

The granting of precautionary attachments during the pandemic: A recent judgment of Jordan's Court of Cassation

Samer Al Zuriekat - Partner, Head of Litigation - Jordan - Litigation / Insurance / Employment and Incentives / Legislative Drafting / Real Estate / Construction and Infrastructure
s.alzuriekat@tamimi.com - Amman

Leen Masadeh
L.Masadeh@tamimi.com - Amman

The Court of Cassation, the highest judicial institution in Jordan, ruled in favour of our client when it issued decision No. 6495/2020 on 25 February 2021 upholding a precautionary attachment. Such a decision would not attract comment in and of itself. What makes the case interesting is its potential ramifications for the recovery of payments under financial instruments in light of the Covid-19 pandemic.

Precautionary Attachments under Jordanian Law

The granting of precautionary attachments is governed by the Civil Procedures Law No. 24 of the year 1988 (the “**Civil Procedure Law**”). According to the Civil Procedures Law, a precautionary attachment is a judicial request that can be pursued through the Court of Merits directly or by submitting a request to the Judge of Urgent Matters. Article 141 of the Civil Procedure Law states that a precautionary attachment can only be granted if the claimed debt is: (a) due, (b) known and identifiable in value, and (c) unconditional.

A court of competent jurisdiction may grant a precautionary attachment (a) on movable and immovable assets, (b) on the debtor's assets in the possession of third parties, (c) before or during a legal action. However, where the court grants a precautionary attachment before an action is commenced, a lawsuit must be filed within 8 days of the application of the precautionary attachment.

In addition, the Civil Procedure Law requires a guarantee in the form of a bond issued by a local bank or an amount of cash to be presented to the court to prevent the malicious filing of precautionary attachments. Where the filing of a precautionary attachment application was unjust, injurious and resulted in damages according to a decision issued by a court of law, the guarantee can be used to compensate the injured party.

Covid-19 related suspensions and grace periods

In March 2020, the Jordanian government activated the Defence Law No. 13 of the year 1992 (the “**Defence Law**”). Article 11 thereof stipulates that in the event of a national emergency, similar to the Covid-19 pandemic, contracts shall be suspended to the extent their implementation is not possible as a result of abiding by the Defence Law or Defence Orders.

In parallel, the Central Bank of Jordan (“**CBJ**”) also issued a statement allowing banks to consider granting grace periods on bank loans provided to companies or individuals who have been affected by the Covid-19 pandemic. However, the CBJ stated that the decision to grant grace periods is within the sole discretion of the creditor bank.

Factual background

Our client, a bank, and the debtor had entered into a facility agreement. The facility agreement concluded between the opposing parties included an acceleration clause, which resulted in all payments becoming due immediately in case the debtor fails to pay any of the instalments, provided that the Bank issues the necessary notice prescribed in the agreement.

The debtor had failed to pay their dues for the facilities granted under the facility agreement concluded with our client. Accordingly, our client had sent the debtor and its guarantors demand letters for all granted facilities in 2020 granting them a period to proceed with settling their outstanding dues. However, the debtor and the guarantors still failed to pay the amounts within the period granted under the demand letters.

In light of the borrower and guarantors' failure to settle the amounts due under the facility agreements, SCB had commenced legal proceedings against the debtor and guarantors before the Amman Court of First Instance.

LEGAL POSITION OF THE DEBTOR

1. The Position of the Creditor Bank

The Bank requested the precautionary attachment on the basis that all outstanding payments were due by virtue of the acceleration clause, accordingly, submitted its request of granting the precautionary attachments to the judge of urgent matters.

2. The Position of the Debtor

The Debtor argued that by virtue of Article (11) of the Defence law and CBJ's statement, the acceleration clause should not be invoked as he was not in violation of the facility agreements. Accordingly, he argued the instalments were not due and hence the precautionary attachment sought by the bank would breach the Civil Procedure Law, which requires the debt to be due in order to grant a precautionary attachment.

3. Decision of the Urgent Matters Judge

The judge rejected the debtor's arguments and granted a precautionary attachment to the bank.

THE OPINION OF THE COURT OF CASSATION

The debtor appealed the decision of the urgent judge to the Court of Appeal which ultimately upheld the precautionary attachment. The debtor later appealed the decision before the Court of Cassation. The Court of Cassation ruled in favour of our client, stating that the precautionary attachment was valid as the bank had a credible claim and dismissed the debtors appeal.

The Court of Cassation ruled that the debtor's arguments on whether the debts were due concerned the merits of the claim, and accordingly fall outside the scope of jurisdiction of the Judge of Urgent Matters. As such the Decision of the Judge of Urgent Matters and the Court of Appeal to uphold the precautionary attachment is in conformity with the legal requirements and formalities of precautionary attachment as prescribed under the Civil Procedures Law.

For further information please contact [Leen Masadeh](#).