

What are the rights of a bona fide purchaser where a prior contract has been invalidated?

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This article discusses the rights of a bona fide purchaser in the UAE in relation to a land purchase, in light of a recent judgment of the Abu Dhabi Court of Cassation (Judgment 136 of 2020), which considered whether a final court judgment that invalidates a sale of land will result in the nullification of a subsequent transaction involving the same piece of land.

Relevant UAE Law

The UAE Civil Code does not expressly address situations where a bona fide purchaser of real property, pursuant to a valid contract whilst being unaware that an earlier contract for the same property, has been invalidated by the courts. However, Article 1 of the UAE Civil Code provides:

“The legislative provisions shall apply to all matters dealt with by those provisions in the letter and in spirit. There shall be no innovative reasoning (ijitihad) in the case of provisions of definitive import.

If the judge finds no provision in this Law, he has to pass judgment according to the Islamic Shari’ah. Provided that he must have regard to the choice of the most appropriate solution from the schools of Imam Malik and Imam Ahmad bin Hanbal, and if none is found there, then from the schools of Imam al-Shafi’i and Imam Abu Hanifa as most befits.

If the judge does not find the solution there, then he must render judgment in accordance with custom, but provided that the custom is not in conflict with public order or morale, and if a custom is particular to a given emirate, then his judgment will apply to that emirate.”.

As a result, in the absence of express legislative provisions the courts have applied the Sharia of the Maliki school. According to this school, a tainted (void) sale contract shall be validated if a new valid sale contract is performed.

Court Judgment

The Abu Dhabi Court of Cassation (judgment 136 of 2020 dated 30 June 2020), ruled that while the grants of certain property to a seller (‘Second Respondent’) were void, the Second Respondent’s subsequent sale of the property to a purchaser (‘Third Respondent’) was valid. As a result, although the initial contract to the Second Respondent was declared void, the Third Respondent could not be compelled to return the property. It is notable that the Third Respondent, who was presumed to have acted in good faith, had purchased the property in question in 2010 based on the seller’s registered title to the property with Abu Dhabi Municipality (‘First Respondent’). The Third Respondent’s purchase contract was also registered with Abu Dhabi Municipality. The sale had taken place prior to the Appellant’s court case in which the grants were declared void in 2013. As a result, the court decision had no effect on the sale to the purchaser. The

Appellant could not provide proof that the land generated any income while it was vacant. The Court of Cassation also noted that the purchaser or a mortgagee shall be deemed a bona fide purchaser, if:

1. the transaction to the purchaser/ mortgagee took place prior to the issuance of the judgment that invalidated the earlier contract (the bona fide purchaser therefore would not have notice of the earlier contract); and
2. such transaction (either sale or mortgage) is registered at the concerned department before the case to invalidate the earlier contract is commenced.

Thus, a judgment that nullifies an earlier contract will not be deemed authoritative against a bona fide buyer or the creditor mortgagee. In this case, the title transfer to the purchaser was valid by two collateral pillars - each supporting the other: (1) the valid act conveying title; and (2) the registration procured pursuant to such a valid act.

Finally, it is notable that in arriving at its decision, the Abu Dhabi Court of Cassation reversed the judgment on the same property by Federal Supreme Court (Case No. 161 of 2020). It based its decision on the good faith of the Third Respondent who relied upon the seller's established and registered title at the relevant municipality and who was not a party to the action of the nullification of the testamentary grant which was filed several years after his purchase, registration, possession and significant development of the subject property. As a consequence, the Court of Appeal held that the status quo existing prior to the Second Respondent's sale to the Third Respondent was impossible to restore and therefore, the sale contract was valid. This view is correct as a matter of law and is sufficient in and of itself to dismiss the action to overturn the sale to the Third Respondent.

Conclusion

In this case, the Abu Dhabi Court of Cassation established that the bona fide purchaser's deed was controlling because he bought the land for value and had no notice of the Appellant's interest in the land. The court acknowledged that contracts registered before a judgment invalidating a grant of a plot would still be valid. Applying the same reasoning, a mortgage on the land sold to a bona fide purchaser would not be impaired where an earlier contract transferring the property had been invalidated. This is a positive outcome as it will ensure certainty in transactions, guarantee the authenticity of official documents and reassure property investors and banks.

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