UAE Supreme Court: Fraud and deception in construction quantity schedules

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Introduction

The United Arab Emirates Federal Supreme Court has offered an important perspective on the implications of fraud and deception in the context of construction contracts, based on a ruling that delved into these concepts. The ruling gives critical insights into how the court views contractual procedures, quantity schedules, and the necessary evidence to establish fraud and deception.

Construction Contract Procedures

In the contract in dispute, a critical element was the inclusion of all specifications and descriptions related to the beautification work, which was the responsibility of the contractor. The contract details served as a roadmap for the contractor, defining their responsibilities and obligations in executing the project.

Quantity Schedules

Integral to the contract is the quantity schedule, a document detailing the types and quantities of work to be completed as part of the project. It acts as a guiding tool that helps eliminate disagreements over the project's scope. The court ruling stressed that any variance from this quantity schedule or any modifications in the design would be viewed as a change, signifying the owner's awareness of the contractor's

prices and work items.

However, the court also noted that the owner had the opportunity to seek better price offers than what had been agreed upon, implying a level of responsibility on the owner's part in terms of due diligence before entering into the contract.

Legislative Provisions and Interpretations

The court based its decisions on relevant legislative provisions, namely Article 94 of the Civil Procedures Law and Article 21 of the Commercial Companies Law No. 2 of 2015.

Article 94 of the Civil Procedures Law primarily addresses issues related to lawsuits and legal procedures. In the context of this case employed to analyze the eligibility of parties involved in the lawsuit, eventually leading to the determination that directing requests to the three individuals along with the contracting company was litigation against an ineligible party.

On the other hand, Article 21 of the Commercial Companies Law No. 2 of 2015 offers guidance on the responsibilities and liabilities of shareholders in a company used to examine the roles and potential liabilities of the three defendants who were partners in the company initially sued.

Court Requirements to Evidence Fraud and Deception

When it comes to proving fraud and deception, the court requires solid evidence to establish such allegations. In this case, the court found no compelling evidence of the three defendants' role in the contract under litigation, undermining the strength of the claim of fraud.

The court reasoned that the owner failed to establish that the contractor used means to mask falsehood as truth and create a deceptive appearance, accompanied by physical manifestations

that would affirm the deception. Simply being partners in the contractor company initially sued does not, in itself, provide sufficient proof of deception.

Similarly, claims of overreaching in the contract, while possibly significant, were dismissed by the court.

Variations to Quantity Schedule: Fraud and Deception?

In the context of construction contracts, variations or changes to the quantity schedule can become potential points of contention. The quantity schedule, as part of the construction contract, specifies the type and quantity of work to be undertaken. It serves as a guiding document that assists in preventing disagreements over the scope of the project. The courts are likely to consider deviations from this agreed schedule as a substantial change, provided these deviations are not mutually agreed upon by the parties.

In the ruling at hand, the court took a pragmatic view of such variations. It asserted that any divergence from the quantity schedule or modifications in the design constituted a change. However, this alone does not equate to fraud or deception. The court maintained that the property owner’s awareness of the prices, work items, and overall understanding of the contract terms plays a crucial role in deciding whether any changes amount to fraudulent activity.

The fact that the owner had the possibility to seek more favorable price quotes than what had been agreed upon in the contract signaled that they were aware of the pricing dynamics. This indirectly implies that even if the contract resulted in less favorable terms for the owner, it cannot be directly classified as fraud or deception unless the contractor employed fraudulent means to mislead or deceive.

If any changes to the quantity schedule are made with the intention to deceive, mislead, or defraud the other party, it can be classified as fraudulent behavior. This could include

actions like the contractor artificially inflating quantities or the owner knowingly accepting lower quantities than required, with the intent to later claim additional costs. However, changes made in good faith, or with full transparency and mutual agreement, are generally considered legitimate variations to the contract.

In the absence of strong evidence of fraudulent means, as in this case, variations to the quantity schedule are not typically regarded as fraud or deception. This highlights the importance of clear, honest communication, and comprehensive documentation in construction contracts, particularly when dealing with changes to the project's scope as outlined in the quantity schedule.

As a takeaway, both parties should be fully aware of their obligations and rights, exercise due diligence before entering the contract, and maintain transparency and clear communication throughout the project to avoid misunderstandings that could be construed as deception or fraud.

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