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## **Claim to cancel loan agreement with interest and dismiss the enforcement of collateral security**





## **Claim to cancel loan agreement with interest and dismiss the enforcement of collateral security**

### **Background:**

The Plaintiff (Company B) filed a lawsuit against our client (Foreign Company) for revocation of a contract that was concluded by the two parties based on the fact that the contract generates usurious interest rates (Riba), which violates the laws of Islamic Sharia. The subject of agreement entered was that our client shall finance the Plaintiff to perform and implement contracting works relating to a public works project in Taif.

### **Summary:**

Under a Memorandum of Understanding (MOU) signed by and between the Plaintiff and our client (Defendant), it was agreed that our client shall be financing the Plaintiff with as much as USD 1,500,000 (one and a half million) in loan without interest and our client shall in exchange receive as much as USD 759,000 (Seven Hundred Fifty Nine Thousand) in interest out of such financing.

The purpose of the financing is that the Plaintiff (Company B) wanted to win a tender to execute contracting works for a public service project in Taif.

Out of such context, the Attorney of the Plaintiff exploited the part concerning the obtainment of usurious interest provided and included in the MoU (Grant Agreement), under which our client handed over the said finance amount to the Plaintiff. Later, the Attorney of the Plaintiff filed a judicial claim demanding the revocation of the (Grant Agreement) since it was spiked with Riba (usury) that is prohibited by all legal and Islamic provisions.

Based on such a context, the court issued a ruling against our client's favour in such part specifically, and in our client's favour in parts otherwise.

### **Details:**

First: Objective details:

The Plaintiff entered into a financing agreement with our client under which our client would provide the Plaintiff with as much as USD 1,500,000 (one million and a half) in a loan so the Plaintiff could hand it as a collateral (bank guarantee) to Government Entity (the owner of Public Service Project in Taif).

Our client had set a condition that the Plaintiff (Company B) would mortgage a part of its ownership shares, which is equal to 20% out of the total shares, as a guarantee to the finance.

Our client set also another clause that the Plaintiff issues promissory notes (bills to order of) to guarantee that the Plaintiff settles the finance amount on the due date, when approaching courts or requesting an enforcement order by the enforcement judge.

To complete the finance process, a Memorandum of Understanding to this effect was signed by the two companies. The MoU included two types of agreements. The first one was a zero-interest loan agreement, which aimed at maintaining the financing rights of our client. The second one was a Grant Agreement, which was designed to maintain our client's rights pertaining to the interest, which was valued at USD 759,000.

It has been agreed also by the two parties that our client would get back the amount they handed over to the Plaintiff out of the revenues public service project in Taif.

However, for reasons beyond control, works on the projects did not commence. As such, a dispute arose between the two parties to the case.

Things got worse for the Plaintiff, which resulted in the matter reaching the court for their expected failure to settle the finance amount, which they borrowed from our client.

#### Third: Judicial claims of the Plaintiff:

The Attorney of the Plaintiff demanded the annulment of the enforcing judgment respecting our client's entitlement to USD 1.5 million, alleging that the project had not yet started, and the finance was intended for a tender relating to the project. The Plaintiff's Attorney purported that their client was in agreement with our client and that our client would recover the finance amount from the returns of the project. The Attorney of the Plaintiff demanded suspension of all the enforcing rulings issued by the enforcement court in Al Khobar, which were in connection with the interest amounts that were ordered by the enforcement court to be paid by the Plaintiff to our client. The Attorney of the Plaintiff demanded to abrogate the Grant Agreement since it was laced with usury (Riba) and violated the Islamic Sharia. The Attorney based his claims on Articles (1), (3), (29), and (30) of the law of Civil Procedure and its implementing regulations.

#### Court Ruling:

The General Court in Al Khobar issued its verdict forcing the Plaintiff to pay off the finance amount (USD 1.5 million) that it borrowed from the Defendant (our client). The court overturned the entire rulings pronounced by the enforcement court in Al Khobar pertaining to forcing the Plaintiff to pay other amounts of money in interest on the finance amount (the loan). The total excessive amount, which comes under interest on the finance/loan amount, regarding which the enforcement court issued rulings in favor of our client, came to roughly USD 759,000 as this loan had been spiked with interest (Riba), which is forbidden under the exigencies and stipulations of Islamic Sharia. The court in Al Khobar, however, disregarded the other claims submitted by the Plaintiff.

Legal lesson utilized from such case:

Finance or loan contracts, when concluded between a financier/lender and a borrower, shall be void of interest (Riba) and any suspicions thereof. Such contracts shall include all sufficient guarantees whereby the financier/lender could maintain its rights upon claiming the amount lent to the borrower before courts of law.

The most prominent of such guarantees is promissory notes (bills to order of) whereby a financier/lender can preserve their rights before judiciary. It maintains their rights over the borrower and ensure the borrower's commitment to pay off the finance or loan amount on the maturity date.

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