, then Article 143 would not apply.

Accordingly the Court of Cassation overturned the lower's court decision and decided that the Claimant should file the case pursuant to the procedures stipulated under Article 42 of the CPL and not those stipulated under Article 143 of the CPL.