

Electronic evidence in the UAE Courts

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Introduction: In a recent case before the Dubai Court of Cassation, the Court held that pursuant to Federal Law no. 1 of 2006 which relates to Electronic Transactions, Ecommerce and Electronic Communications,

electronic transactions such as emails are bestowed probative force provided that they can be traced to the sender's sent items and provided that the email in question refers to the fact that it may be used relied on as evidence.

This case which supports previous Court of Cassation rulings serves as an important reminder that parties need to be wary of the contents of email correspondence which can in itself provide evidence of binding agreements between parties. The fact that parties have not physically signed an agreement is not necessarily relevant as emails can be used as conclusive evidence to support what was agreed between parties.

Facts of the Case:

The Claimant in the case was a company specializing in providing marketing and public relations services. The Respondent Company was a real-estate developer.

The Claimant and the Respondent entered into an agreement on 20/11/2006 pursuant to which the Claimant agreed to provide public relations and marketing services in relation to the marketing of a Real Estate Project owned by the Respondent. The Claimant had subcontracted some of this work to third parties and sought to include in its invoices to the Respondent the sums relating to this subcontracted work.

The amount of approximately AED 1.3M accrued and fell due and payable to the Claimant, of which the Respondent only paid AED 803,476.47. The Claimant filed an action before the Dubai Court of First Instance seeking a court order to compel the Respondent to settle the remaining sum which fell due.

The Court of First Instance appointed an expert and after having reviewed the expert's report, held that the case should be dismissed. The expert's report highlighted the fact that the Claimant had failed to provide the Respondent with details of invoices submitted by third parties to the Claimant. Further the report held that such third party invoices had not been authorized by the Respondent. The Court of First Instance agreed with this finding.

The Claimant appealed to the Court of Appeal which upheld the lower court's judgment, consequently the Claimant appealed to the Court of Cassation.

The Claimant's argument before the Court of Cassation was two fold:

- 1- The agreement between the parties did not require that the Claimant produce evidence of third party invoices or that such invoices be authorized by the Respondent; and
- 2- The Court of First Instance erred in its reasoning and when relying in its judgment on the expert's report due to the fact that the expert's report had disregarded crucial evidence submitted by the

Claimant which constituted an email from the Respondent to the Claimant dated 31 March 2007 which attached a letter in which the Respondent acknowledged the debt due to the Claimant. This evidence was disregarded as the Claimant was unable to produce the original documents and was only able to produce photocopies.

The Court of Cassation held:

1- The Court of Cassation held that the Claimant's first argument was groundless. Provided that the Court of First Instance was assured that the court-appointed expert had examined all relevant evidence, it was entitled to rely on the findings of the expert's report.

Further, when investigating the relationship between the parties, the Court has the discretion to look beyond the literal wording of an agreement between the parties and to examine the intention of the parties in accordance with article 265 (2) of the UAE Civil Code. In this respect the Court held that the Claimant had previously supplied the Respondent with copies of third party invoices which included details of the work which had been executed. The Claimant had also provided the Respondent with evidence that it had paid such third parties. Accordingly, it was a matter of custom in the parties' dealings that the Claimant would provide the Respondent with such information and therefore, the Respondent was entitled to request such information in relation to this case.

2- As for the Claimant's second argument, the court held that it was well established in the case law of the Court of Cassation that in accordance with Article 3 of the Federal Law no. 1 of 2006 relating to Electronic Transactions & E-Commerce that email evidence could be relied upon. Moreover, according to Articles 2 and 4 of the aforementioned law, electronic records, documents and signatures in connection with electronic transactions and commerce have probative force provided that the details of such information are available for inspection in the electronic system of the sender and that the email refers to the means of inspection thereof.

Article 10 of the same law provides that emails or electronic signatures shall be acceptable as evidence before the Courts even if such email or signature is not original or in its original form, provided that such email or signature is the best evidence reasonably expected to be provided by the person relying on such evidence.

In light of the above, the Court of Cassation held that the lower courts had failed to take into consideration all the available evidence when rendering their judgments as the Courts had failed to take into account the email dated 31 March 2007 and accordingly the Court of Cassation overturned the previous judgments and referred the matter back to the Court of First Instance for further review.