

Qatar: Compensation for damages resulting from defaults on loans

by Ahmed El Amoury - a.amoury@tamimi.com - Doha

December 2014 – January 2015

A recent decision from Qatar's highest court, the Court of Cassation, may prove to have significant implications for court-awarded compensation to a lender when a borrower defaults on a loan agreement.

Background to the Case

The Claimant (a bank) provided a real estate mortgage to the Defendant for an amount of QAR 7 million (USD 2,000,000) with an interest rate of 8.25% per annum, in addition to other benefits which amounted to QAR 1 million (USD 280,000) in debits against the Defendant's account with the bank.

In 2010, the Claimant filed a civil case with the Court of First Instance in Qatar, seeking payment on the arrears of the principal amount in addition to the interest of 8.25%.

The Case at First Instance

In 2011 the Court of First Instance issued a judgment for the Claimant and awarded the Claimant the full amount of the principal amount but refused to grant him any interest.

Ruling of the Court of Appeal

The Claimant brought appealed the decision of the Court of First Instance to the Court of Appeal. In a judgment delivered in 2011, the Court of Appeal upheld the finding of the Court of First Instance but additionally awarded further compensation amounting to QAR 100,000 (USD 28,000) as damages for the delay caused by the borrower's nonpayment.

Judgment of the Court of Cassation

In 2012 the Claimant lodged an appeal with the Court of Cassation, seeking to overturn the judgment for the damages of QAR 100,000 and asserting that the court erred in the calculation method used to reach this figure. The appeal was argued on three grounds:

1. That the QAR 100,000 compensation was calculated in an arbitrary manner with no regard to the appropriate legal reasoning or factual considerations between the parties (i.e. the interest rate of 8.25% agreed by the parties in the contract). There was a degree of certainty in reaching a foreseeable figure of damages, and it therefore follows that the Court should not have reached a figure contradictory to the terms agreed to between both parties;
2. The basis for the calculation of compensation award used by the Court was tortious liability not contractual liability with respect to the agreed interest rate between the parties; and
3. The damages should have been measured from the date when the Claimant filed his claim to the date the judgment was issued.

The Court of Cassation's Decision

The Court of Cassation rejected all three grounds of the Claimant's appeal and reasoned as

follows:

1. In principle it was a well regarded fact that when banks lend to borrowers there is a certain degree of risk associated with making such a loan, namely, that the borrower may default. The Court retains full discretion in measuring the damages associated with such a loss. In reaching their decision, the Court of Cassation reviewed the decision of the lower court and found that in issuing their judgment their legal reasoning for calculating the compensation amount was sound and therefore the Claimant's claim on the first ground failed.
2. With regards to the second ground, the Court reiterated that the Court reserves its authority to tackle the issue of measuring damages. The legislature had set out two forms of liability in this context, tortious and contractual liability, each governed by separate rules and regulations. In this instance, tortious liability will apply not contractual liability.
3. Finally, in considering the third and final ground, the Court confirmed that the compensation amount of QAR 100,000 had accounted for and included the date the Defendant fell behind in his repayments until the date the judgment was issued, and that this timeframe in the Court's estimation was valued appropriately.

In light of the foregoing, the Court of Cassation upheld the judgment of the Court of Appeal and rejected the bank's appeal with respect to challenging the measure of damages valued at QAR 100,000.

Conclusion

This judgment has significant implications for day-to-day transactional banking activities conducted in Qatar. In considering this case the Court appears to have overlooked the substance of the terms agreed between the parties regarding the interest rate. It is not clear from this ruling why the court refused to apply the interest rate agreed upon between the parties. In addition, the judgment does not explain why the liability of the borrower was based on the principles of tortious rather than contractual liability. As the said ruling contradicts previous judgments issued by the Court of Cassation confirming the enforceability of the interest rate stipulated in the loan contract, we hope that the Court of Cassation issues a new judgment clarifying these matters.