

Union Supreme Court Judgment-Case no. 4 of 2021 - The Federal Supreme Court's exclusive jurisdiction

Nasser Yahia - Senior Counsel - Litigation

ny.yahia@tamimi.com - Sharjah

Sara Omer Ali - Associate - Litigation

- Sharjah

Introduction

It is well established that the Federal Supreme Court has exclusive (i.e., original) jurisdiction with respect to matters set out under Article 33 of Federal Law No. 10 of 1973 establishing the Supreme Federal Court. Amongst the powers conferred on the Federal Supreme Court, are the power to determine conflicts of jurisdiction between a judicial body in an Emirate and another judicial body in another Emirate or between the judicial bodies in any Emirate between them (Article 33(10)). This article considers a recent judgment of the Federal Supreme Court, in which the Court determined a conflict of jurisdiction between a Dubai court and Sharjah court.

First case filed No. 132/2018 (Civil) - Dubai

The claimant and his business partner entered into a sale and purchase agreement (**the Original SPA**) in 2011 with the second and third respondent for the sale of 100% of the shares of a company that was registered with the Department of Economic Development in Sharjah. The second and third respondents agreed to pay an amount of AED 103 million in a series of instalments. The Original SPA contained a clause which provided that any dispute arising in connection with this agreement was to be referred to arbitration before the Dubai International Arbitration Centre (DIAC).

The second and third respondent failed to pay the amount in accordance with the instalment plan set out in the Original SPA. Thus, the claimant filed Arbitration No. 80 of 2016 before DIAC against the second and third respondents to terminate the original SPA. In November 2017, the arbitral tribunal issued an arbitral award in which it decided the following:

1- Approval of the claimant's request to terminate the SPA and the Addendum.

2- Declare the termination of the SPA and the Addendum.

3- Order the Respondents to pay the fine to the claimant in the amount of 5,000,000 dirhams as compensation for the violations they committed in accordance with Clause 16(b) of the SPA))

The claimant then filed a case before the Dubai Court to ratify the arbitration award, which was registered under Case No. 132/2018 (Civil).

During Case No. 132/2018 (Civil), the first respondent submitted a joinder request. He requested confirmation of the alleged validity and enforceability of a SPA for the sale of the shares of the Company that had been concluded between himself, the second and third respondents (**the Second SPA**).

The Dubai Court of First Instance issued its judgment, in which it ratified the arbitration award. The second respondent rejected the joinder's request for confirmation of the alleged validity and enforceability of the Second SPA on the basis that the arbitration award terminated the Original SPA. Thus, the arbitral award

had the effect of *res judicata* from the date of its issuance, and it was not permissible to issue a contradictory ruling.

The third respondent appealed the judgment issued by the Dubai Court of First Instance in Appeal No. 1084/2018 (Civil Appeal). However, the Dubai Court of appeal rejected the appeal and upheld the judgment issued by the Dubai Court of First Instance.

The second respondent appealed the judgment issued by the Dubai Court of Appeal before the Dubai Cassation Court under Cassation No. 380 of 2019 (Civil Cassation). However, the Dubai Court of Cassation rejected the appeal, which made the judgment final and binding.

Second case filed- Case No. 3141 of 2018 (Civil) - Sharjah

The first respondent, filed a case before the Sharjah Court of First Instance, under Case No. 3141 of 2018 (Civil – Sharjah). In his statement of claim, he made the same request which the Dubai Court of First Instance had rejected. The first respondent requested the court to issue a judgment to confirm the validity and enforceability of the Second SPA. The first respondent did not join the claimant to the Sharjah court proceedings

The Sharjah Court of First Instance issued its judgment regarding the validity and enforceability of the Second SPA and confirmed the validity and enforceability of the Second SPA.

The contradictory judgments

The Sharjah Court of First Instance’s judgment conflicted with the Dubai Court of First Instance’s judgment in Dubai Action No. 132-2018 denying the request to confirm, as valid and enforceable, the Second SPA. The latter judgment had acquired *res judicata* status as a final judgment. It was this conflict that prompted the claimant to file his action before the Federal Supreme Court pursuant to Article 33 of Law No. 10 of 1973 for relief.

Federal Supreme Court’s exclusive jurisdiction

In accordance with Article 99 of the Constitution of the United Arab Emirates and Article 33(10) of Federal Law No. 10 of 1973 establishing the Supreme Federal Court, only the Supreme Court shall have the jurisdiction to adjudicate the following matters:

“10- The jurisdiction dispute between a judicial authority in an emirate and a judicial authority in another emirate or among the judicial authorities in one emirate.”

In addition, Article 60 of Federal Law No. 10 of 1973 defines the types of conflict that may arise and provides that if the authorities do not desist or all desist from hearing the action or issue conflicting judgments thereon, an application for designation of the competent court shall be submitted to the Federal Supreme Court.

Taken together, the essence of Articles 33(1) and 60 is that a conflict of jurisdiction will be deemed to arise between a Federal Court and a judicial authority in another Emirate or between the judicial authorities of an individual Emirate, where each asserts jurisdiction over the action, cedes jurisdiction, or issues a judgment that conflicts with the other judgments.

The legislative intent to be achieved in the case of such conflicting judgments is for the Federal Supreme Court to exercise its exclusive jurisdiction to resolve disputes over the enforcement of conflicting final judgments of different authorities which. Furthermore, it is judicially settled that a conflict with a final judgment will arise only where the ruling of the contested judgment conflicts with the operative part of an earlier court ruling, which enjoys the status of *res judicata*, on the same issue.

Judgment of the Federal Supreme Court

The Court held that the award made in Dubai Arbitration Case No. 80-2016 and the judgment of the Dubai Court of First Instance ratifying the award in Action No. 132-2018 determined the issue between the parties, concerning the alleged validity and enforceability of the Second SPA. There was therefore a conflict between the ratification judgment in Dubai Action No. 132-2018 and the judgment issued by the Sharjah Federal Court of First Instance in Sharjah Action No. 3141-2018 on the issue of the validity and enforceability of the Second SPA. Hence, considering that the judgment in Sharjah Action No. 3141-2018 conflicted with the judgment in Dubai Action No. 132-2018, the latter of which was res judicata on the issue, the Federal Supreme Court acceded to the claimant's request and denied recognition of the judgment in Sharjah Action No. 3141-2018.

For further information, please contact [Nasser Yahia](#)