Annulment of a brokerage contract does not preclude the court from compensating the broker

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Background

- The Claimant is an investor and came to the UAE to invest in real estate. The Claimant met the Defendants, who introduced themselves as working in real estate brokerage and having connections with prominent developers in the UAE such that they could purchase, through their relationship with the officials, the plots of land desired by the Claimant.
- The First Defendant received approximately AED 2,500,000 and the second Defendant AED 6,000,000, for their mediation.
- Although the purchasing transactions were successfully made, the Claimant alleged that the Defendants had not expended any effort and did not answer the Claimant's calls. Therefore, the Claimant filed his claim before the Court of First Instance requesting reimbursement of the amounts paid by him on the basis of unjust and baseless enrichment.
- The Court of First Instance rejected the Claimant's action. The Claimant then appealed to the Court of Appeal, who overruled the judgment of the Court of First Instance and ordered the Defendants to reimburse to the Claimant the amount received, along with legal interest at the rate of 9% from the date of the claim until full payment. The Court of Appeal based its reasoning on the fact that the brokerage contract, the subject matter of this case, should be considered invalid since it was not interpreted into a written contract in accordance with Article 26 of Regulation No. 85/2006 regulating the real estate agents register in Dubai.

The Defendants appealed the judgment before the Court of Cassation on the grounds of:

- Misapplication and misunderstanding of the law;
- Flaws in reasoning; and
- Contravening what was established by the documents.

The Defendants argued that the Court had ruled for the invalidity of the brokerage contract due to its form, despite evidence submitted to prove that the transaction for plot no. 32 had been executed by the Defendants, as a result of their mediation, for the benefit of the Claimant. This fact had been confirmed by the Court of First Instance and the Court of Appeal had also pointed out in its reasoning that the Claimant has issued the cheques because of the Defendants' mediation efforts for the land deal.

Judgment of the Court of Cassation

In its ruling, the Court of Cassation granted the appeal of the Defendants (the Brokers) and explained that Articles 210 and 274 of the Civil Transactions Law provide that if the subject matter of an obligation is contrary to public order or morals, the contract is considered void. In deciding the invalidity of the contract, the contracting parties shall return the received amounts pursuant to the provision on refund of unentitled amounts at Article 321 of the Civil Transactions Law. Even if the invalidity is due to illegality,

such that restitution is impossible, if a contracting party has provided a benefit, the recipient party is obliged to make fair compensation.

Even though the judgment under appeal had found that the contract of brokerage was invalid because it was not interpreted into a written form and this should lead to restoring the parties to their initial status before contracting and thus obliging the Defendants to refund the amounts received from the Claimant, the expert assigned by the Court of First Instance had stated in his report that the purchase transaction of plot no. 32 for the company belonging to the Claimant and his son was a result of the effort made by the Defendants, which meant that they had achieved a benefit for the Claimant in procuring the plot. Due to the impossibility of restitution for the benefit received by the Claimant, the Defendants deserved compensation for their effort and this should have been estimated by the judgment. The appealed judgment had violated the law in ruling that the Defendants must refund the amounts received from the Claimant without estimating compensation for the benefit they provided, and must be revoked for this reason.