

Mortgage Enforcement through the Abu Dhabi Summary Court

Hassan El Tahir - Partner - Litigation / Legislative Drafting

h.eltahir@tamimi.com - Abu Dhabi

Zane Anani

z.anani@tamimi.com - DIFC, UAE

Introduction

The Abu Dhabi Summary Court recently issued an order in relation to enforcement proceedings filed by a bank (mortgagee/creditor) against mortgaged property. The court issued the decision on 7 August 2017 (Grievance 288 of 2017). While there have been similar decisions enforcing mortgages, this is believed to be the first time a court has applied Law No.3 of 2015 concerning the Regulation of the Real Estate Sector in the Emirate of Abu Dhabi ('the Real Estate Regulation Law'). The court confirmed that all the conditions were met for enforcement and that it had jurisdiction to hear the case. The judgment has also been confirmed by the Abu Dhabi Appeal Court.

The Dispute

The bank ('the Claimant') filed a grievance against two respondents ('the Respondents'), before the Judge of Summary Matters, seeking permission to sell two properties by public auction as security for payment of a debt. The properties were mortgaged to the Claimant as security for a debt owed by the first Respondent for which the second Respondent stood as guarantor. The Respondents defaulted on payment thereby rendering the balance of the debt, AED 6,623,416.65, immediately due and payable and entitling the Claimant to take steps to sell the properties pursuant to Articles 53 and 54 of the Real Estate Regulation Law. The Respondents used Article 31 of the UAE Civil Procedure Law to argue that the Court of First Instance lacked jurisdiction over the matter as they were domiciled in Dubai but the grievance was filed in Abu Dhabi and thus the requirements of Articles 53 and 54 of the Real Estate Regulation Law were not met.

The Court held that jurisdiction to grant interim or summary relief belonged to (i) the competent Court of First Instance in the area of the domicile of the defendant or (ii) the court in the area of completion of the procedure where the assets subject to enforcement were located, being the court nearest the place of enforcement.

The Abu Dhabi Court's findings

The Abu Dhabi Summary Court held that the grounds of the grievance were well founded. Article 53 of the Real Estate Regulation Law provides:

1. *The mortgagee/creditor holding a mortgage or his successors or assigns may initiate enforcement proceedings against the mortgaged property in order to sell the same by public auction if the debt is not paid by its due date or if a condition is met as to render the debt due and payable before then.*
2. *The mortgagee shall, prior to initiating enforcement proceedings against the mortgaged property and making an application with the Judge of Summary Matters to attach and sell the mortgaged property by public auction, give written notice to the mortgagor and the guarantor, if any, by registered post with acknowledgement of receipt, informing them of the breach and requesting payment of the debt and other amounts owed within at least 30 days from the date of notice.*

Article 54(1) of the same Law states:

Subject to the provisions of Article 53 (2) of this Law, if the mortgagor or its guarantor or the successors or assigns fail to pay the debt, the Judge of Summary Matters shall, upon request of the mortgagee/creditor, issue a decision directing the sale of the mortgage property by public auction in accordance with the applicable procedures of the competent court."

As a result of these provisions, the Court held that the Judge of Summary Matters had the authority, upon the request of the mortgagee/creditor, to issue a decision directing the sale of the mortgaged property by public auction in accordance with the applicable procedures of the competent court.

The Court also found that the judge may also defer the sale up to 60 days, but once only, should he find that the mortgagor or its guarantor or their successors or assigns will be able to pay the debt within that period or that the sale of the mortgaged property may cause gross damage to the debtor, after following the procedures outlined in Article 53.

Enforcement against mortgaged property in Abu Dhabi in satisfaction of a secured debt was pursued by means of an application to the Judge of Summary Matters to issue an order in two stages: first, executive attachment of the property, and second, permission to sell the property in the manner stipulated by the Real Estate Regulation Law.

The judge shall, when issuing the order, whether at the stage of executive attachment or the stage of permission to sell by public auction, decide whether one month advance notice of payment was given before the order was filed for an executive attachment to be imposed on the property and whether the mortgagee/creditor holds admissible proof of debt. The proof of debt can be an official or a regular document. The latter includes acts under private signature, admissions and documents the law regards as admissible evidence, including extracts from commercial records, as an exception to the general rule that a party may not manufacture self-serving evidence (Articles 4, 11, 26, 36 of the Commercial Transactions Law).

The Court also held that at the permission to sell stage, the judge would confirm the validity of the procedures which followed the order of executive attachment, as provided for by Article 293 of the Civil Procedure Law. This would be done by way of:

1. an executive attachment being levied on the property without protest if no other creditors come forward from among those holding rights registered on the mortgage register; and
2. the execution judge responsible for the disputes raised by the parties or third parties proceeding to issue an order for the sale of the mortgaged property as the second and final stage of the process of satisfying the creditor bank's claim out of the proceeds of sale in accordance with the applicable procedures of the competent court, pursuant to Articles 53 and 54 of the Real Estate Regulation Law.

The Importance of the Judgment

The judgment is important as it highlights the stages and the issues the Summary Court will consider before it may issue an order for the enforcement of a mortgage under the Real Estate Regulation Law. In summary, an order is issued in two stages – the 'executive attachment' stage and the 'permission to sell by public auction' stage – pursuant to an order on the basis of an application filed by the mortgagee/creditor. Most importantly, the claimant may file one application for both stages i.e. the claimant may ask the court to order the attachment of the property and at the same time, order the sale of the mortgaged property, which is what occurred in this case.

The intention of the law is to expedite the mortgage enforcement process, in order to facilitate the enforcement of debts resulting from commercial transactions, and ensure expedited enforcement of the mortgagee/creditor's rights, in the interest of providing quick and cost-effective commercial transactions, while ensuring credit protection.

Al Tamimi & Company represented the successful claimant before the Abu Dhabi courts. Our litigation

team regularly advises on real estate and banking disputes related to the sale of mortgaged properties by summary court. For further information please contact Hassan Eltahir (h.eltahir@tamimi.com)