

# Dismissal of criminal case related to a dishonoured cheque that was honoured without actual payment

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May 2014

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Pursuant to Article 401 of the UAE Penal Code, the practice of the criminal courts has been to dismiss a criminal case related to a dishonoured cheque on the basis only of withdrawal of the complaint by the complainant or payment of the value of the cheque.

## **Article 401 of the UAE Penal Code states**

“Shall be sentenced to detention or to a fine, whoever draws in bad faith a cheque without sufficient funds or who, after giving the cheque withdraws all or part of the funds, so that the remaining balance is insufficient to cover the amount of the cheque, or gives an order to the drawee to stop payment, or deliberately writes or signs the cheque in such a manner as to make it unpayable.

Shall be sentenced to the same penalty whoever endorses to another, or delivers to him, a bearer draft, knowing that it does not have sufficient funds available in consideration thereof or that it is not drawable.

The criminal action shall be ended/terminated upon withdrawal of the case by the Complainant or upon payment of the cheque value subsequent to the perpetration of the crime but prior to the issuance of a final verdict, otherwise stay of execution shall be ordered ...”

In this judgment the Dubai Court of Appeal decided to terminate the criminal proceedings against the accused despite non-fulfilment of either of the above conditions required for dismissal of the case.

## **Facts**

The Dubai Public Prosecution filed a criminal case against the accused for issuing a cheque payable to the complainant without sufficient funds to cover the amount of the cheque. The Court of First Instance penalized the accused and ordered payment of a fine of AED 20,000.

The accused filed an appeal and argued that the cheque was issued subject to a condition precedent and, since the condition was fulfilled by the accused, the cheque was subsequently fulfilled. The Accused asserted that, pursuant to a contracting agreement concluded with the complainant, she was appointed as contractor for a project. As such, she wrote the cheque as a guarantee against the advance payment of the project price.

In light of this, the accused requested the Appeal Court to overturn the judgment and dismiss the charges for fulfilment/payment of the cheque amount.

## **The Appeal Court**

The Appeal Court held that, pursuant to Article 401 of the Penal Code, the criminal case pertaining to a dishonoured cheque shall be terminated either by payment of the value of the cheque or by withdrawal of the complaint following the occurrence of the crime and prior to the issuance of a final court judgment.

According to the complainant's admission, the cheque in this case was issued to him as a guarantee against advance payment in a construction project. Further, it was agreed that the complainant would return the cheque to the accused once deductions against advance payment were completed or upon completion of the contracted works.

It is evident from the completion certificate of the project and the letter sent to the Complainant (Employer) by the Consultant that both conditions mentioned above were fulfilled; a fact from which the court inferred that the cheque was paid in full. As such, the criminal charges against the Accused must be dismissed.

Accordingly, the Appeal Court overturned the judgment of the Court of First Instance and dismissed the criminal charges against the accused.

### **Practice note**

This decision is an important precedent, in that the court dismissed criminal charges relating to a dishonoured cheque, based on the fulfilment of the value of the cheque without an actual payment of the value, since the cheque in this case was written as a guarantee for the execution of works on a project. It is also important to note that the court admitted the complainant's evidence that the value of the cheque was not actually due to him, following fulfilment of the obligation for which the cheque was given to him (payment for the works done).