

Exclusive Distributorships Are Subject To The General Rules Set Out Under Chapter II Of The Commercial Transactions Law

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SUMMARY

In this case, the exclusive distributor (the Claimant) filed a case against its principal (the Defendant) for terminating the distributorship contract, without lawful cause or prior notice. The Claimant claimed the termination caused him to suffer substantial loss and claimed loss of profit and other expenses. The Claimant also brought a case against the newly appointed distributor (the Second Defendant) as well as the First Defendant for collusion and conspiring with the First Defendant to terminate the Claimant's distributorship agreement.

This case confirmed that exclusive distributorships are subject to the general rules governing commercial agency contracts which are set out under Chapter II of the Commercial Transactions Law (Federal Law 18 of 1993) dealing with specific types of commercial agency (Articles 220, 225 & 226). Pursuant to Article 227 of the Commercial Transactions Law *“a distribution contract, whereby a trader undertakes to promote and distribute the products of an industrial or commercial establishment in a specific area on an exclusive distributorship basis, shall be considered a contracts proxy and be governed by the provisions of Articles 220, 225 and 226 (of this law) hereof.”*

Exclusive distributorships need not be subject to the special provisions relating to commercial agencies contained in the 1981 Commercial Agencies Law. The Court of Appeal was right to hear the action involving the distributorship agreement despite the fact it was not registered in the commercial agencies register, as this requirement is not necessary for distributorship agreements. Further, unlike commercial agency disputes, a court can look at the reason for the termination of a distributorship agreement directly without a requirement that the dispute should first be referred to the Commercial Agencies Committee, whereas with a commercial agency, the Commercial Agencies Committee is the competent authority to adjudicate commercial agency disputes before these are finally referred to court after the Committee's decision.

The Claimant, the exclusive distributor, successfully won its case against the First Defendant, the Principal. The Court ordered the First Defendant to pay AED 7,179,518 in damages.

COURT OF FIRST INSTANCE

The Court of First Instance appointed an accounts expert who prepared his report confirming the claim amount. The Court of First Instance rejected the Claimant's claim and accepted the First Defendant's argument that the action against him should not be entertained on the basis that the agency had not been registered in the commercial agencies register at the Ministry of Economy. The Court of First Instance here treated the agency as a commercial agency and not a distributorship agreement and relied on Article (3) of the Commercial Agencies Law which prevents the courts from entertaining disputes relating to commercial agencies, if the agency is not registered.

COURT OF APPEAL

The Claimant appealed this decision in Appeal number 78 of 2009. The Claimant contended that the Court of First Instance was incorrect when it rejected the claim simply because the distributorship agreement

was not registered with the Ministry of Economy. The agreement is not subject to the UAE Commercial Agency law. The Court of Appeal ruled that the Court of Instance decision should be reversed, that it would entertain the action against the First Defendant, ordering the First Defendant to pay the amount of AED 7,179,518 in damages.

The First Defendant appealed this decision and the case was sent to the Court of Cassation

COURT OF CASSATION

The Court of Cassation confirmed the Court of Appeal's decision and ruled that commercial agencies that are governed by the Commercial Agency Law (Federal Law 18 of 1981) are subject to strict requirements, such as the requirement that the business be conducted exclusively through UAE nationals and that the contract be attested and registered with the Commercial Agency register at the Minister of Economy. Therefore, parties opting for this type of contract for their business must comply with these requirements in order to have all the rights and protections afforded to them. In contrast, commercial representation and exclusive distributorships are subject to articles 220, 225 and 226 of the Commercial Transactions Law.

The Court of Cassation held that the interpretation of agreements in a manner that reflects the intention of the parties is for the court. The Court of Appeal, based on the evidence of record and the expert's report, rightly concluded that the agreement between the parties is in fact an exclusive distributorship contract and the action should be heard without the regard to the requirement that the agreement should be registered in the commercial agencies register.

The First Defendant's appeal was therefore dismissed.