DUBAI COURT OF CASSATION HOLDS CLAUSE PROVIDING FOR COURT PROVISIONAL MEASURES NOT A WAIVER OF ARBITRATION AGREEMENT

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UAE Litigation and Dispute Resolution Alert

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INTRODUCTION

The Dubai Court of Cassation (Court of Cassation) in Case No. 296 of 2024 vacated the decision of the Dubai Court of Appeal (Court of Appeal) in Commercial Appeal No. 2284/2023, in which the Court of Appeal issued a decision on the merits of a claim despite the existence of an arbitration agreement. Relying upon an inaccurate translation of the arbitration agreement, the Court of Appeal found that the parties had agreed that either party could refer disputes arising out of the parties' contract to any competent court and had therefore waived the right to arbitration. In vacating the Court of Appeal's decision, the Court of Cassation confirmed that the Dubai courts have the authority to look to the original text of an arbitration agreement, and disregard any inaccurate translation, to ascertain the intent of the parties.

BACKGROUND

The claimant filed proceedings in the Dubai Court of First Instance seeking a monetary judgment against the defendant arising out of alleged breaches of contract. The defendant did not appear before the Court of First Instance, and the Court of First instance dismissed the claim due to lack of evidence.

The claimant (appellant) filed an appeal to the Court of Appeal. The respondent to the appeal (the defendant in the lower court proceedings) argued that the claim should be dismissed on the grounds of lack of jurisdiction due to the existence of an arbitration agreement between the parties. The Court of Appeal dismissed this argument and found, based on the Arabic translation of the arbitration agreement, that the parties had agreed that either party could refer disputes arising out of the parties' contract to any competent court and therefore, the Dubai courts had jurisdiction over the dispute.

The defendant appealed this judgment to the Court of Cassation relying upon the existence of an arbitration agreement to argue that the Dubai courts lacked jurisdiction.

JUDGMENT OF THE COURT OF CASSATION

The Court of Cassation noted that the arbitration agreement was concluded in English and therefore, the intent of the parties had to be considered in light of the original text of the arbitration agreement and not any Arabic translation thereof. The Court of Cassation held that the original text is clear that either party may apply to any

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competent court for “injunctive relief” or other “provisional remedies” (but not in respect of the determination of the substantive claim). The Court of Cassation noted that these are common law terms and the closest concepts under UAE law are “provisional orders” and “provisional or precautionary measures”. The Court of Cassation confirmed that the parties' agreement is consistent with the right of the parties, set forth in Article 18(2) of Federal Law No. 6 of 2018 (UAE Arbitration Law), to seek provisional or precautionary measures from a court of competent jurisdiction in support of current or future arbitration proceedings. Accordingly, the Court of Cassation held that the parties' agreement did not constitute a waiver of the agreement to resolve the substantive dispute in arbitration and therefore the Court of Appeal decision must be vacated.

ANALYSIS

This judgment confirms that, under the UAE Arbitration Law, parties may seek provisional or precautionary measures from a court of competent jurisdiction in support of current or future arbitration proceedings and that any express agreement to this effect does not constitute a waiver of the arbitration agreement. It also serves as a reminder to ensure that translations into Arabic for the use in onshore court proceedings are accurate.

ABOUT THE FIRM

Our Litigation and Dispute Resolution practice 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 United Arab Emirates and wider Middle East region.

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