

# Union Supreme Court Holds that Parties' Capacity Determined by Nature and Purpose of Contract

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## Background

The claimant was a local property management and development company. The first defendant was the owner of a property located in the Emirate of Sharjah. The first defendant entered into an agreement with a bank as lender on 25 December 2006 in order to finance the purchase of the property. As part of that agreement the first defendant authorised the lender to collect rental income from the property in order to meet his financing instalments.

The first defendant thereafter approached the claimant to manage the financed property. The claimant and first defendant entered into a management and operations agreement on 31 January 2009. The lender separately also entered into a direct contractual relationship with the claimant on 19 February 2009 for the management of the same property.

The agreement between the lender and the claimant authorised the claimant to rent the property, sign rental agreements, carry out maintenance works, and collect rental income to be deposited in a special account with the lender. In the event that the claimant failed to meet its obligations the lender had the right to terminate the agreement with the claimant.

The claimant connected all services to the property and prepared it for lease. However, on 11 April 2013, after the claimant had completed the preparation of the property and made it ready for lease, the first defendant terminated the 2009 management and operations agreement. Later on, the claimant found out that the first defendant intended to contract with another company to manage the property instead, and hand over the rental income directly to him.

## The Claim

The claimant subsequently filed a case against both the first defendant and the lender before the Sharjah Courts, requesting enforcement of its contractual relationship with the first defendant and the lender, or, in the alternative, compensation for both the works and services done to the property and its losses arising out of the first defendant's and lender's breach of contractual obligations. The claimant requested the appointment of an accountant expert to calculate the losses that it suffered.

The expert was appointed and, after considering all documentation, he found that the first defendant was responsible for breaching its contract obligations. He reported that the first defendant should pay the claimant all expenses it had incurred on the property, with additional compensation, without holding the lender liable for any compensation towards the claimant.

Despite the expert report, the claimant emphasized that its loss was the responsibility of the first defendant and lender together and that they were jointly obliged to compensate them for all the money that had been spent on the property and the works done to it.

In its defence, the lender had argued that the agreement it had signed with the claimant was in its capacity as a proxy and not in its own capacity. The claimant objected and argued that the lender in fact entered into the agreement in its own capacity and its name was listed in all lease agreements. In addition to its right to cancel the agreement with the claimant in the event that any of the obligations stated in the contract were not met.

Which means the lender and the first defendant are jointly responsible to compensate the claimant on the works done and expenses spent on the property.

### **Court of First Instance**

On 28 October 2015, the Sharjah first instance court issued its judgment (relying on the expert's report) and ordered the first defendant to pay expenses to the claimant, in addition to compensation.

The claim against the lender was dismissed.

### **Court of Appeal**

The claimant appealed the judgment before the Sharjah Court of Appeal requesting it to amend the decision of the first instance court and order that both the first defendant and lender jointly pay the expenses and compensation to the claimant.

The Court of Appeal appointed the same expert as the court of first instance and therefore the findings of the expert remained unchanged

On 24 November 2016, the Court of Appeal issued its judgment and rejected the appeal.

### **Union Supreme Court**

The claimant appealed to the Supreme Court on the basis that the Court of Appeal erred when it did not enforce both the first defendant and lender jointly to pay the claimant the expenses spent on the building and compensate it for the breach of contract obligations.

The Supreme Court issued its judgment on 11 April 2017 and referred the case back to the Court of Appeal requesting it to re-look into the matter from a different perspective.

The Supreme Court found that the contract signed between the lender and the claimant was entered into by the lender acting in its own capacity. In support of this conclusion, the Supreme Court found that the lender had incorporated its own terms and conditions into the contract with the claimant; it had signed the contract under its own name and in its own capacity; and it had not acted in its capacity as a proxy or signed the contract on behalf of the first defendant, as by virtue of the agreement with the claimant the lender gained many benefits and managed to collect its finance instalments. Hence, the lender is responsible jointly with the first defendant to pay to the claimant the expenses spent on the property and compensate it on the harm / losses occurred due to the termination of the contract.

### **Analysis**

The Supreme Court ordered the Court of Appeal to re-look into the matter, clarifying that since the lender signed the agreement with the claimant (after the date of agreement between the first defendant and the lender) in its personal capacity and not by its capacity as proxy, the lender was to bear responsibility for breaching its contractual obligations and is to compensate the claimant – jointly with the first defendant – for all works and services done to the property and the losses it suffered as a result.

*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).*