

Abu Dhabi Court accepts estoppel claim in recognising the Parties' Arbitration Agreement

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Introduction

In a recent judgment in case 95 of 2021 (Foreign Courts Chamber, Abu Dhabi Commercial Court), the Abu Dhabi Court of First Instance ("CFI") rejected a party's challenge to the validity of an arbitration agreement. In upholding the arbitration agreement, the CFI relied on the doctrine of estoppel. This article considers the courts' helpful judicial analysis of the doctrine of estoppel, the circumstances in which it may be applied, and how it is characterised by the requirements of good faith in the UAE.

Background to the Case

A dispute arose in the context of a construction project when a main contractor encashed a performance bond, which had been provided by a sub-contractor. The sub-contractor filed a case before the CFI seeking relief against the main contractor for the value of the performance bond because of its alleged unlawful encashment.

The main contractor argued that the CFI had no jurisdiction to hear the matter as the parties had agreed to arbitration under the rules of the Abu Dhabi Commercial Conciliation and Arbitration Centre in Abu Dhabi. The sub-contractor argued that the arbitration agreement was invalid as the signatory of the arbitration agreement did not have the authority to agree to arbitrate on behalf of the main contractor. The sub-contractor argued that the only person authorised to bind a company to an arbitration clause was the general manager and, in the absence of the general manager signing the arbitration agreement, there could not be a valid and binding arbitration clause.

Amongst other arguments, the main contractor requested the CFI to apply the doctrine of estoppel in recognising the validity of the arbitration agreement entered into between the parties. The CFI accepted the estoppel claim.

The decision of the CFI

The CFI held that the arbitration agreement was valid and binding on the parties. In its decision, the CFI took into account that the parties had entered into other contracts with each other in the past that were signed by the same signatory for the main contractor, which had not been challenged or denied by the parties.

The CFI considered that it was unacceptable for one of the parties to challenge the authority of the signatory of the contract to agree to arbitration six years after signing the contract when a dispute arose. In addition, the CFI took into account that the authority of the signatory to represent the main contractor

was unchallenged for six years, which the CFI deemed to confirm the parties' acceptance of their contract and the authority of the signatory.

In reaching its decision, the CFI relied on a number of legal provisions and principles:

UAE Commercial Companies Law: authority of the manager of a company

The CFI invoked Articles 22, 23, 25, and 83 of the Commercial Companies Law (Federal Law No. 2 of 2015) ("UAE Commercial Companies Law"):

- Article 22 provides that a manager of a company is to represent, manage and protect the interests of the company, and carry out these duties as a diligent and well-experienced manager. The duties must be performed in accordance with the objectives of the company and the powers granted to him/her by the partners or the board;
- Article 23 stipulates that the company is bound by the acts of the authorised representative of the company during its management. The company will also be bound by any act of its employees or agents on behalf of the company, especially by those who relied on the former's appearance of authority;
- Article 25 states that the company cannot deny liability on the basis that the person who represented the company was not given the power to act by the company if he or she was acting within its power in the usual manner of its position in the company and nature of the company's business;
- Article 83 provides that unless the power granted to the manager is limited in the articles or memorandum of association, it should have all the authority required to represent the company, and these acts would be binding on the company.

The presumption that signatory is authorised to sign the Arbitration Agreement

The CFI relied on a well-established judicial presumption according to which whenever the name of the company is provided in a contract that includes a signature at the bottom of that contract without specifying the name of the signatory, there is a presumption that the signatory was authorised to sign the arbitration agreement. Consequently, the CFI considered the signatory on the parties' contract to be the representative of the main contractor and, accordingly, for the arbitration agreement to be valid and binding between the parties.

Doctrine of Estoppel

Notably, the CFI also relied on the doctrine of estoppel in concluding that the arbitration agreement was valid. It considered that the application of this doctrine would prevent parties from relying on disingenuous arguments to avoid the application of the parties' agreement to arbitrate. Hence, when parties execute a contract, they are deemed to have accepted the validity of the signatures in a contract; they may not later dispute the validity of the arbitration clause contained in the same contract.

The CFI found that the estoppel doctrine had also recently been applied in a judgment rendered by the Egyptian Court of Cassation (Commercial and Economic Chamber, Appeal 18309 of Judicial Year 89 on

27/10/2020). The Egyptian Court affirmed the doctrine of procedural estoppel and observed that there was no contradiction in applying this doctrine in its jurisprudence, which was not limited to only arbitration cases, but to all other transactions.

The CFI also found support for the doctrine in Article 243 of Federal Law No. 5 on the Civil Transactions Law ("UAE Civil Transactions Law"), which states, that "[u]nless the law provides otherwise, the contract's provisions apply, upon its formation, on the object of the contract and its consideration, independently from taking possession or anything else ... all contracting parties shall fulfill the liabilities to which they are bound to perform thereunder."

Furthermore, the Sharia law principle that is enshrined in Article 70 of the UAE Civil Transactions Law also supports the doctrine of estoppel: "No person may resile from what it has (conclusively) performed." This is the same principle that exists under Roman law, which does not allow one to act contrary to its previous actions where this causes damage to others.

The CFI considered that the sub-contractor's attempt to contradict itself between, on the one hand, accepting the signatures and proceeding with the execution of the contract, and, on the other hand, denying the power of the signatory and the arbitration clause, is not a benefit it ought to obtain. The CFI reasoned that a person can not rely on the authority of a signatory to execute a contract while simultaneously attempting to deny the agreement to arbitrate after executing the contract.

The CFI also considered two further factors that were also relevant to the application of this principle: (a) an act or statement that contradicts a previous act with the same entity or person can be said to cause damage to another person who has dealt with or has proceeded with the work relying on the act or statement of that person. This principle is applicable to all contracts including arbitration agreements; (b) parties are to execute their contract in good faith pursuant to Article 246 of the UAE Civil Transactions Law.

Conclusion

The CFI's decision endorses the increasingly pro-arbitration approach of the UAE courts and sounds a cautionary note to parties that disingenuous attempts to challenge an otherwise valid arbitration agreement will not be entertained. This judgment is a first of its kind in the UAE and a useful case on the doctrine of estoppel.

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