

Dubai Court: Tenant Must Obtain Landlord's Consent to Lease Assignment Despite No Express Contractual Obligation

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This Dubai Court of Cassation applied this principle in a recent case involving the obligations of a party to a contract (the "Original Tenant") under which it assigned its lease to another party who wished to take over the Original Tenant's lease (the "New Tenant").

Background

The Original Tenant had agreed to assign its lease to the New Tenant. The Original Tenant's obligations under the contract were limited to concluding an assignment of the lease in favor of the New Tenant. The contract did not require the Original Tenant to obtain an assignment or consent to an assignment from the landlord under the lease in favor of the New Tenant.

The New Tenant (the claimant in the court proceedings) sued the Original Tenant to terminate the contract and recover the amount of AED 220,000 that it had paid to the Original Tenant because the Original Tenant (the defendant) failed to fulfill its obligation to transfer the lease to the New Tenant.

Court of First Instance

The Court of First Instance ordered that the contract be terminated and that the Original Tenant return the amount paid by the New Tenant with interest. The Original Tenant appealed.

Court of Appeal

The primary ruling was upheld on appeal and the Original Tenant appealed again.

Court of Cassation

The Original Tenant took exception to the Court of Appeal's ruling on the following grounds:

- The Court of Appeal upheld the primary ruling that the contract would be terminated and the award amount returned despite the contractual obligation to assign the leased premises, which the Original Tenant has proceeded to fulfill.
- The parties' intention was that the Original Tenant's obligation would entail transferring the lease and assigning the tenancy of the demised premises. The Original Tenant has fulfilled its obligations in this regard.
- The Original Tenant has performed the contract and there is no negligence on its part.

The Court of Cassation dismissed the appeal on the basis that the Court of Appeal's ruling was correct since, according to Article 246 of the Civil Transactions Law (Federal Law No. 5 of 1985), a contract shall be performed in accordance with its terms and in a manner consistent with the requirements of good faith. The contract shall not be restricted to an obligation upon the contracting party to do that which is expressly contained in it, but shall also embrace that which is appurtenant to it by virtue of the law, custom and the nature of the transaction.

The Court of Cassation held that the Court of Appeal, in exercising its discretion, correctly found that there was no express consent or assignment by the landlord with respect to the Original Tenant's assignment in favor of the New Tenant. Further, the Court of Appeal had correctly concluded that the Original Tenant was in breach of contract because it did not refrain from concluding the assignment and transferring the rent to the New Tenant in order to obtain the landlord's prior consent, even though the contract did not state that the Original Tenant must obtain the landlord's consent.

Significance of the Ruling

The Court of Cassation confirmed the principle that a contract should be performed in good faith and that the obligations of the contracting parties are not restricted to those expressly stated in the contract but extend to those that are appurtenant to it by virtue of the nature of the transaction.

The Court of Cassation further confirmed that a tenant shall, upon assigning its lease to another tenant, obtain the landlord's prior consent to the assignment; otherwise the assignment contract may be terminated and the parties returned to the positions they occupied prior to entering into the contract (i.e. the original tenant/assignor shall return the amount paid and the new tenant/assignee shall surrender the leased premises if it passed into the new tenant's possession). The Court found that this is a contractual requirement given the nature of the transaction notwithstanding any actual assignment by the original tenant or the absence of a provision in the contract requiring the original tenant to obtain the landlord's prior consent.