

Jurisdiction and Property Disputes in Dubai

Ammar Haykal - Partner, Head of Office – Northern Emirates - Litigation

a.haykal@tamimi.com - Ras Al Khaimah

- Sharjah

There are two court systems in the UAE: Federal and Local. In 1971 when the federation was formed, a federal judicial structure was established to deal with civil and criminal matters within the UAE. However, two of the emirates, Dubai and Ras Al Khaimah, have remained outside the federal structure and maintained their own independent judicial systems.

The federal court system applies in the emirates of Sharjah, Ajman, Umm Al Quwain and Fujairah. Each of these emirates has its own federal courthouse which houses the court of first instance and appeal court. The Federal Supreme Court is located in Abu Dhabi and hears all appeals from the appeal courts of the emirates which fall within the jurisdiction of the federal court system.

A local court system applies in Abu Dhabi, Dubai and Ras Al Khaimah. Each of these emirates has its own local courts with first instance, appeal and cassation divisions that hear cases within their jurisdiction. Consequently there are four high courts in UAE: the Federal Supreme Court, the Abu Dhabi Cassation Court, the Dubai Cassation Court and the Ras Al Khaimah Cassation Court. These high courts represent the final stage of the appeals process and rule only on matters of law. In view of this framework, understanding the jurisdiction of the UAE Federal and Local Courts to hear disputes is essential prior to the filing of a claim by a potential litigant.

Article 31 of the UAE Civil Procedure Law (“CPL”) identifies several factors which need to be considered in determining whether the courts of a particular emirate will have jurisdiction in relation to a dispute. It is important to note that other than in the circumstances stipulated in Article 32 of the CPL, parties can agree to empower another court to hear their dispute unless public policy considerations prevent this. For example, with respect to proceedings relating to real estate (dealt with in Article 32 of the CPL), parties cannot nominate a court other than the court which has original jurisdiction over the location of the real estate that forms the subject matter of the proceedings. This is a matter of public policy.

Article 32 of the CPL stipulates that:

“With regard to actions in rem concerning real estate or possession, if the subjects are located within the jurisdiction of various courts, competence lies with a court within the jurisdiction of which the property or some part thereof is located.

In personal real estate actions, competence lies with the court within the jurisdiction of which the real estate or the address of the defendant is located.”

Apart from the Dubai International Financial Centre free zone (“DIFC”), the free zones in Dubai do not have separate jurisdiction and are subject to the jurisdiction of the regular Dubai Courts. The DIFC, which was established in 2002 by Dubai Law No. 3 of 2002, has its own separate legal system. As part of the establishment of the DIFC, the DIFC Courts were created pursuant to Dubai Law No. 12 of 2004 (as amended recently by Dubai Law No. 16 of 2011), which is often referred to as the “Judicial Authority Law”. The Judicial Authority Law established the Judicial Authority at the DIFC, sets out the jurisdiction of the DIFC Courts and protects the independent administration of justice in the DIFC. The DIFC Law No. 9 of 2004 outlines the powers, procedures, functions and administration of the DIFC Courts.

Until October 2011, the DIFC Courts were not an “opt in” jurisdiction. Their jurisdiction was limited to civil or commercial cases and disputes that fell within one of the four jurisdictional gateways set out in Article 5A(1) of the Judicial Authority Law. Where the DIFC Courts had jurisdiction, the jurisdiction of the Dubai Courts was specifically excluded, except in relation to criminal and matrimonial matters. In order for a dispute to fall within the DIFC Courts’ jurisdiction, there had to be a connection to the DIFC. This connection could have related to the subject matter of the dispute, the location of the parties involved and/or the transaction concluded by the parties.

This arrangement changed on 31 October 2011 with the signing of Dubai Law No 16 of 2011 (“New Law”), which amended the jurisdictional limitations in the Judicial Authority Law. Article 5A(2) of the New Law now permits contracting parties to agree clearly and expressly in writing to refer their civil and commercial dispute to the DIFC Courts, even where they or their contract have no other connection to the DIFC (and as long as no final judgment has been issued by another court).

Moreover, if a dispute has already arisen it can still be resolved in the DIFC Courts if both parties agree to have it heard there. In other words, parties, regardless of where they are located, are now free to “opt in” to the jurisdiction of the DIFC Courts and select it as the forum to hear and rule on their dispute.

Where parties have not agreed clearly and expressly in writing to refer their dispute to the jurisdiction of the DIFC Courts, the DIFC Courts still maintain exclusive jurisdiction in relation to civil and commercial cases falling within one of the (now) five jurisdictional gateways set out in Article 5A(1) of the New Law:

- (a) civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;
- (b) civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalized or performed within the DIFC or that will be performed or is supposed to be performed within the DIFC pursuant to express or implied terms stipulated in the contract;
- (c) civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within the DIFC and is related to DIFC activities;
- (d) appeals against decisions or procedures made by DIFC Bodies where DIFC Laws and DIFC Regulations permit such appeals; or
- (e) any claim or action over which the DIFC Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations.

Cases are therefore clearly within the DIFC Courts’ exclusive jurisdiction if they either fall within one of the five jurisdictional gateways in Article 5A(1) of the New Law or because contracting parties have expressly agreed to submit to the DIFC Courts’ jurisdiction. Alternatively, cases clearly fall outside the jurisdiction of the DIFC Courts where neither the parties, nor their contract, have anything to do with the DIFC and the parties have not expressly selected this jurisdiction as permitted under the New Law. Between these two categories there may be borderline cases where issues as to the DIFC Courts’ jurisdiction are raised and the relationship between the DIFC Courts and the regular Dubai Courts requires further clarification.

Practice in the Dubai Courts

In one case Al Tamimi & Company was instructed to act for the sellers of properties (“Defendants”) and for a third party joined to the proceedings by the Purchaser (“Claimant”). The Claimant applied for an order from the regular Dubai Courts:

- validating and enforcing a Sale and Purchase Agreement concluded between parties on 15 April 2008 (“SPA”) in respect of shops A, B, C and D (“Shops”) and ordering the Defendants to hand over the Shops; and

- requiring the Defendants to pay the Claimant jointly and severally an amount of AED 19.4m and compensating him for the loss of profits that he suffered together with 9% interest starting from the due date.

Facts of the claim

The Claimant argued that on 15 April 2008 he purchased the Shops for AED 34.1m (the “Price”). The Claimant further argued that an additional amount of AED 3.48m was paid as due under the SPA. The Claimant also alleged that the Defendants had refrained from both the registration of the SPA and from the handover of the Shops because they intended to sell the Shops to a third party as their value had increased to more than AED 50m.

During the proceedings before the Court of First Instance, the Claimant filed an application requesting the Court to join a third party to the proceedings. The Claimant argued that the UAE courts had jurisdiction to hear the case pursuant to Dubai Law No. 13 of 2008 regulating the Interim Real Estate Register in the Emirate of Dubai (“Law No. 13 of 2008”). The Defendants, however, mounted a jurisdictional challenge seeking the dismissal of the case on the basis that the Shops were located in the DIFC. They argued that any disputes relating to the Shops fell within the exclusive jurisdiction of the DIFC Courts.

Court of First Instance

The Court of First Instance ruled in favor of the Defendants and dismissed the case as the Shops were located in the DIFC. It ruled that the DIFC Courts had exclusive jurisdiction in relation to the dispute. The Claimant appealed this decision.

Court of Appeal

The Court of Appeal reversed the decision of the Court of First Instance and ruled in favor of the Claimant. It held that the UAE courts had jurisdiction to hear the case. The case was consequently referred back to the Court of First Instance for a decision as to its merits. The Defendants and the third party appealed the Court of Appeal’s decision to the (Dubai) Court of Cassation. Similar arguments were heard in that the Appellants submitted that the Dubai Courts lacked the necessary jurisdiction to hear the case.

The Court of Cassation

The Defendants and the third party argued that the Court of Appeal had erred in its decision to reverse the decision of the Court of First Instance. The following arguments were submitted:

- the Claimant’s argument that Decree No. 28 of 2008 gave the Dubai Court jurisdiction over all real estate cases without any exception was erroneous as this Decree did not incorporate such terms. The Defendants and the third party argued that the basis for the Decree was the cancellation of Decree No. 30 of 2007 establishing a special judicial committee for tenancy disputes in the Emirate of Dubai and that it therefore excludes the DIFC;
- Article 8 of Dubai Law No. 9 of 2004 regarding the DIFC Judicial Authority grants exclusive jurisdiction to the DIFC Courts to hear and determine any claims to which the DIFC, DIFC Establishments or DIFC Bodies are parties (and also to hear and determine any dispute arising out of any transaction carried out in the DIFC or to determine an incident which took place there);
- by virtue of the Shops’ location in the DIFC, the DIFC Courts had the exclusive jurisdiction to hear the case; and
- the parties had agreed, in Clause 13 of the SPA, that the DIFC Courts would have the jurisdiction to hear any disputes that may arise between them.

The Court of Cassation held that as the Shops were located in the DIFC, the DIFC Courts had exclusive jurisdiction to hear and determine the dispute. The result of this ruling was that the Court of Cassation overturned the Court of Appeal’s decision and upheld the Court of First Instance’s decision (which had

initially held that the DIFC Courts had jurisdiction).