Grey matter in legal recourse

A commentary by Al Kabban & Associates on a recent rent-related dispute that the firm was able to determine and attain in the Abu Dhabi Court of Cassation.

From early on, we are taught that the legal profession is rarely black and white and there are many grey areas of law which require the objective analyses of judges, in most cases, to determine the verdict. This is a familiar encounter for many lawyers, where a break-through in the law is key to determining the path. This article will discuss the recent break-through that the firm has successfully attained in the Abu Dhabi Court of Cassation Case No. 30/2021 (Rent), Appeal No. 54/2021 (Rent), Case No. 5/2021 (Rent) related to determining:

a) the admissibility of Memorandum of Understandings in dealing with rental disputes; and

b) where the jurisdiction lies in deciding on the merits of rental disputes, when a Lease Agreement has not been issued or attested by the Municipality.

THE LEGAL FRAMEWORK

In the Emirate of Abu Dhabi, any rent-related disputes must be referred to the Rent Dispute Settlement Committee, pursuant to Article 25 of Law No. (20) of 2006 On Lease of Premises and Regulation of Landlord-Tenant Relationship in the Emirate of Abu Dhabi which states as follows:

Article 25

The Committee shall urgently resolve the disputes arising out of the rental relationship between the landlord and tenant in accordance with provisions of this Law and UAE Civil Transactions Law as amended if no provision is provided in that respect. The Committee shall have the power to take temporary measures submitted by either party; it shall also have the power to control execution of provisions of the Law and to prosecute either party when violating provisions of this Law upon request of the other party or the Secretariat-General of the Executive Council.

Furthermore, any Lease Agreement issued in Abu Dhabi must be registered and attested by the Abu Dhabi municipality pursuant to Articles 4 and 5 of Resolution No. (4) of 2011 for the Emirate of Abu Dhabi which state as follows:

Article 4

1. All lease contracts, whether made at the effective date of this resolution or made later, shall be recorded in the Lease Contract Register and any modifications to such contracts after being registered to be marked in such register.

2. Any lease contract not registered in accordance with provisions of this Resolution shall not be considered by the Competent Bodies. Any transaction requires a lease contract not be accepted unless such lease contract is registered at the Concerned Municipality.

3. The Concerned Municipality may halt the landlord's transactions in connection with registration of new lease contracts for the property in case of breach of any provisions of this Resolution.

Article 5

All landlords shall register data of their properties and all operative lease contracts made before or after issuance of this Resolution, register lease contracts when being renewed or any amendments beings made on them at the concerned musicality, and submit all necessary documents within six months of effective date of this Resolution according a work plan to be developed by the Head of the Department. However, they may extend such period if necessary, otherwise; the concerned municipality will make this action and all administrative fees and expenses shall be at the landlord's expenses.

THE CASE

The firm handled a case involving a Memorandum of Understanding ("MOU") between a landlord and tenant. This MOU stated that retail units were to be leased out to the tenant and a Lease Agreement



will be issued later on. However, the Lease Agreement was never issued and thus was not attested by the Abu Dhabi Municipality.

After having a dispute with the Landlord due to the Landlord's failure to handover the units to the tenant and the Landlord's attempt to swap the rented units to other units without the tenant's consent, the tenant proceeded to file a case before the Abu Dhabi Court. This path was chosen instead of the Abu Dhabi Rent Dispute Settlement Committee ("Committee"), as the Committee requires a Lease Agreement to be issued and attested by the Abu Dhabi Municipality in order to accept the case.

The Abu Dhabi Court of First Instance granted a judgment in the tenant's favour, terminating the MOU and binding the Landlord to refund the claim amount due to the tenant. However, the Respondent appealed the judgment of the Abu Dhabi Court of First Instance. Upon filing the appeal, the Appeal Court cancelled the judgment of the First Instance Court on the grounds that the case entirely deals with rent, pursuant to the characterisation of the facts of the case. Therefore, the Court decided that it lacks jurisdiction to hear the case and that instead, it should be referred to the Committee.

The tenant then appealed the Appeal Court's judgment before the Abu Dhabi Cassation Court and requested a cancellation of the said judgment. However, the appeal was dismissed and the Abu Dhabi Cassation Court confirmed the Appeal Court's judgment.

This forced the tenant to file a new case before the Committee to terminate the MOU and demand a refund of the amount paid towards rent. Unsurprisingly, the Committee dismissed the case on the grounds that the Lease Agreement was not issued and attested by the Abu Dhabi Municipality. The Committee refused to accept the MOU as proof of leasing the retail units and insisted that in order for them to accept the case against the Landlord, the Lease Agreement must first be issued and attested by the Abu Dhabi Municipality.

THE VERDICT

With its back against the wall, the tenant filed an appeal against the Committee's judgment, but the Appeal Court confirmed the Committee's judgment. The case was then referred to the Court of Cassation and a judgment was rendered in the tenant's favour. The Court held that due to the fact that the MOU stated the retail units shall be leased to the tenant, the MOU acts as evidence of a promise to lease the retail units. Therefore, there is no requirement to attest the Lease Agreement at the Abu Dhabi Municipality, and the Abu Dhabi Rent Dispute Settlement Committee does have jurisdiction in such cases and must decide on the merits of the case.

Therefore, pursuant to the judgment of the Court of Cassation, due to the determination of the Al Kabban team in finding the light at the end of the tunnel, if a MOU exists between the landlord and tenant, it shall be considered as a promise between the parties and is a valid document to lease the properties in question. A lease agreement attested by the Abu Dhabi Municipality is not mandatory for the Committee to hear a dispute and render a judgement based on the merits of the case. Furthermore, whether a lease agreement attested by the Abu Dhabi municipality exists or whether a MOU regarding the tenant's lease of the premises exists, all rental disputes are outside the Court's jurisdiction and must be referred to the Rent Dispute Settlement Committee, pursuant to Law No. (20) of 2006 On Lease of Premises and Regulation of Landlord-Tenant Relationship in the Emirate of Abu Dhabi.

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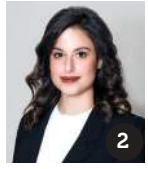
2

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