

UAE: The standard of care for special care objects and equipment and the extent of liability of its Custodian

Zafer Oghli

z.oghli@tamimi.com

The extent of this liability has been examined in a recent Abu Dhabi Supreme Court judgment as detailed here below.

Facts of the case

An insurance company (the Claimant) filed for legal action before Sharjah Court of First Instance against another insurance Company (the First Respondent) and an Oil Company (the Second Respondent) seeking a court order for damages. The Claimant brought proceedings on the basis that a fire broke out at the storehouses owned by the Oil Company and caused damages to nearby warehouses. The Claimant, as the insurer for the affected neighboring warehouses, indemnified its owners. The Claimant consequently pursued a subrogated claim against the First and the Second Respondents seeking a court order against the Respondents with an amount exceeding AED 40 millions and interest.

The Claimant relied in its action on provisions of Article 316 of the UAE Civil Code (“the Law”) which provides “Any person who has things under his control which require special care in order to prevent their causing harm, or mechanical equipment, shall be liable for any harm done by such things or equipment, save to the extent that harm could not have been averted, without prejudice to any special provisions in this regard”

Procedural History

The Court of First Instance issued a decision dismissing the case. The Claimant appealed before the Court of Appeal which was affirmed the lower court’s decision. The case was then appealed to the Abu Dhabi Supreme Court.

The Supreme Court

The Supreme Court held that the effect of Article 316, as supported by the explanatory memo of the Law, is that the custodian of the thing that requires special care (whether such person is the owner or not), is liable for harm caused from said thing. The custodian’s liability here is not on the basis of the presumed fault but on the basis of the rule that the burden accompanies the benefit. However, the custodian of the thing can avoid liability by negating one of the elements of the cause of action by proving:

- that the thing which caused the harm did not require special care to prevent its causing harm;
- proving that the custodian did not have actual control over the thing at the time the harm occurred;
- that the custodian had taken all the precautions necessary to prevent the thing causing harm;
- that the harm could not have been prevented because a person is bound to do only that which is within his capability; or
- under the general rules, that the harm did not result from the thing but was due to an external factor over which the custodian had no control.

On the other hand, Article 282 of the Civil Code provides that “Any harm done to another shall render the doer thereof, even though not a person of discretion, liable to make good the harm”. This means according to the explanatory memo of the Civil Code that Article 282 establishes the elements of a tort claim as fault,

harm, and a causal link between them. The term harm is used instead of various other terms that describe fault such as “unlawful act”, “act contrary to the law” or “act prohibited by law”.

Also, Article 283 of the same code provides that “(1) harm may be direct or by causation (2) If the harm is direct, it must unconditionally be made good, and if it is consequential there must be a wrongdoing or a deliberate act or the act must have led to the harm.” This indicates, according to the explanatory memo of the Civil Code, that damage is direct if the act causing the loss is done directly on the thing itself, and such a person is called the direct actor; as where for example when one breaks a pot. Whereas causation is established if the actor does an act on something else which leads to the damaging of the thing; as for example where one cuts a rope from which a lantern is hanging and the lantern falls and breaks. The actor directly caused of damage to the rope, and indirectly caused the damage of the lantern, or as in the case where a fire broke out at a certain location and spread elsewhere causing fire damage at the other location. A direct actor is liable even if he has not acted deliberately or wrongfully, whereas an indirect actor is liable only if he has acted deliberately or wrongfully. The issue of liability in tort or for things lies in the sound discretion of the trial court as finder of fact and weigher of evidence.”

In light of the above law provisions, the Abu Dhabi Supreme Court rendered its judgment upholding the Sharjah Appeal Court and held that the lower court’s decision was in accordance with the provisions of the law:

“The lower court dismissed the Claimant’s insurer’s subrogation claim on behalf of the insured seeking a recovery against the oil company for damages caused to the insured by the fire that had spread to their premises from the oil company’s premises. The lower court reasoned its dismissal on the basis that the case documents and the reports of technical experts, including those from forensic laboratories in Sharjah, Abu Dhabi and Dubai, did not conclusively pinpoint the cause of the damage that destroyed the oil company and its contents and the source of the flames to confirm that the fire and the damage sustained by the insured were caused by things under the oil company’s control in terms of the building and its contents (oil, storage facilities, vehicles) and, in turn, its liability as one liable for things. The lower court held that the oil company should not be made to bear the burden of negating its ability to avert the damage by proving that the damage was due to external factors or an act of the aggrieved party, as this would require knowledge of the cause of the fire and proof that the fire was caused by things under its control. If, however, the cause is unknown, and not conclusively shown to be due to those things, then there can be no obligation to do what is not possible since liability for damage caused by things cannot be made to rest on presumed fault. The lower court accordingly found the oil company not liable for damages as one liable for things under Article 316 of the Law and not liable in tort under Article 282 of said Law because there was no proof of its fault. The oil company was also found not to be liable under Article 283 of said Law as a direct actor in the sense of having done the act causing the fire directly.”

Practice Note

There are several key and important points noted from the Abu Dhabi Supreme Court judgment above:

In order to prove damages and its source, it is pertinent to identify its cause. No liability can be imposed on the defendant in the absence of one of the key elements of a cause of action, in this case, the cause.

Justice necessitates that the defendant’s liability be determined to arise in contract or in tort while allowing the defendant the opportunity to dispute said liability. A defendant will not be liable for damages if the claimant has not established a statutory basis for liability. Hence, the Court’s finding that the defendant cannot disprove liability if the claimant has not identified a statutory basis for liability in the first place.

The above ruling is an invitation to owners of companies, factories and warehouses to ensure safety of their establishments by exercising the necessary level of care towards the maintenance of their establishments. Equipping their establishments with sufficient risk detection devices that are provided by specialized companies which can provide a record of evidence, in cases where damage occurs, is an essential tool that business owners can use to dispute liability for damages caused by things under their

custody.