

CASE FOCUS

Case No ECA 37214/74 (28 June 2020)

Jurisdiction Egypt

Court Egypt Administrative Court

Recommended by Wasel & Wasel

WHAT HAPPENED?

A Government association ordered a scheduled election to be suspended until normal daily life was resumed. However, an association member challenged the president's decision before the Administrative Court and requested the decision be nullified. The association president argued COVID-19 was a force majeure event and various Government decisions had been issued prohibiting certain activities and this was sufficient grounds for the scheduled election to be suspended.

WHAT WAS DECIDED?

In its judgment of 28 June 2020, the Administrative Court said COVID-19 qualified as a force majeure event as it could not have been foreseen. They also adopted the World Health Organisation's definition of COVID-19 as a pandemic and it was stated the State had to take various steps to mitigate its effects. The Court also addressed the implications of Sharia law on COVID-19 related disputes. Since May 2020, practitioners and courts in Arab jurisdictions have turned to the judgment issued by the Paris Commercial Court in May which found COVID-19 could not have been reasonably foreseeable and therefore it qualified as a force majeure event. This judgment has been discussed widely and relied on regionally as Arab jurisdictions are civil law jurisdictions like France. This means parties with business in the Middle East looking to argue COVID-19 is a force majeure event and relieve themselves of any impossible obligations may draw reference from a much closer jurisdiction.

WHY'S IT SIGNIFICANT?

This case is thought to be the first judgment in an Arab jurisdiction, ruling that COVID-19 qualifies as a force majeure event. Since courts in these jurisdictions tend to respect rulings from their Arab counterparts on

matters which have not been addressed at length in their own respective jurisdictions, this judgment could have extra jurisdictional effects and be grounds, or be argued as grounds by counsel in other courts in Arab jurisdictions. It is also significant as it relies on the World Health Organisation's categorisation of COVID-19 as a pandemic. This judgment also considered Sharia law principles on the protection of human life and restrictive Government orders.

Case No 344/2012 (27 June 2012)

Jurisdiction Qatar

Court Qatar Court of Appeal

Recommended by Saba & Co Intellectual Property

WHAT HAPPENED?

The Evyap Sabun Yag Gliserein Sanayi Ve Ticaret Anonim Sirketi (Evyap) v Soleys Trading Company (Solyes) case involved a request to a local court to cancel a trademark (ARKO) which was unrightfully registered by Solyes, the local distributor of Evyap's products in Qatar. The claimant relied on Article 26 of Qatar Law No. 9/2002. This enables anyone to request the Civil Court to declare a trademark registration null and void if the mark has been unrightfully registered. They argued the defendant had registered the trademark without their knowledge or consent. Evyap claimed Soleys had registered the ARKO trademark without their knowledge or consent and, taking several factors including their business relationship into account, Soleys' act was contrary to accepted standards of honest practice. It was also a violation of the provisions of Articles 8(6) of Qatar Law No. 9/2002 and the provisions of the Paris Convention, particularly Article 6. The defendant argued the claimant's allegations and claims were unsubstantiated, Evyap did not use their trademark in Qatar and they had not violated the relevant laws and regulations.

WHAT WAS DECIDED?

The Court of First Instance ruled the use of the trademark by the defendant was a breach of Article 6 of the Paris Convention and Qatar's Trademarks

Law. Therefore, the defendant's registration of the trademark must be declared invalid. The defendant appealed but the Court of Appeal upheld the initial judgment.

WHY'S IT SIGNIFICANT?

This case set a precedent by considering use by the distributor as giving them the benefit of the trademark proprietor even if the proprietor had no registration or application of the mark in Qatar. Use by the local party was considered use on behalf of the trademark proprietor. It was therefore considered a prior use of the disputed mark as a result of the prior registration of that mark in the name of the local party in Qatar.

Case No 44/2020 (22 June 2020)
Jurisdiction UAE
Court Khor Fakkan Court of Appeal
Recommended by Al Tamimi & Company

WHAT'S THE RELEVANT LAW?

Cabinet Decision No. 57/2018 which is the Implementing Regulations to Federal Law No. 11/1992 (the Civil Procedures Law), states creditors who obtained attachment orders over their opponents' real estate and movable assets have to file their claim no more than eight days after the issuing of the attachment orders, with the relevant court proving the right to their claims in order for it to be valid. Otherwise, the attachment order will be null and invalid, unless the validity of debt claims have been filed before the attachment is granted.

WHAT HAPPENED?

In June 2019, a claimant which was a shipping company agreed to sell one of its vessels to the defendant which was another company under a Vessel Purchase Agreement. Under the agreement, the purchase price of the vessel was \$11,700,000 and the money had to be paid via an escrow account. It was also agreed the defendant would pay 20% of the purchase price to the claimant in advance before the delivery of the vessel and the remaining 80% of the Purchase Price within three days of delivering the vessel to the defendant. Once the claimant received 20% of the Purchase Price or \$2,340,000 they arranged for the vessel's ownership to be transferred to the defendant. Under the agreement, the vessel was delivered to the defendant at the Khor Fakkan Port. However, the claimant had still not received 80% of the purchase price. In January 2020, the claimant filed arbitration proceedings in London against the defendant. They claimed that vessel ownership should be returned to them, or alternatively, 80% of the purchase price which was owed to them amounting to \$9,983,921.91 should be paid. The claimant obtained an arrest order over the vessel which was moored at Khor Fakkan Port. The claimant based the ship arrest application on the agreement. In addition, the claimant had also filed a validity of arrest

order claim with the Khor Fakkan Court of First Instance requesting the Court stay the validity of the arrest order claim in the UAE until a final award was issued on the validity of the debt claim in London. They argued that the new Civil Procedures Law amended by Cabinet Decision No. 57/2018 did not require a validity of arrest order claim to be filed by the creditors as this law did not refer to the Maritime Law, Federal Law No. 26/1981. They also argued that Federal Law No. 26/1981 was a private law while the Civil Procedures Law, Federal Law No. 11/1992 was a general law so the rules of private law should prevail over the general rules. In addition, they argued that Federal Law No. 26/1981 dealt with ship arrest procedures while the Civil Procedures Law (Federal Law No. 11/1992) dealt, in general, with precautionary attachments over the debtor's real estate and movable assets. Therefore, the ship arrest procedures which were set out in the Federal Law No. 26/1981 should be applied in ship arrests. It was argued that as a result of Article 120(1) of Federal Law No. 26/1981 the Khor Fakkan court should have jurisdiction to decide on the validity of the arrest order claim as it issued the arrest order over the vessel. They was also stated that Article 121 of Federal Law No. 26/1981 required judgments which were issued in a validity of debt claim to confirm or validate the arrest orders over arrested vessels. However, the validity of the arrest order claim depended on the outcome of the validity of debt claim which had been filed in London.

Therefore, the validity of arrest claim should be accepted based on Article 120, 121 of Federal Law No. 26/1981 and the Court should stay the validity of the arrest order claim until a final award was issued on the validity of the debt claim in London.

WHAT WAS DECIDED?

The Khor Fakkan Court of First Instance decided the validity of arrest order claim should be stayed until a final award was issued on the validity of the debt claim in London in line with Article 102 of Federal Law No. 11/1992. The defendant appealed to the Court of Appeal which upheld the Court of First Instance's judgment. They added that the Court had jurisdiction to decide on the validity of arrest order claim based on Article 22 of Federal Law No. 11/1992. They went on to rule that the claimant's debt was considered a maritime debt based on Article 115(2)(d) of Federal Law No. 26/1981, as the vessel purchase agreement related to the use or exploiting of the vessel. Finally, they added that the validity of an arrest order claim is specifically mentioned in Article 121 of Federal Law No. 26/1981 and this Law is a private law so its rules should supersede the general rules.

WHY'S IT SIGNIFICANT?

Creditors should ask the court to validate or confirm the arrest order over an arrested vessel when they file the validity of debt claims in order to avoid having their claims dismissed on a technicality.