

The Interpretation of Contracts under the Civil Code

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When parties have differing views about what their contract means, or what its effect on their legal rights and obligations is, their differences must be settled by the court.

The settlement of these differences is to a large extent governed by the proper construction (or interpretation) of the contract. In arriving at its conclusion the court applies relatively well-established principles of interpretation found in Chapter 4 of The Civil Transactions Act (commonly referred to as the Civil Code), under the title “Construction of Contracts”. Generally, no distinction is drawn between the ‘construction’ and ‘interpretation’ of contracts and the two terms are used interchangeably.

OBJECTIVE OR SUBJECTIVE METHOD OF CONSTRUCTION

There are two approaches that can be taken when interpreting a contract. Judges can seek to determine the subjective intent of the parties in order to ascertain what their stipulations mean, or they can consider the external acts of the parties and ascertain, in an objective manner, the meaning of the contractual clause

In common law traditions, the interpretation of a contract is often an objective exercise, the aim of which is not to probe the real intentions of the parties but to ascertain the contextual meaning of the relevant contractual language using the famous ‘reasonable man’ standard test. However, unlike the trend in the common-law system, the UAE Civil Transactions Act as we shall see is unequivocal in applying a subjective test of what the real intention of the parties was.

RULES OF CONSTRUCTION

Articles 265 and 266 of the Civil Transactions Act state that there are three instances where expressions contained in a contract may require interpretation. These are detailed as follows:

1. PLAIN EXPRESSIONS

In this regard, two scenarios may be distinguished from one another. The first one is whether the expression in a contract is plain and conforms to the true will of the parties. The second is where the expression does not conform to that will.

In the first scenario wherever the expression of the contract is plain in its entirety and matches and conforms to the will of the parties, then there can be no room for further interpretation. Hence, it is incumbent on the judge to consider the apparent meaning of the expression provided that it is not in conflict with the law. Article 258(2) of the Civil Transactions Act states that ‘there shall be no room for inference by implication in the presence of express provisions’. This rule has been quoted and applied by the UAE courts on countless occasions. For example, in judgment No 280 of 2008 the Dubai Court of Cassation stated that ‘where the wording of the contract is clear and obvious, there shall be no deviation from that clear wording to another’.

In the second scenario the expression is plain but it does not represent the true will of the parties, as they intended a meaning contrary to the wording. Here, the content of the expression in the contract is not plain as to what the parties intended it to be. In this case, the judge may carry out

the interpretation despite the clarity of the expression, as clarity in this instance involves only the wording and not the parties' will. Undoubtedly, in such a case, significance should be given to the true meaning of the expression as actually envisaged by the parties with disregard to the apparent meaning of the expression contained in the contract. This is reflected in Article 285(1) of the Civil Transactions Act which provides that 'In interpreting contracts what matters is the real intention of the parties and not the wording and syntax'. The application of this rule can be found in the Dubai Cassation Court's judgment No 294 of 2008 in which it was stated that 'In interpreting the contract what matters is to ascertain the true meaning of the word and not to stick to its apparent wording or syntax'.

2. AMBIGUOUS EXPRESSIONS:

Generally speaking, a statement may be said to be ambiguous when it has two or more primary meanings, each of which may be adopted without distortion of the language. If the expressions of a contract are so ambiguous to the extent that they may imply more than one meaning, then they do require interpretation. Article 265(2) of the Civil Transactions Act details how they are to be interpreted: 'if there is a room for construing the contract, the common intention of the parties shall be looked at without stopping at the literal meaning of expressions together with seeking guidance in the same by the nature of the dealing and bona fide governing relations between the parties in accordance with the current customs in dealings. Thus, It had been decided by the Dubai Cassation Court judgment No 125 of 2007 that 'According to the tradition of this court, and to the provisions of articles 258, 265(2) of the Civil Transactions Act, the contract's aim is defined by the true intentions and meanings [of the parties] and not the wording or the syntax. If there is a room for construing the contract, then the mutual intention of the contracting parties shall be considered without stopping at the literal meaning of the contractual wording'.

However, it is important for both the court and practitioners to keep in mind a clear distinction between evidence of context and extrinsic evidence. While relying on the former to interpret an ambiguous contract is admissible, it is not legally acceptable to use the latter as an aid for construing a written contract. Therefore, parties' intention may only be ascertained from the contract itself. This is simply representing the so-called parol evidence rule. The application of this rule may be found in Article 36 of the UAE Evidence Act 1992.

3. CONSTRUCTION IN CASE OF DOUBT

Article 266 of the Civil Transactions Act Code provides that 'doubt is construed in favor of the debtor'. This is a complicated article which calls for an interpretation itself. The key problem with this article is that it raises questions as to the nature of the "doubt" referred to, and the identity of the party who may be considered to be the "debtor" in whose favor the doubt in question is to be construed.

In my opinion, the doubt contemplated by article 266 can only be understood to mean ambiguity which is not resolved by the application of the rule of construction laid down by article 265 of the Civil Transactions Act, for if Article 266 is taken to be applicable independently and in isolation of the other provisions, there would be no need for those other articles. Therefore article 266 must be interpreted to be a residual rule to be applied after the other rules of constructions have been exhausted.

Another difficulty in article 266 is the confusion it creates when it comes to defining the term 'debtor'. In most contracts, each one of the parties is alternately debtor and creditor simultaneously as each party is obliged to give something to the other and has a right to expect something else in return. In my opinion, it would have been more helpful if the term debtor in article 266 had been replaced by the term 'aggrieved party'. Alternatively, it would have been wiser if in such a case the doubt is to be construed 'contra proferentem' i.e. against the party who put forward the ambiguous

clause. However, to the best of my knowledge no decided case in UAE seems to have encountered a dispute in which these concerns were invoked.

CONCLUSION

This has been an overview of the general framework of the UAE Civil Transactions Act regarding the issues of the interpretation of contracts. A general survey into the judicial precedents reveals that the UAE courts will usually abide by the statutory provisions when interpreting a contract. However, it is important to remember that all the above-mentioned rules of construction are not of an obligatory nature – they are merely guidelines for the court to help it ascertain the presumed intention of the parties.

The parties are free to modify or exclude any of these statutory rules of construction by agreement and to stipulate their own rules of construction.