

Article 255 of the Civil Procedure Law & The Competent Court

Suzanne Abdallah - Senior Associate - Litigation
- Dubai International Financial Centre

The Facts

A Civil Action was filed before Dubai Court of First Instance by a local company ("the Claimant") against another local company ("the Defendant"). The Claimant requested the Court to confirm an attachment order recently issued from the summary judge until the issuance of the arbitral award in related arbitration proceedings.

The Claimant submitted that a Muqawala Agreement incorporating an arbitration clause was concluded between the Claimant and the Defendant on 14 May 2005. The Claimant contended that muqawala prescribed that the Claimant would perform the construction work and subsequent maintenance of an office and warehouse complex on a plot in the Jebel Ali Free Zone.

The Claimant completed the agreed works rendering the Defendant liable for payment. Of the amount due, the Defendant failed to pay the Claimant the amount of AED 664,335.16. The Claimant accordingly applied for and obtained a precautionary attachment order against the Defendant's properties.

In view of the existence of an arbitration clause in the agreement between the parties, the Claimant also sought the appointment of an arbitrator by the Court to resolve the dispute.

Court of First Instance

On 12 June 2008, the Court of First Instance dismissed the claim. The Claimant appealed to the Court of Appeal.

Court of Appeal

The Court of Appeal upheld the Court of First Instance's decision and dismissed the appeal., The Plaintiff subsequently appealed to the Court of Cassation.

Court of Cassation

Before the Court of Cassation the Claimant argued that the Court of Appeal had erred in its decision to uphold the lower Court's decision. The basis for the Claimant's appeal was that Arbitration may not be conducted in respect of an attachment or the proceedings required for the confirmation or validation of an attachment unless referral to arbitration for that purpose has been pre-agreed. However, the Claimant also submitted that he had simultaneously filed a case to appoint an arbitrator to resolve the dispute together with the lawsuit filed to confirm and validate the attachment order.

The Court of Cassation overturned the Court's of Appeal decision and held that pursuant to Article 22 of the Civil Procedure Law (CPL), Courts shall have jurisdiction over summary and precautionary proceedings that shall be executed in the country although they have no jurisdiction over the original action. Unless the arbitration agreement specifically empowers arbitrators to award precautionary relief such as attachments, they may not do so – jurisdiction in this respect remains with the competent court.

It was agreed between the parties that disputes between them would be resolved by arbitration. However, the arbitration clause within the parties' agreement did not specifically grant the Arbitral Tribunal

jurisdiction over precautionary procedures against the Respondent's properties in Dubai.

The Court of Cassation continued in its analysis and found that Article 255 of the UAE Civil Procedure Law requires the applicant for attachment to bring, within eight days from the date of the attachment order, an action before the Court to prove his right and to validate the attachment. The Court of Cassation said that this principle applied to cases where the attachment order has been rendered by a summary court; otherwise, the attachment order shall be deemed void ab initio.

If the substantive has been brought beforehand (i.e. prior to the awarding of the attachment), and the action to validate the attachment was brought subsequently before the same Court in order that both actions be heard together, Article 255 shall be applicable as it deals with cases where the Court is competent to decide the merits. Therefore, the Court is competent to hear the claim for validating the attachment order.

However, if the Court is not competent to decide the merits, the Plaintiff shall still have the right to file an action to validate and enforce the attachment order independently from the substantive claim. The original rule is that the action will be admitted unless there is a restriction. The restriction provided for in Article 255 is a "non-standard" exception which deprives the Arbitral Tribunal of jurisdiction over the precautionary summary procedures decided by the Court.

In light of the above, the Court of Cassation held that the appealed decision did not properly construe Article 255 of the Civil Procedure Law, resulting in the misapplication of the law. The Court of Cassation overturned the Court of Appeal's decision and remitted it back for further analysis.