

New Precedent regarding electronic communications in contract

Dana Al Shawwa - Associate - Litigation
- Amman

Omar Habaybeh
o.habaybeh@tamimi.com - Amman, Jordan

New Precedent on the electronic communications in contract

The legal field is an ever-adaptable machine that is always trying to keep up with the technological advancements our world continues to create. The legal arena must regularly adapt and innovate in order to accommodate all possible challenges arising from such rapid technological developments.

Recently Al Tamimi & Company advised on a matter where the court decided that email communication can now be considered an equal to the written form of communication. This decision set a precedent, regarding the way by which emails are viewed in the eyes of the Jordanian courts. The following judgment rendered by the court of Cassation of Jordan is a clear indication of the courts' modern legal approach.

Background

The case concerned a contractual agreement reached between our client and an internet service provider. The dispute occurred when our client notified the internet service provider of their lawful intention to terminate the contract via email. The internet service provider continued to issue invoices for the internet service that was not being used by our client, maintaining the email did not constitute a valid and official termination of the contract as per the stipulated means of notification under the contract. After the refusal by our client to pay for any expenses incurred after the notice of termination, the internet service provider filed a legal claim against our client.

The court of first instance of Amman ruled in favour of the internet service provider agreeing that electronic mail is not analogous to the stipulated forms of contractual notification such as telefax, post or registered mail. After the ruling, on behalf of our client, we filed for an appeal but the court of appeal confirmed the decision of the court of first instance and ruled in the favour of the internet service provider.

After applying to the Court of cassation in a request to appeal the decision (*noting that the claim amount does not qualify the lawsuit to be automatically subject to an appeal before the court of cassation unless a request of appeal is accepted by reason of a complex or a new legal issue*), the court of cassation repealed the previous judgments and ruled in favour of our client, recognising emails as an acceptable form of notification (analogous to a written notice using any other means of communication) despite not being explicitly mentioned in the contract as an acceptable form of notice to terminate.

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the current technological climate.”

Grounds for Judgement

The Court of Cassation’s approach was clear from the beginning where they stated that the two previous courts were mistaken not to dismiss the claim where it was evident that our client had terminated the contract via email. Furthermore, the Court referred back to the Electronic Dealings Law no. 15 for the year 2015 the (‘ Electronic Dealings Law’) which recognises emails as a legal means to communicate with other parties in respect of accepting or refusing any terms of a contract, including the termination of a previously agreed upon contract.

Moreover, according to Article 17 of the Electronic Dealings Law, the successful delivery of an email is recognised under the law when an email is sent from the location of the business of the first party to the location of the business of the second party. The Court went further by stating that if one of the parties did not have a location for its business, then the place of residence of the owner would constitute a place of business and given that our client entered into a contractual agreement with an internet service providing company and had fulfilled all the requirements of a successful exchange of emails, the Court of Cassation saw no reason not to consider the emails as a valid and legal form of communication/notification of termination especially considering the current technological status of the world where the main form of communication for corporations is email.

The Court of Cassation ultimately refused to attach any less weight to emails than to any other form of communication such as fax because email is now such an integral element in the day-to-day dealings of any business. Considering all of the supporting laws were in full effect prior to the agreement, the Court found that since the internet service provider did not deny receiving the termination emails from our client, the contract was no longer binding and the termination was initiated from the date of receiving the termination email.

Conclusion

The legal effect of such a ground-breaking ruling will be key in spurring on the Jordanian legal system to recognise new forms of modern day communication, such as email, by giving them equal weight in legal deliberations. The Court of Cassation, in its decision, was more inclined to accept modern means of communication and interpret the contracts in a more current manner. The effects of this modern approach by the judicial system will certainly be felt in future cases and business dealings whereby it will set the tone for new and unprecedented challenges that are yet to be tackled by current laws against the backdrop of a 21st century technological climate.

Al Tamimi & Company’s Litigation team regularly advises on and represents clients before judicial and administrative bodies to resolve existing disputes. For further information please contact Dana Al Shawwa (d.alshawwa@tamimi.com) or Omar Habaybeh (o.habaybeh@tamimi.com).