UAE Supreme Court orders default termination clauses only exercisable by beneficial party

September 10, 2022

Brief

In June 2022 the UAE Federal Supreme Court issued a judgment finding that default termination clauses cannot be exercised by both (or all) parties to a contract – if that termination clause inures to the benefit of one of the parties with a standing claim.

The reasoning rendered by the Supreme Court is where a termination clause is a default termination clause yet inures to the benefit of one party but not the other and is read to intend protecting the interest of that beneficial party, then it is that beneficial party who must explicitly trigger the default termination clause otherwise the contract remains intact.

Ruling

The Federal Supreme Court ordered that:

"It is decided that if the contract does not contain an express condition, it is terminated if its elements are fulfilled.

The court is not necessarily bound to terminate the contract based on an implicit termination condition established for the benefit of the applicant in the event the other party fails to

implement their mutual obligation.

The court may compel the debtor to implement their obligation immediately or within a specified time.

And the court may reject the request for termination if it appears to it from the facts of the situation that the debtor is no longer in breach of implementing their obligation, by preventing the issuance of the judgment for termination, by implementing his commitment before or during the consideration of the case and until before the issuance of the final judgment in it.

And there would be nothing in this delay that would harm the applicant requesting the termination or anyone else, and there would be no principle in this regard to the extent of the defendant’s obligation that he had not fulfilled, or the value of the obligation that the applicant fulfilled in accordance with the terms of the contract.

Rather, the principle is what will be the state of affairs when the case is judged and until the final ruling is issued.”

Facts

In 2008, the applicant (seller) sold to the respondent (buyer) an apartment of which the buyer paid the deposit of about 15% for.

The buyer failed to pay the rest of the installments despite the completion of the apartment.

The seller requested the buyer take possession of the apartment.

The buyer rejected without justification and issued a termination notice to the seller.

The seller sued for the remaining amounts due for the development of the apartment plus interest.

The primary and appeals courts rejected the claim on the basis that the contract had been terminated.

Ultimately the seller petitioned the Federal Supreme Court for review.

References

The Supreme Court relied on Articles 267 and 272 of the Civil Transactions Law that state:

267: If a contract is valid and binding, none of the contracting parties may revoke, modify, or terminate it except by mutual consent, order of the court or a law provision.

272: (1) In bilateral contracts, if one of the parties does not perform his contractual obligations, the other party may, after serving a formal notification to the debtor, demand the performance of the contract or its termination. (2) The judge may order the debtor immediate performance of the contract or grant him specified additional time, as he may order termination with damages, in any case, if deemed justified.

The Supreme Court deduced the penalty and termination clauses of the contract in dispute which read as follows:

Clause 5: In the event of the buyer’s failure to pay three consecutive or non-consecutive payments, a notice of default for week shall be issued. In the event that the overdue amounts are paid during this period [the week], the buyer will pay a delay fine of 10% of the overdue amounts.

Clause 6: If the buyer does not pay during the above-mentioned period, which is the week for payment of the overdue amounts, the contract is terminated without referring to the buyer, and the seller has the right to sell the apartment to another person, and the buyer deducts 30% of the total paid contract.

Reasoning

The trial courts, primary and appeals, had considered that the contract is deemed automatically terminated pursuant to clauses 5 and 6.

The Federal Supreme Court overturned the lower court judgments and found that the option of the express termination clause is in the interest of the seller and not for the buyer.

The Supreme Court found that the termination notice issued by the buyer is invalid as the termination clause is not in his interest and the buyer does not have the right to terminate the contract unilaterally.

And the seller had insisted on executing the contract of sale of the apartment and requested that the buyer be obligated to pay the rest of the price and take possession of the apartment.

The reasoning rendered by the Supreme Court is where a termination clause is a default termination clause yet inures to the benefit of one party but not the other and is read to intend protecting the interest of that beneficial party, then it is that beneficial party who must explicitly trigger the default termination clause otherwise the contract remains intact.

And the courts may not terminate the contract without the request of the beneficial party to the termination clause – and must grant requests for performance of the contract.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com