

# Dubai Court of Cassation Broadens Losses Recoverable in Real Estate Disputes

by Rami Abdellatif - r.abdellatif@tamimi.com -

May 2015

In a recent judgment (No.29 of 2014) the Dubai Court of Cassation considered how to calculate damages in relation to termination of a transaction involving the sale and purchase of real estate units.

The Court explained that damages may not be only limited to the amount paid by the buyer to the seller and interest, and may include other associated heads of loss also.

## Background

The Claimant (the Buyer) purchased an entire floor in the property intended to be constructed and built by the Respondent (the Developer). A contract for booking and transferring the title of the units had been signed for a total price of approximately AED 14,000,000. The Claimant paid the following amounts:

- Units' booking settlement at a rate of 15% of the total sale price (AED 2,430,000). The Claimant also handed over a guarantee cheque for the value of the remaining amount.
- AED 300,000 for Transfer of Title fees.
- AED 160,000 for the services of the Real Estate Broker.
- AED 1,300,000 to the first purchaser of the property, who had previously booked the property without transferring the title.

The Respondent did not fulfill its contractual obligations to build the project by March 2010, nor did it produce or sign the final Sale Agreement.

The Claimant filed a case against the Respondent claiming the invalidity of the contract for non-registration in the Land Registry or alternatively, seeking termination of the contract with compensation.

## Court of First Instance

The Respondent submitted evidence that it had registered the units in the initial registry under the name of the Claimant. The Court assigned an expert for the case, who confirmed that the project was not complete but the units were indeed registered under the Claimant's name.

The Court of First Instance rendered a judgment calling for the termination of the contract, and ordered the Respondent to reimburse the Claimant the amount of AED 2,431,000 and interest at the rate of 9%. The Respondent was also ordered to return the guarantee cheque. Both the Claimant and the Respondent appealed the judgment.

## Court of Appeal

The Court of Appeal ruled to reduce the amount awarded in favor of the Claimant to AED 2,440,000 and upheld the rest of the Judgment. The Claimant appealed to the Court of Cassation.

## Court of Cassation (First Decision)

The Claimant challenged the decisions of the lower courts on the basis that they had been wrong not to grant compensation to the Claimant for the full amount expended by him and other expenses incurred.

The Court of Cassation found that the Court of Appeal erred in its analysis of the assessment of damages. The Court of Appeal had denied the damages as it did not find that there was additional wrongdoing by the Respondent that would form the legal basis to award the payments made to the first Buyer and Real Estate Broker to the Claimant. The Court of Cassation sent back the case to the Court of Appeal directing the court to not only consider if any additional wrongdoing had occurred, but to also consider whether these damages were a direct consequence of the Respondent's actions which led to the termination of the contract.

The Court of Appeal reconsidered the case and ruled again. The Court ruled for the Claimant, and in addition to the amount originally awarded, allowed recovery of the value of the amounts paid by the Claimant to the first Buyer of the property in addition to the amounts paid to Real Estate Broker.

The Respondent appealed this judgment.

### **Court of Cassation (Second Decision)**

The Respondent argued that the Court of Appeal was wrong to allow recovery of Real Estate Broker payment. This should not be considered as damage to the Claimant because it was a commission paid to the Real Estate Broker for intermediating between the parties and was a commission the Broker deserved. Furthermore, the amount paid to the First Buyer should not have been recoverable from the Respondent since it had nothing to do with the Respondent. The Claimant should seek such compensation from the First Buyer.

The Court of Cassation considered the case for a second time and ruled to dismiss the Appeal and reject the reasons put forward by the Respondent. The reasons for this are as follows:

- Where a judgment has been reversed by the Court of Cassation and the case referred back to the court that made the decision, the lower court must follow the judgment of the Court of Cassation on the legal issue determined. Such issues are considered *res judicata*.
- Article 272 of the Civil Transactions Law (the Civil Code) provides that in the event of a contractual breach the judge may order the obligor to perform the contract forthwith or may defer (performance) to a specified time, or he may order that the contract be cancelled and compensation paid in any case if appropriate.
- Where the contract is to be terminated, the contracting parties are to be returned to their initial status before the contract existed unless this is impossible. However, if possible, and if the terminated contract was a contract for sale, the seller is to return the price of the purchased item, and if received the buyer shall return the purchased item.
- Breach of contract may cause considerable and unusual damages. The person alleging damage must prove the direct damage that warrants compensation. However for practical considerations a line shall be set at which the damage stands.
- The question whether the damage is direct or indirect is a substantive issue and the defaulting party shall be bound to pay the expected compensation. The Claimant shall be compensated for the alleged losses that were incurred reasonably and directly pursuant to the contract, and which resulted from the Respondent's breach of the contract and as estimated by the Court in its sole discretion.
- The appealed judgment obliged the Respondent to compensate the Claimant for the amounts paid to the Real Estate Broker and the First Buyer in order to complete the deal. The court was satisfied that these constituted direct losses suffered by the Claimant. This was reasonable and the Trial Court is free to determine and consider the evidence as it sees fit.

## **Conclusion**

This judgment has important consequences for real estate disputes. Developers may no longer simply be liable for the amount received from the buyer plus interest, but may also be liable for other amounts required to be paid by the buyer that were ancillary to the SPA, including payments to real estate brokers and to the former purchaser.