Disputes on Delayed Approvals in Construction: An Analysis of Dubai Court Judgments

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In the intricate tapestry of construction law within the United Arab Emirates (UAE), delays related to approvals have emerged as a recurring theme in disputes. The courts' approach to these matters is both nuanced and pragmatic, reflecting a deep understanding of the complex realities of construction projects. This article will dissect three key judgments from the Dubai Courts, each shedding light on the stance of the judiciary on delays arising from construction-related approvals.

Judgment 1: Case No. 673 of 2021, Court of Cassation (Dubai)

The case involves a maritime construction project. The developer's failure to obtain necessary approvals, licenses, and permits led to significant delays, resulting in the purchaser's request for contract termination.

Court's Findings and Reasoning

Contractual Obligations and Delayed Approvals: The court found that the developer's delay in obtaining necessary approvals was not excusable. The developer was expected to study the project's requirements and obtain all necessary approvals before commencing the project. The delay of over three years was deemed a breach of contractual obligations.

Rejection of Force Majeure: The court rejected the developer's claim of force majeure, reasoning that the delay in obtaining

approvals did not constitute an unforeseeable event. The court emphasized that the delay was within the developer's control and did not render performance impossible.

Expert Evidence and Site Inspection: The court relied on an expert committee's report and site inspection, which revealed that the construction was incomplete and did not meet the agreed specifications. The court found this evidence sufficient to form its belief in the developer's failure to perform.

Interest Rate Adjustment: The court reduced the interest rate from 9% to 5%, balancing the developer's breach and the purchaser's legitimate expectations.

Relation to Disputes Arising from Approval Delays

The judgment offers significant insights into how courts may approach disputes arising from approval delays in construction projects:

Pre-Contractual Planning: The judgment emphasizes the importance of thorough planning and understanding of regulatory requirements before entering into a contract.

Clear Contractual Terms: The case underscores the need for clear contractual terms addressing potential delays and unforeseen challenges, including approval delays.

Judicial Discretion and Evidence Evaluation: The judgment illustrates the court's discretion in evaluating evidence and understanding the factual matrix, particularly concerning delayed approvals.

Judgment 2: Case No. 105 of 2013, Court of Cassation (Dubai)

The dispute at hand revolves around a construction project that suffered significant delays. The developer (the appellant) alleged that the delays were caused by factors beyond its control, including changes made by the principal

developer and governmental inaction. The buyer (the respondent), on the other hand, contended that the developer's negligence and failure to meet its fundamental obligations led to the delays.

The Court's Reasoning

The Developer's Obligations: The court embarked on a detailed analysis of the developer's obligations under the contract and the relevant statutory provisions. It emphasized that the developer's commitment was not confined to the explicit terms of the contract but extended to all that was necessary for the proper execution of the project, including obtaining necessary approvals and ensuring the readiness of the land.

The Developer's Conduct: The court scrutinized the developer's conduct, finding no credible evidence to support the claim that the delays were beyond its control. The absence of documents proving governmental interference or changes by the principal developer led the court to conclude that the developer was either negligent or in default of its obligations.

The Buyer's Rights: The court also considered the buyer's rights under the law, recognizing that the buyer was entitled to withhold payment if the developer failed to fulfill its corresponding obligations. The court's reasoning was grounded in the principles of good faith and reciprocity that underpin contract law.

Analysis and Implications

The Importance of Documentation: This judgment underscores the critical importance of proper documentation in construction disputes. The developer's failure to provide evidence of external factors leading to delays proved fatal to its case. Parties must be diligent in maintaining records that can substantiate their claims, particularly when alleging circumstances beyond their control.

The Interplay between Contractual and Statutory Obligations: The court's interpretation of the developer's obligations illustrates the complex interplay between contractual terms and statutory provisions. It serves as a reminder that parties must be mindful of not only the express terms of their agreements but also the broader legal framework within which they operate.

The Broader Context of Construction Disputes: The judgment also sheds light on the broader context of construction disputes arising from approval delays. It highlights the multifaceted nature of such disputes, encompassing not only legal and contractual issues but also practical considerations such as project readiness, governmental actions, and the conduct of various stakeholders.

Judgment 3: Case No. 161 of 2011, Court of Cassation (Dubai)

The dispute arose between a contractor and a property owner. The contractor, having completed a significant portion of the construction, alleged breaches due to delayed approvals, which they claimed led to increased costs and project delays. The owner, on the other hand, attributed the project's delays to the contractor's actions, particularly their cessation of work pending increased prices.

Delayed Approvals: The Heart of the Dispute

Cancellation of Annex and Modified License: The court's analysis delved deep into the impact of delayed approvals. Specifically, it examined the contractor's claim that the cancellation of parts of the work, such as a service annex, required a halt in work pending a modified license. The court found that such cancellations did not necessarily warrant a work stoppage.

Impact on Timelines: The court juxtaposed the actual project delays against the contractual timelines. It underscored the contractor's refusal to continue work without price hikes as a

breach of contract. Yet, it also acknowledged the role of delayed approvals in extending the project's duration.

Increased Costs: The court recognized that delayed approvals, combined with the contractor's cessation of work, led to escalated costs for completing the remaining work. Damages were awarded, reflecting the multifaceted repercussions of delayed approvals.

The Court's Reasoning

The court's approach was marked by a meticulous examination of the contractual obligations, the parties' conduct, and the overarching role of delayed approvals.

Contractual Obligations: The judgment emphasized the importance of clear contractual terms. In this case, the absence of provisions allowing the contractor to demand price increases due to delays became a pivotal point.

Expert Testimony: The court leaned heavily on expert testimony to decipher the cause of delays and the resultant damages. This reliance underscores the significance of expert analysis in disputes pivoting on delayed approvals.

The disposition of the court in this vein was as follows:

"And the cancellation of the annex and the issuance of a modified license does not cause a delay because the contractor does not stop work pending the issuance of the modified license, and there are no instructions from the municipality to stop the work until the issuance of the modified license, except in the works that include the execution of additions or additions to the building. As for the cancellation of parts of an issued license, as is the case in this lawsuit, the cancellation of a part of the licensed works, such as a service annex, does not require the contractor to stop until the issuance of the modified license. Also, the cancellation of the annex reduces the agreed-upon work that must be

executed, and therefore reduces the time needed to execute what is agreed upon, and does not cause a delay.”

Implications for Construction Disputes

This judgment offers a lens into the handling of delayed approvals in construction disputes.

Understanding Different Types of Delays: The court’s nuanced differentiation between various types of delays provides a roadmap for future disputes, offering clarity on the distinct impacts of each delay type.

The Importance of Contractual Clarity: The case accentuates the need for lucid contractual terms, especially when navigating the murky waters of delayed approvals.

Assessment of Damages: The court’s methodical assessment of damages resulting from delayed approvals sets a precedent for gauging the multifaceted impact of such delays..

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