Dubai Judgments on Extension of Time Claims: Repair and Additional Works, Concurrent Delay, and Contractual Wording

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In the construction and engineering sector, extension of time claims (EoTs) are ubiquitous, often representing complex contractual and legal implications. Amid the evolving international perspectives on these claims, the United Arab Emirates (UAE) has carved out its distinct path, driven by a pragmatic and robust legal framework. A deep dive into the UAE's legal ethos towards EoT claims reveals rich insights, hinged on a series of landmark court judgments. To capture this perspective, we turn to three pivotal rulings:

- Dubai Cassation Court case no. 389/2022 issued on 19 September 2022.
- Dubai Cassation Court case no. 161/2021 issued on 11 April 2021.
- Dubai Cassation Court case no. 348/2015 issued on 22 May 2016.

1. EoT in Repair Works: Dubai Cassation Court case no. 389/2022

In this case, the appellant claimed that the defendant had failed to adhere to the agreed upon project timeline, leading to significant delays. Further, the appellant alleged that the work done was flawed, requiring deconstruction and reassembly.

The case turned on the question of whether the delays were permissible under the contract, and whether the repairs could be considered a breach of the same.

Crucially, the expert's report, addressing the appellant's objections, concluded that modifications made to the architectural and structural works, boundary wall modifications, general modifications, and sanitary drainage modifications—totaling eight core works—required additional time beyond the original project timeline for completion. In other words, the delay was necessary, and not a result of any failure on the part of the contractor.

One must observe that time extension claims often arise from the unforeseen complexities that are integral to any construction project. Contractors can be confronted with a variety of challenges beyond their control. Here, the nature and magnitude of the required modifications justified the delay.

The consultant agreed to extend the project deadline based on a letter issued in response to the plaintiff's request. Consequently, any delay could not be blamed on the contractor. The contractor rectified the flawed works, and the repairs were approved by the consultant. Therefore, as per the court, the appeal lacked a solid basis and was therefore dismissed.

The Dubai Cassation Court's ruling in case no. 389/2022 highlights the complex nature of time extension claims in construction contracts. It underscores the importance of considering project-specific circumstances, the necessity of repairs, and agreed-upon contract terms while dealing with such issues. Through this lens, the court's ruling offers a logical, well-argued, and reasoned response to such claims, proving instrumental for arbitration in similar cases in the future.

2. EoT in Additional Works and Concurrent Delay: Dubai

Cassation Court case no. 161/2021

In the Dubai Cassation Court case No. 161/2021, the Court made a seminal ruling on EoT claims, throwing into sharp relief the fine line between the rights and obligations of contractual parties.

The Court's ruling navigates the muddled waters of concurrent delay and additional work – both being principal triggers of EoT claims. Essentially, it ruled that a contractor could claim an EoT in instances of concurrent delay, provided the owner's delay activities are simultaneous with those of the contractor. Simultaneity here denotes that the owner's actions (or inaction) must be within the same period as the contractor's delay-causing activities. Moreover, the ruling underscores the essentiality of establishing causation – the delay must directly spring from the owner's actions.

The Court also delineated on the question of additional work causing delay. It observed that when additional work requiring extra time is commissioned, it becomes imperative to grant an EoT to the contractor. This not only maintains the contractual balance but also upholds the fundamental principle of fairness. The judgement makes it clear that an owner cannot take refuge in the delay penalties clause if the contractor's delay in execution arises from causes attributable to the owner.

The critical aspect of this case, though, lies in the unfurling of the connection between EoT claims and performance bonds. The Court postulated that a contractor's entitlement to return of performance bonds is intricately linked to its adherence to contract completion timescales – extended or not. In situations where the contractor has dutifully executed its obligations and delays are not its sole fault, it is entitled to the return of the bonds, as they have fulfilled their purpose.

Moreover, the Court also shed light on the role of a project consultant, highlighting that the certificates issued by the consultant, attesting the progress of work, are consequential for the contractor's payment claims. In this context, it was emphasized that allegations of collusion between the consultant and the contractor must be substantially proven.

The ruling elucidates that in the adjudication of EoT claims, every aspect of the case is scrutinized – from the causation of delays to the extent of their impact on the project timeline. It reiterates the importance of thorough examination and comprehensive understanding of the project specifics, as well as the nuances of the EoT claim itself.

The Court's decision in case No. 161/2021 indeed serves as a comprehensive guide for stakeholders in construction contracts. It lucidly explicates the concept and ramifications of EoT claims, helping parties navigate this intricate facet of contract law. This case, thus, is a welcome addition to the compendium of legal guidance available for understanding EoT claims, a complex, yet pivotal element of construction contract disputes.

3. Elucidating Contractual Clarity: Dubai Cassation Court case no. 348/2015

The contractor sought compensation for additional costs arising from an extended period of project execution. The employer argued that the contract contained no provision allowing the contractor to claim any costs related to the EoT.

The case turned upon the interpretation of Articles 199 and 207 of the UAE Civil Transactions Law, which emphasize the significance of a valid cause and subject matter for a contractual obligation to be legally enforceable. The Court, applying these provisions, found that the contractor's claim for additional costs lacked a legitimate contractual or legal basis since there was no provision in the contract allowing

such a claim. The EoT claim was purely for additional time and not for additional costs.

This judgment showcases how the courts can, and will, enforce the strict letter of the contract, highlighting the importance of precise contractual wording. The contractor could not claim additional costs because the contract did not explicitly provide for such a claim in the event of an EoT. This indicates that, in EOT claims, courts are unlikely to imply terms or interpret contracts generously.

It should be noted that the Court also reinforced the employer’s obligation to compensate the contractor for the contracted works upon their completion. This reciprocal obligation mirrors the contractor’s commitment to finish the work in the agreed-upon time, further reinforcing the symmetrical nature of construction contracts.

Interestingly, the court rejected the notion that the extension of the contract duration would equate to a contractual amendment leading to additional obligations. The contractor’s claim for additional expenses arising from the extension period was deemed invalid, emphasizing that the performance of contractual obligations during an extended period does not grant the right to additional remuneration unless explicitly agreed in the contract.

In conclusion, this judgment from the Dubai Cassation Court reaffirms the criticality of meticulous contractual drafting and provides a cautionary tale for contractors entering into EOT claims. It reinforces the need to ensure that provisions allowing for additional costs during an EoT are included in the contract. Moreover, it reiterates the importance of careful contract management to ensure contractual obligations are met and rights are adequately protected during the project lifecycle.

The decision underscores the need for parties to consider all

possible scenarios and articulate their mutual obligations comprehensively. Ultimately, it serves as a reminder that the law does not provide a safety net for those who fail to take the necessary precautions in their contracts. The burden lies with the parties to negotiate and agree on all material terms, including those related to EoT claims.

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