

The Res Judicata Effect of an Arbitral Award in Dubai

Zane Anani

z.anani@tamimi.com - Dubai, UAE

Robert Karrar-Lewsley

r.lewsley@tamimi.com - Dubai, UAE

The Facts of the Case

The Claimant entered into a contract with the Respondent for the supply of work.

The contract contained an ambiguous arbitration clause that did not specify a method for appointing the Tribunal, nor the appointing authority. When a dispute arose between the parties over the outstanding debt, the Claimant approached the Dubai International Arbitration Centre (DIAC) to appoint an arbitrator. The dispute was heard by the arbitrator and an arbitral award was issued disposing of the dispute.

Following the issuance of the arbitral award, the Respondent filed Civil Action No. 652 of 2012 to set it aside while the Claimant filed Civil Action No. 584 of 2012 to confirm the award. The Respondent also filed a claim (Commercial Action No. 597-2013) before the Dubai Courts for the appointment of an arbitrator, on the basis that the previous award was invalid and it was for the court to appoint the tribunal, not DIAC. The Claimant argued that this action was beyond the limits of the courts' jurisdiction as the dispute had previously been determined by the arbitral award.

Court of First Instance

The Court of First Instance dismissed the Respondent's application for an arbitrator to be appointed because an arbitral award existed that had already resolved the dispute matter.

Court of Appeal

The Court of Appeal upheld the decision of the Court of First Instance.

Court of Cassation

The Court of Cassation upheld the decision of the Court of Appeal.

The Court explained that it was well established by the Court of Cassation that arbitral awards become res judicata upon issuance, although their enforcement is subject to a confirmation procedure. The parties therefore have no recourse to the courts to resolve the dispute once the award has been issued. This is so even if there is new factual evidence or legal arguments.

In issuing the award, the arbitrator disposes of the issues pursuant to the arbitration clause. The purpose of the arbitration clause is therefore fulfilled irrespective of whether the court then proceeds to confirm the award or set it aside for any reason (including a procedural one). The dispute cannot be brought before the same arbitrator or a different one except in accordance with a new agreement between the parties.

An arbitral award does not have res judicata effect only upon confirmation by a final and conclusive decision of the competent court. The situation is similar to the way that court rulings have res judicata effect even if challenged by way of an appeal to the Court of Cassation.

As to the contention that DIAC was not competent to appoint the Tribunal, this was rejected because the

Respondent had acknowledged and agreed to DIAC arbitration. The action to set aside the arbitral award was dismissed on this basis.

Comment

This judgment is important because it puts beyond doubt that arbitral awards have res judicata effect once issued, and that this remains the case even if the award is being challenged in the courts. The idea that an award is in some sense temporary or without effect until upheld by the local courts is wrong. Those that use arbitration can have confidence that once issued an award is effective, and that unless the award is annulled the issues that it resolves cannot be re-argued, even if new evidence or arguments arise.