

Sharjah Court of Appeal orders repayment of compound interest even after settlement

Ahmed Mounir El Sha'er - Senior Counsel - Litigation
a.elshaer@tamimi.com - Sharjah

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The Court found that a party could raise a claim against the imposition of compound interests even after settlement of the bank loan because imposition of compound interests is a violation of public policy. Al Tamimi represented the successful claimant.

Background

The claimant is a businessman who had applied for bank facilities by way of loans from one of the UAE's largest banks in order to finance his projects.

The bank offered banking facilities with interest rates that the bank said compared competitively to those offered by other banks in the UAE.

The claimant accepted the bank's offer, believing that the proffered interest rate was the best he could get from any bank in the UAE, and he signed four facility agreements with the bank.

The claimant noticed that, even though he was paying the loan installments regularly, the bank was calculating compound interest rates and additional fees that were not agreed between the parties in the signed agreements. The additional payments presented an onerous burden on the claimant and his business.

The claimant therefore notified the bank that the compound interest rates they calculated were illegal and exceeded those normally applied by the banking industry, and that the additional rates contravened the terms of the signed agreements. The claimant was forced by the onerous interest rates to approach another bank and obtain another loan with a simple interest rate in order to close his loan accounts with the defendant bank and stop the calculation of the compound interests and additional fees.

The claim

The claimant subsequently filed a case before the Sharjah courts requesting the appointment of a banking expert who could review the facility agreements and the methods employed by the bank to calculate the interests.

The expert was duly appointed and, after considering the documentation, he reported that the bank had calculated compound interests and additional fees amount of almost AED 10.5m.

In its defence, the bank said that the claimant had accepted the additional interest calculations and had assumed an obligation to pay them. It said that this meant the claimant had no right to bring any claim after settling all loan installments and issuance of the clearance letter. Any dispute should have been raised prior to settlement of instalments and issuance of the clearance letter.

In reply, the claimant argued that compound interest rates are prohibited by Sharia and violate the public policy, and as long as there is a violation of the public policy he had the right to sue the bank even after full settlement of the loan, especially that he had had no choice but to make an early settlement in order to stop the compound interest from accruing.

Court of First Instance

On 27 September 2016, Sharjah first instance court issued its judgment and ordered the bank to pay to the claimant the full sum, as assessed by the banking expert, of almost AED 10.5m, plus interest of 5% per annum from the date on which the claim was raised. The court based its judgment on the prohibition on compound interests found in Sharia law and the violation of public policy that the interest rate represented.

Court of Appeal

Both parties filed appeals and on 22 February 2017, the Court of Appeal issued its judgment upholding the decision of the First Instance Court and confirming that the bank had no right to calculate compound interest rates. The Court of Appeal also agreed that, as a matter of public policy, the claimant had the right to sue the bank in respect of the compound interest rates even after settlement of full loan, because they are prohibited by Sharia.

Analysis

Usually the UAE Courts will not allow a party to resile from the terms of an agreement it has voluntarily entered into. However on this occasion the Court of Appeal has allowed it because the compound interest is prohibited by Shariaa and violates the public policy and the banks should not apply it.

This judgment is not final and may be subject to review by the Court of Cassation. However it nonetheless indicates a willingness by the courts to review the agreements and dis-apply them should they contravene the public policy.

For further information on this dispute or any of the grounds / merits of this case or judgments, please contact Ahmed El Shaer (Senior Associate / Litigation department - Sharjah)