

Abu Dhabi Court confirms how mortgages are to be enforced

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Background

The Borrower obtained a mortgage to finance the purchase of a property in Abu Dhabi. The mortgage contract was duly registered at the Properties Registrar at the Lands Department in Abu Dhabi Municipality.

At the time of entering into the mortgage the Borrower issued cheques for the installments of the loan for the first six months. However the cheques for the first and second installments were dishonoured and returned unpaid. The Lender notified the Borrower repeatedly to repay the amount of the loan but the Borrower failed to respond to the legal notices served on him.

Summary Court

The Lender applied to the Summary Court for an order that the mortgage be affixed with an Execution Deed so that it could be enforced by the Execution Court (i.e. foreclose on the property). The Lender argued that a mortgage is an authenticated deed in accordance with Article 225 of the UAE Civil Procedure Law since it was registered with the competent authorities. This allows the Lender the right to enforce the mortgage immediately without a need to obtain a judgment (on the merits) on the basis of the Borrower's default. The Summary Court accepted the application and ordered that the mortgage contract be sealed with the Execution Deed so as to allow immediate enforcement. The matter was then transferred to the Execution Court for enforcement.

The Execution Court

The Execution Court issued a decision temporarily staying execution on the basis that a final judgment (on the merits) was needed which granted permission to sell the property. The Lender appealed this decision to the Court of Cassation.

The Court of Cassation

The issue before the Court of Cassation was whether the duly registered mortgage contract between Borrower and the Lender constituted a valid Execution Deed for purposes of Article 220 and 225.

The Court held that it was. Once a mortgage is registered with the appropriate authority it becomes an 'Execution Deed' under article 225 of the UAE Civil Procedure Law. In the event of a default by the Borrower it can then be enforced against the mortgaged property without the need for any other procedure.

The Court therefore ruled to reverse the appealed judgment and to return the case to the Execution judge to consider the matter again. The Execution judge then proceeded as directed by the Court of Cassation.

Comment

This judgment provides valuable confirmation of the Abu Dhabi Court's stance on the issue and will be

welcomed by mortgage lenders. Whilst there have been similar decisions from other courts in the Emirates, this is believed to be the first such judgment from the Abu Dhabi Court of Cassation.