

Supreme Court Decision: Powers of Attorneys submitted to Banks

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This decision is considered controversial particularly as the Civil Code provides that the principal's express notification to the agent/third party is required to revoke a power of attorney.

Background

The Bank (the First Defendant) in this case was held liable for unauthorized transactions and was ordered to pay damages in the amount of AED 3.2 million (the Claim amount was AED 8.3 million) representing the loss suffered as a result of the unauthorized transactions. The Bank's alleged error was that it allowed the Second Defendant (an individual) to unilaterally withdraw funds from the account despite the existence of the last power of attorney requiring the joint signatures of the Claimant and the Third Defendant (another individual) to manage the account.

Three powers of attorneys were submitted to the Bank in total, the first power of attorney authorized only the Second Defendant to manage the account, the second power of attorney authorized the Second Defendant and the Claimant jointly and the third power of attorney authorized the Claimant and the Third Defendant jointly.

The Court of First Instance and Court of Appeal rejected the Claimant's case on the basis that the Bank had the discretion to accept any transaction based on any signature of the authorized attorneys together as long as the Bank had not been notified of the revocation of the power of attorney. In these circumstances, the Bank had not been notified of any revocation and as a result, all the powers of attorneys submitted to the Bank were binding.

The Federal Supreme Court's decision and its reliance on 933 (2) of the Civil Code

The argument by the Bank, although successful at the lower two levels, failed at the final level. The Federal Supreme Court rejected the Bank's argument and ruled that the bank was mistaken in accepting transactions based on the first power of attorney as the last power of attorney issued, provides very clearly that two people should sign together.

The court relied on Article 933(2) of the Civil Code, which provides:

"if the attorneys are appointed in one contract without any of them being given the power to act individually, they must act jointly unless the work is such that it cannot be done jointly with another such as legal representation, but provided that (the person acting on his own) must consult the others appointed with him, or unless it is a matter which does not require the exchange of views such as the collection or payment of a debt."

The Federal Supreme Court therefore overruled the Court of Appeal judgment and sent the matter back for retrial. Upon retrial, the Court of Appeal ruled in favour of the Claimant and ordered the bank to pay AED 2.7 million plus 5% interest in compensation for unauthorized transactions.

Recommendations to banks in light of Supreme Court decision

The Supreme Court overruled the Court of Appeal's decision and held that if a number of attorneys are appointed in one power of attorney they have to act jointly, irrespective of the fact that one of them has been appointed to act individually in a separate previous power of attorney. In the event there is a material difference in either the terms of authorisation or the names of the individual attorneys in the powers of attorney submitted, the court will only look at the last power of attorney.

As a result of this decision, it is recommended that banks carefully check the wording of powers of attorneys particularly when several powers of attorneys are submitted at different times since it can be argued that the later power of attorney amends the former one even though the former has not been expressly revoked.

Notwithstanding the above and pursuant to Article 954 of the Civil Code, a power of attorney still needs to be expressly revoked.