

Liability of Restaurants for Serving Food Contaminated with Bugs and Insects

November 2014

Introduction

This article is a review of a recent UAE court judgement where a lawsuit that was brought by a customer ("Plaintiff"), against a company that develops and operates the trade mark of a well known restaurant in the Middle East including the UAE ("First Defendant"). The company that owns the trade mark was also a party to the proceedings which is located in USA ("Second Defendant"), where the Plaintiff was served food contaminated with bugs and insects by the First Defendant. The judgment of the Court of First Instance was issued in favour of the First and Second Defendants (together "Defendants"). Al Tamimi & Company represented the Second Defendant in these proceedings.

Background

In 2009 the Second Defendant granted a license to the First Defendant to develop and operate its restaurants in the Middle East including the UAE, pursuant to a Master License Agreement.

On 10 June, 2013, the Plaintiff and his colleague visited one of the First Defendant's restaurants to have their lunch. They ordered several food items from the menu, one of which contained lettuce and while eating the food, they found bugs and insects in the lettuce. The Plaintiff quickly filed a complaint to Dubai Municipality claiming that the restaurant served them with contaminated food. The Food Control Department of Dubai Municipality inspected the restaurant and issued a report, which confirmed that the lettuce contained bugs and insects due to not washing the same properly.

The Nature of the Claim

The Plaintiff brought an action before Dubai Court of First Instance against the Defendants seeking damages in the sum of AED 250,000. The Plaintiff claimed that he suffered serious moral damages as well as diarrhoea and vomiting due to eating food contaminated with bugs and insects at the First Defendant's restaurant (which is controlled and supervised by the Second Defendant). The Plaintiff claimed that the First Defendant is subordinate to the Second Defendant.

The Plaintiff provided the Court with copies of four photos that show the insects and bugs are in the food and a copy of an email that was sent by Dubai Municipality thanking the Plaintiff for filing his complaint to Dubai Municipality regarding the contaminated food.

The Plaintiff based his claim in tort and relied on the following Articles of the Civil Transactions Law:

Article 282 which provides:

"Any harm done to another shall render the actor, even though not a person of discretion, liable to make good the harm."

Article 292 which provides:

"In all cases the compensation shall be assessed on the basis of the amount of harm suffered by the

victim, together with loss of profit, provided that that is a natural result of the harmful act”.

However, the Plaintiff relies on Article 313(b) to include the Second Defendant into the claim. This article provides:

“(a) No person shall be liable for the act of another person, but nevertheless the judge may, upon the application of an injured party and in the event that in his opinion there is justification for taking that course, render any of the following persons liable as the case may be to satisfy any amount awarded against a person who has caused the harm:

(b) any person who has actual control, by way of supervision and direction, over a person who has caused the damage, notwithstanding that he may not have had a free choice, if the act causing harm was committed by a person subordinate to him in or by reason of the execution of his duty.”

The Plaintiff asked the Court to bind the Defendants to jointly pay the sum of AED 250,000 for monetary and moral damages that he suffered due to eating contaminated food. In addition, the Plaintiff claimed interest on the claimed amount at a rate of 12% from the date of claim until a full payment is made, as well as all legal expenses and fees.

The Arguments of the Defendants:

The Second Defendant argued that since it does not operate in Dubai and it had granted a license to the First Defendant to develop and operate its trade mark restaurants in the Middle East including the UAE, the Second Defendant has no legal capacity to be sued in this claim. Moreover, the Second Defendant does not control or supervise the First Defendant and, the First Defendant is not subordinate to the Second Defendant. Furthermore, the Plaintiff did not submit any evidence proving that the First Defendant is controlled and supervised by the Second Defendant. Therefore, Article 313(b) of the Civil Procedures Law does not have any applicability in this case, so it should be dismissed for lack of legal personality against the Second Defendant. It is worth mentioning that the First Defendant confirmed to the Court that it has been using the trade mark of the Second Defendant.

The Defendants denied all the supporting documents that were submitted by the Plaintiff to the Court, on the basis that they were photocopies and not the originals and such documents do not have evidential value according to Article 45 of the Civil Procedures Law.

The Defendants argued substantively that, since the Plaintiff based his claim in tort and not a contractual relationship, he should prove to the Court that the Defendants committed a harmful act resulting in damages to him. However, the Plaintiff did not submit to the Court any evidence proving that he suffered any damages, diarrhoea and/or vomiting due to the food he ate at the restaurant. Furthermore, even if the Plaintiff submits to the Court evidence to prove that there were insects in the food, such evidence does not prove any harmful act committed by the Defendants. Also such evidence does not prove that the Plaintiff suffered damage. Therefore, the Defendants argued that the case should be dismissed for lack of evidence.

The Court of First Instance

The Court of First Instance found that the Second Defendant has no capacity to be sued in this case, as the Plaintiff did not provide the Court with any evidence to prove that the First Defendant is the representative or agent of the Second Defendant. Therefore, the Court dismissed the case against the Second Defendant.

Also the Court ruled that according to Article 1 of the Civil Procedures Law and the legal precedents, the Plaintiff should prove his claim. However, the Plaintiff did not submit to the Court any evidence that proves that the food he ate at the First Defendant’s restaurant caused him to suffer damage. Also, all the documents that were submitted by the Plaintiff were photocopies and the Defendants denied them, thereby they have no weight of evidence.

Accordingly, the Court decided to dismiss the case for lack of evidence.

Comment

It can be said that even if a restaurant serves its customers contaminated food with bugs and insects, the restaurant will not be liable to compensate the customers for serving such food, unless the customer proves to the Court that they suffered from damages.

It is worth mentioning that the Plaintiff has filed an appeal to challenge the Court of First Instance's judgement.