UAE Supreme Court rules on priority of ‘hidden’ agreements over fictitious contracts

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During the Summer of 2020, the Supreme Court ruled on the validity and priority of ‘hidden’ agreements over fictitious (sham) contracts.

A similar case was brought to the Supreme Court earlier in 2015 but was not addressed on merits and was rejected procedurally.

The Dubai Cassation Court looked at similar cases in relation to the constitutional contracts of commercial companies in the past but found that constitutional contracts of companies cannot be rendered fictitious but only void.

Now the Supreme Court has taken a definitive position on ‘hidden’ agreements granting them priority over fictitious contracts.

Case

The facts of the case revolved around two siblings conducting a sale agreement and a gift contract otherwise known as “Heba” under Shariah law – for the transfer of the property owned by their father who was at the time mentally impaired due to an accident.

As per the submissions of the litigants and in the *obiter dicta* of the judgment, the gift contract was put together to

avoid the Dubai Land Department registration fees.

One of the siblings sued before the Federal Primary Court requesting the Court to rescind the gift contract, and to order the Dubai Land Department to re-register the land in the name of the father, on the basis that their father was taken advantage of due to his mental impairment to sign-off on the gift contract, and on which basis the property had been transacted without the father's knowledge.

The Primary Court appointed a real estate expert and a forensic doctor as expert trial witnesses, and the forensic doctor confirmed that the father suffered from mental dementia and disability, and impaired memory, and would have been easily influenced and unaware of his actions. The forensic doctor concluded that the father could not be held responsible for his actions from a medical perspective.

The Primary Court ordered rescindment of the gift contract and addressed the Dubai Land Department to re-register the property in the name of the father. The defendant appealed this ruling.

In January 2020, the Appeals Court rejected the appeal, which was challenged before the Federal Supreme Court on the grounds that the transaction was in fact subject to a sales contract and not the gift contract that had been rescinded, and that the gift contract was a fictitious contract drawn up in order to avoid the real estate registration fees.

In deciding the matter, the Federal Supreme Court applied the provisions of Articles 394 and 395 of the Civil Transactions Law which state as follows:

Article 394

1-If a fictitious contract has been concluded, creditors of the contracting parties and particular successors in title may, if they are in good faith, avail themselves of the hidden

contract and prove, by any means, the fictitious of the contract by which they were prejudiced.

2-In the case of a conflict of interest between the interested parties, some of whom rely upon the fictitious / apparent contract and others on the hidden contract, the former shall have preference.

Article 395

When the contracting parties hide a genuine contract behind a fictitious contract, the genuine contract will bind the contracting parties and their universal successors in title.

The Supreme Court also referenced the provisions of Sharia law in stating that:

"…if the contracting parties conceal a real contract with a fictitious contract, then the contract in force between the contracting parties and any concerned parties is the real (concealed) contract."

The finding of the Supreme Court was ultimately:

"…the fictitious contract has no effect between the contracting parties, given that the contracting parties intend to refute the fictitious contract and adhere to the concealed contract."

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