THE LIABILITY FOR BANKING FACILITIES WHEN LEASING A TRADE LICENCE IN DUBAI

In 1973 the Federal Ministry of Justice started publishing al-Adala quarterly but because it sells for as little as Dh 3 it is difficult to acquire!

Al-Adala reports leading cases decided by the Courts of Cassation and of Appeal in Abu Dhabi and by the Court of Appeal in Sharjah. The decisions of the courts in Dubai remain unreported as the Dubai courts are not Federal (as permitted by the temporary Constitution).

This may explain why the local press discussing the need for an insolvency law and the difficulty in implementing the Federal Companies Act of 1984 to existing businesses in Dubai, did not refer to a leading case of the Dubai Court of Cassation, No. 102/88 decided in 1989: The Bank of Oman Ltd. v. Intervedio Establishment, Said Nasir and Salim Sultan.

As the claim was for around Dh 150,000 this was perhaps a test case. The Bank was successful at first instance but lost on appeal. The Bank appealed to the Court of Cassation as the issues turned on a point of law.

It was held by the Court that on the facts and with reference to the documentation there was no relationship of principal and agent between Intervedio and businessman Muhammed Mirza who opened and operated the bank account exclusively.

The relationship between Intervedio and Mirza was that of a Lease of a Trade Licence and of a Business Name for five years with the exclusive liability of Mirza. Mirza was paying the two owners of Intervedio Dh 40,000 per annum for the privilege of operating exclusively. (The Court, consisting of 7 judges and presided over by Dr. Mustafa Kasir, did not actually use the term “Sponsorship fee”.)

As the two owners of Intervedio were not parties to the opening or operating of the bank account and as Mirza was a Lessee of a Trade Licence and not their Agent there was no privity of contract between the two owners and the appellant Bank even though the lease of a trade licence is contrary to Federal Laws No. 9 of 1969, No. 2 of 1978 and No. 7 of 1979.

It was further held that the request for financial facilities on an Intervedio letterhead was signed by Mirza individually and therefore such an act does not impose a lia-

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bility on the two owners of Intervedio and because Mirza is the person who (in 1984) opened the account.

The judgment of the Court of Appeal was upheld with costs.

It is worth noting that counsel’s arguments referred to Article 252 of the Civil Code on privity of contract even though the case was purely commercial.

To conclude, I draw an analogy. Newton’s laws of motion tell us that for every action there is an equal and opposite reaction. If we shift from Natural Philosophy (Physics) to Jurisprudence (Legal Philosophy) we find that every right, invariably, has a corresponding duty, e.g., no taxation without representation. To revert to the Cassation ruling, if the Lessors of the Trade Licence have not incurred a liability can they nevertheless claim entitlement to abandoned assets as often happens in practice?