

DUBAI COURT OF CASSATION RECOGNISES THE CONCEPT OF WITHOUT PREJUDICE SETTLEMENT DISCUSSIONS

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UAE Litigation and Dispute Resolution Alert

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INTRODUCTION

In a recent judgment in Case No. 486 of 2024 (issued on 22 October 2024), the Dubai Court of Cassation (Court of Cassation) upheld the decision of the Dubai Court of Appeal (Court of Appeal) (issued on 3 April 2024 in Case No. 31 of 2024) that parties' unsuccessful settlement discussions are inadmissible as evidence of a party's liability.

BACKGROUND

The claimant filed a case in the Dubai Court of First Instance (Court of First Instance) arising out of an agreement to purchase cryptocurrency. The claimant alleged that the agreed amount of cryptocurrency had not been transferred following payment and claimed compensation, plus interest. The Court of First Instance only awarded a small part of the claimed amount and dismissed the rest of the claim. The claimant appealed to the Court of Appeal on the basis that the Court of First Instance had failed to take into consideration WhatsApp communications between the parties during settlement discussions in which the defendant admitted to owing the claimed amount. The Court of Appeal held that statements made during amicable settlement discussions are not evidence of liability, as they are given on a "without prejudice" basis and such statements are protected from being used as evidence of liability. The claimant appealed that judgment to the Court of Cassation.

JUDGMENT OF THE COURT OF CASSATION

The Court of Cassation upheld the decision of the Court of Appeal and dismissed the appeal. The Court of Cassation reiterated that settlement discussions, if unsuccessful, are inadmissible as evidence of a party's liability.

ANALYSIS

Although the concept of without prejudice communication is well established in common law jurisdictions, the laws of the United Arab Emirates (UAE) do not expressly recognise the concept, and the onshore UAE courts have historically been open to receiving evidence of parties' settlement discussions. As there is no system of binding precedent in the UAE, it remains to be seen whether this judgment marks a change in approach by the onshore

UAE courts. If followed, this would be a welcomed development, as it would allow contracting parties to seek to negotiate a settlement without the risk of any settlement offers being used as evidence of liability. It is also worth noting that none of the judgments at any level are clear as to whether the correspondence at issue was marked “without prejudice.” This may suggest that no specific designation is required, provided the correspondence was sent as part of a genuine effort to settle the dispute. Nonetheless, parties may have more success asserting privilege over correspondence that has been clearly marked as such.

ABOUT THE FIRM

Our Litigation and Dispute Resolution practice group has a long history of acting as counsel on high-stakes international arbitration and litigation mandates. Our lawyers in Dubai have extensive experience advising on litigation and arbitration with respect to complex, high-value disputes in the UAE and wider Middle East region.

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