


DCC 290/2021

Type	Case
Court	Dubai Court of Cassation
Jurisdiction	Dubai
Decision date	21 Apr 2021
Catchwords	Construction Dispute - Multiple Contracts - Court Jurisdiction - Arbitration Clause - Not in All Contracts

Document link: https://www.lexismiddleeast.com/case/Dubai/DCC_2021_290_2021



This construction dispute involved multiple contracts one of which had an arbitration clause while the other did not. A key issue was whether the court or arbitration tribunal had jurisdiction.

Background

A real estate developer hired a consultant to provide engineering, design and supervisory services for the work of a contractor who was constructing a tower. The contract between the Developer and the Consultant contained an arbitration clause but the contract between the Developer and the Contractor did not.

The Developer filed a lawsuit before Dubai Courts to claim damages as a result of incomplete and faulty work because the Consultant had certified the work was complete but it was not complete and as a result the new contractor had faced problems.

The Dubai Court of First Instance accepted the case against the Contractor and dismissed the case against the Consultant for lack of jurisdiction due to the arbitration agreement in the contract between the Developer and the Consultant.

The Developer appealed the Court of Appeal decision which had overturned the judgment, rejected the jurisdiction challenge based on the arbitration agreement and remitted the case back to the Court of First Instance to issue a judgment against the Consultant again.

The Dubai Court of Appeal stated it was obvious that the agreement between the appellant and the second defendant (the Consultant) included providing design and supervision of enabling work which was carried out by the first defendant who was the Contractor, which meant that a finding that the first defendant did not commit any default would definitely conclude that the second defendant did not commit any mistake in its turn, because to resolve the dispute it was necessary to determine whether the first defendant had committed a mistake before a determination could be made on whether the second defendant had committed a mistake. Therefore it was in the interest of fair proceedings and to avoid contradicting judgments to have the dispute adjudicated by one forum, and as there was no arbitration agreement between the appellant and the first defendant, the second defendant was obliged to have the dispute adjudicated before the court and the arbitration agreement was not binding on the appellant.

Decision

The Consultant appealed the judgment to the Dubai Court of Cassation and argued that the Court of Appeal had erred in dismissing the jurisdictional challenge on the grounds that the dispute should not be divided because the contract between the Consultant and the Developer included an arbitration agreement, as this contract was separate from the other contract between the Developer and Contractor and there was no connection between the obligations of the Consultant and the Contractor.

The DCC upheld the Court of Appeal judgment and stated the arbitration agreement was only binding on its parties and not third parties. If a lawsuit was filed against several defendants and the claimant had a separate contract with each of them, and there was an arbitration agreement in one of the contracts, the transaction in both contracts were closely connected and the lawsuit involved this transaction, then, for the sake of fair proceedings, the dispute should not be divided because of this connection and should be adjudicated by one forum. That forum was the court as it had the original jurisdiction and arbitration was exceptional and a consensual jurisdiction based on the parties' intention.'