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المركز السعودي للتحكيم التجاري
Saudi Center for Commercial Arbitration



منافسة التحكيم التجاري الطلابية
SCCA Arabic Moot
النسخة الخليجية GCC Edition

The Case

V.02



920003625



ArabicMoot2.sadr.org



events@sadr.org

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Saudi Center for Commercial Arbitration
8th Floor, 7982 King Fahd Branch Road - Almutamarat
Postal code: 12711 - 4183
Riyadh, Saudi Arabia
Telephone: +966 920003625

1 May 2020

To: Ms. Royaa Jameel

On behalf of my client, Saudi Museum of Modern Art LLC, we are requesting arbitration under Article 4 of the Saudi Center for Commercial Arbitration's arbitration rules. Enclosed with this letter is a copy of the power of attorney to represent Saudi Museum of Modern Art LLC in arbitration proceedings.

A copy of the request for arbitration has been sent to the SCCA and to the Respondent, and the required registration fees have been paid.

Sincerely,

Turki Abdulhakim

Claimant's representative

cc:

Artists Coalition LLC

Enclosures:

Request for Arbitration with its annexes

Power of attorney (not attached)

Proof that RFA was sent to the Respondent – expedited delivery (not attached)

Copy of receipt for payment of registration fees (not attached)



Request for Arbitration

(Under Article 4 of the Saudi Center for Commercial Arbitration
arbitration rules effective as of 31 July 2016)

Saudi Museum of Modern Art LLC
("Claimant")

v.

Artists Coalition LLC
("Respondent")



I. Introduction

1. The Saudi Museum of Modern Art Company Limited (“the **Museum**” or “the **Claimant**”) submits this request for arbitration (“the **Arbitration Request**”) in accordance with Article 4 of the Saudi Center for Commercial Arbitration’s arbitration rules of July 2016 (“the **Arbitration Rules**”) against Artists Coalition LLC (“the **Artist**” or “the **Respondent**”).
2. The request for arbitration concerns the Claimant’s claim for compensation from the Respondent in the amount of SAR 5,400,689 for delay in the delivery of the artwork and its violation of the contractual specifications agreed under the artwork design and supply contract dated 1 June 2019 (“the **Contract**”).
3. The Arbitration Request is divided into nine parts as follows:
 - (a) Section **II** introduces the parties to the dispute.
 - (b) Section **III** addresses the facts of the dispute.
 - (c) Section **IV** is an analysis of the facts.
 - (d) Section **V** addresses the arbitration agreement.
 - (e) Section **VI** addresses the applicable law.
 - (f) Section **VII** addresses procedural matters.
 - (g) Section **VIII** addresses the composition of the arbitral tribunal.
 - (h) Section **IX** covers the Claimant’s requests.

II. The Parties and Their Representatives

(a) Claimant

4. The Claimant is the first museum of its kind in the Kingdom of Saudi Arabia, specializing in modern art.
5. Claimant’s contact information:

Postal address

Saudi Museum of Modern Art
Art City
P.O. Box 67380
Riyadh
Kingdom of Saudi Arabia

info@momasa.com.sa

(b) **Claimant's representative**

6. The Claimant is represented in this dispute by the Law Firm of Turki Abdulhakim in association with Will & Smith LLP. Contact information for the Claimant's representative:

Postal address

Al Emaar Tower
30th Floor
P.O. Box 20765
Riyadh
Kingdom of Saudi Arabia

Turki Abdulhakim
Turki.abdulhakim@willsmithlaw.com
John Will
John.will@willsmithlaw.com

(c) **Respondent**

7. The Respondent is a limited liability company. It is one of the world's most important art organizations and consists of several artists from various countries specializing in modern art, particularly fine arts. Artists Coalition was incorporated on 7 March 2004 in accordance with the laws in force in the Arab Gulf State.
8. Respondent's contact information:

Postal address

Artists Coalition
12 Coalition Street
Arab City
Arab Gulf State
info@art.com.gcc

III. Facts of the Dispute

9. Pursuant to Article 4(3)(e) of the Arbitration Rules, the Claimant hereunder provides a description of its claim and the facts supporting it.
10. With the support of the Saudi Ministry of Culture, the Saudi Museum of Modern Art was established on 1 November 2015, as a private entity taking the form of a limited liability company, to cultivate and attract local and international modern art talent.
11. After several discussions, the Museum was scheduled to open on 25 February 2020.
12. Since it was founded, the museum began to research and deliberate opportunities to cooperate with Saudi, Gulf, and international artists to build the initial collection and the first exhibition for the museum opening.



13. One of the tasks assigned to the Museum was to build an artwork that would represent Saudi culture amid the cultural leap that Saudi Arabia is witnessing, namely Vision 2030. The goal was that this piece would remain as a key element of the Museum, unlike other artworks that may be added and then removed after a specific season. After discussions with several artists, the Museum selected Mr. Hamad Al-Nasser, one of the founders of the Artists Coalition. He is an artist from Bahrain with deep experience in modern art and permanent installations, as well as work that blends Gulf culture with modern art.
14. The Museum selected this Artist because of the idea he presented to the Museum, which was to create an artwork in the form of a collection of date palms (a key component and symbol of Saudi culture) made from high-quality stainless steel and high-quality glass in keeping with the Claimant's needs for a permanent piece capable of enduring at Museum for a long period. The glass and steel would be shaped into palm trunks and fronds by specialists.
15. Thus, the parties concluded a contract on 1 June 2019 for the design and supply of the artwork, with a contract value of SAR 12,405,000. The artwork was to be delivered in its final form on 15 February 2020 (Claimant Exhibit 1). According to the Artist, creating the piece would normally take 8-10 months from the start of initial design through fabrication and ending with the delivery of the artwork to the Museum.
16. When the Parties concluded the Contract, the Claimant agreed to a long timeframe for the delivery of the artwork, but it stressed the importance of delivering it at the agreed time prior to the opening of the Museum, as the artwork is a pivotal part of the opening, which the Claimant has coordinated and committed to a several obligations for so. For example, the Museum contracted with an event management company according to the opening date of the Museum, and any change in the opening date would cause the Museum to suffer significant losses in the form of compensation to the event management company. Therefore, in affirmation of the Respondent's commitment to delivery, the parties agreed to a delay penalty of up to 10% of the contract value for each day the Respondent is late in delivering the artwork.
17. During pre-contractual negotiations, the two parties discussed the nature of the artwork's components and the result of mixing glass and stainless steel. The Claimant stressed the importance of the durability and sustainability of the artwork's components, both the stainless steel and the glass. The Artist, in turn, emphasized that he had selected the highest quality glass, which is fine enough to enable the artist to achieve the shape required for the artwork, and at the same time, is able to maintain the same level of quality for a long period.
18. As such, under clause 4 of the contract, the parties agreed that the artwork should be made of fine glass that is both malleable and highly durable to ensure the long-term quality of the piece.
19. The Artist therefore selected glass that conforms to the specifications agreed upon in the contract. As Mr. Al-Nasser explained, producing a piece of art with these specifications is possible only with two materials, Bohemian glass and optical glass, imported from countries with a cold climate, as both of which are not available from any nearby area.
20. Bohemian glass and optical glass are essential elements of the artwork, and they must be available for fabrication at the beginning of the project, being a priority to commence the work on the project. That is particularly so with regard to the Bohemian glass that will make up the majority of the piece, noting that such glass, for the quality required, can be manufactured in only two countries, one of which is the country of Greater Central Europe.



21. Due to the type and source of the glass, the two parties agreed that the artwork should be placed in the Museum's semi-outdoor courtyard, which combines an outdoor courtyard partly exposed to natural sunlight and a semi-interior, air-conditioned area, which will enable the visitors of the Museum to visit year-round.
22. On 15 August 2019, while the artwork was being made, news came of the closure of all factories in Greater Central Europe due to a national strike by all workers in the country to protest labor laws, particularly the minimum wage and pension laws, which have been debated to no avail in the country's Parliament for years and have long received global media coverage. In addition, demonstrations preceded the strike for several months (Claimant Exhibit 2).
23. As a result of that news, the Artist contacted the Claimant the next day to inform it that delivery of the piece may be delayed because they were unable to import the materials needed to start making the piece, and because the material is unique and is not produced in any country, the Artist was unable to find another supplier. This was in spite of the Artist's knowledge of the opening date of the Museum, which had been announced and top Saudi figures and international artists were invited for the unveiling of the artwork. Additionally, the Museum had contractual obligations such as the contract with the event management company (Claimant Exhibit 3).
24. Nearly two months had elapsed since the contract was concluded before the news was reported. The Artist should have started making the piece and therefore been able to avoid the obstacles that arose after the shutdown of business in Greater Central Europe. Accordingly, the Claimant responded by expressing its dissatisfaction with the Artist because of his delay in starting work. It further emphasized that the artwork delivery date could not be changed (Claimant Exhibit 4).
25. On 20 August 2019, the Artist proposed to wait for a maximum of one month, until the situation is settled and business are resumed in Greater Central Europe. The Artist has also agreed to hire more assistants to start the artwork and finish it on time. The Claimant agreed to the Artist's proposal.
26. On 20 September 2019, however, unrest and strikes were still ongoing in Greater Central Europe, with no signs of a solution hand. On the contrary, the country's president announced his resignation from the government, triggering a snap election, while strikes continued.
27. After it became clear that it would be difficult to import materials from Greater Central Europe, the Artist decided to go with another supplier for the glass needed to make the artwork. Accordingly, the Artist began to implement his design with a different kind of glass than agreed. This glass is thicker than the kind agreed on, which limits the Artist from shaping the piece, such as the dates for example. The substitute glass is also more delicate, especially in varying temperatures.
28. The Artist contacted the Claimant on 1 February 2020. He first referenced the delay caused by the failure to obtain the glass on time and the stoppage of work from August to September. He then explained that he was unable to shape the artwork as required using the substitute glass, and he requested an extension of the artwork delivery deadline from the agreed date (15 February 2020) to 1 March 2020, i.e. after the opening of the Museum. He stated that he managed to obtain the necessary Bohemian glass after the situation settled and some business resumed in Greater Central Europe. Although the Claimant refused to extend the delivery deadline, the artwork was not delivered on the agreed date. In fact, the Claimant received the artwork on 1 March 2020. When the piece was delivered, the Artist indicated that it was made using 70% Bohemian glass and 30% substitute glass.

29. On the same day, the Claimant sent the Respondent a notice demanding the delay penalty pursuant to the contract for the 14-day delay in the delivery of the artwork, equivalent to SAR 1,120,000 (one million one hundred twenty thousand Saudi Riyals) at the rate of SAR 80,000 (eighty thousand Saudi Riyals) per day of delay.
30. The Claimant was unable to delay the opening of the Museum because of the obligations it incurred based on that date, which could not be rescheduled without suffering moral injury that would harm the Museum's reputation as a new center and landmark of Arab and international culture.
31. The Respondent did not make delivery of the artwork until March 1, 2020, and the accompanying artistic certificate indicates that the artwork consists of only 65% of the agreed Bohemian glass and 35% of the substitute, optical glass. According to the Respondent's representative, though, optical glass is equivalent to Bohemian glass in quality.
32. A month after receipt of the artwork, some glass parts of the artwork began to show cracks because the Artist used a different type of glass than the one agreed upon. As a result, the Claimant had to close the part of the Museum containing the artwork and make an emergency contract with experts to assess the damage to the glass and repair the cracks. This resulted in considerable additional costs on the Claimant.
33. When the experts analyzed the glass, they found that the two types of glass in the blend used by the Respondent led to an adverse reaction, especially for Riyadh's climate, and caused the cracks. The only solution for the cracks was to remove the cracked glass and replace it with a single type of glass instead of a blend of the two. The Claimant therefore incurred the costs of the materials procured by the expert firm, in addition to the cost of the work:
 - a) Cost of glass that conforms to specifications: SAR 1,180,689 (one million one hundred eighty thousand six hundred eighty-nine Saudi Riyals).
 - b) Cost of contract to repair the artwork, on a cost-plus basis: SAR 3,100,000 (three million one hundred thousand Saudi Riyals).
34. Upon the arrival of the Artist to the Museum after receiving the Claimant's complaint, it claimed that the location of the artwork in the Museum affected the glass due to exposure to the sun in the heat of the city of Riyadh, despite that the Artist is already aware of the weather condition in Riyadh. The Claimant relied on what the Artist presented regarding the high quality of glass which claimed to be is able to maintain its shape for a long time, which were the reason why the Museum chose the glass to structure of the artwork.

Analysis of the Facts

35. Based on the above, the Artist must pay the delay penalty provided in the Contract for each day that delivery of the artwork was delayed.
36. Under the Contract, the delay penalty is waived only in two circumstances: if the Museum is the cause of the delay, or for specific reasons outside the Respondent's control that prevent the Respondent from fulfilling the Contract.
37. The strike in Greater Central Europe does not qualify as one of these circumstances. Additionally, the strike did not prevent the Respondent from fulfilling its obligations, as it could have imported materials from the other country that produces Bohemian glass. In fact, that could have been avoided if the Respondent had ordered the materials when the contract was signed, instead of waiting two months before starting the work.

38. In addition to the delay penalty, the Respondent must compensate the Claimant for its violation of the specifications agreed in the Contract with regard to the type and quality of glass, as indicated in clause 5 of the Contract. Under Article 35(1) of the United Nations Convention on Contracts for the International Sale of Goods ("**CISG**"), which is the applicable law, the seller (i.e. the Respondent) "must deliver goods which are of the quantity, quality and description required by the contract." Otherwise, the buyer is entitled to claim damages under Article 45(1)(b) of the CISG.
39. Even if Article 35(1) did not apply, the Artist admitted that the artwork violated Article 35(2)(b) of the CISG because it was not "*fit for [a] particular purpose ... made known to the seller,*" as he did not provide a piece of art made from high-quality, durable iron and glass. The Claimant is therefore owed the compensation necessary for the artwork, which did not conform to the contract specifications and/or was not fit for its purpose.

V. The Arbitration Agreement

40. The Claimant refers this dispute to arbitration pursuant to Article 9 of the Contract, which provides:
- a. If a dispute arises between the Parties regarding any matter related or linked to the interpretation or execution of this Contract, the Parties shall seek amicable resolution of the dispute. If the Parties are unable to resolve the dispute amicably, then either of the Parties may refer the dispute to arbitration.
 - b. Any dispute, disagreement, or claim arising from or related to this Contract, or from a breach of the Contract, or its termination or nullity, shall be settled via arbitration administered by the Saudi Center for Commercial Arbitration in accordance with its arbitration rules. Arbitration shall be by a tribunal of three arbitrators. Each party shall nominate an arbitrator, and these two arbitrators shall nominate a chairman for the arbitral tribunal. They shall be appointed by SCCA. The language of arbitration shall be Arabic, and the arbitration venue and where the hearings will be conducted in the Arab City, Arab Gulf State.

VI. Applicable Regulation

41. Pursuant to Article 8 of the Contract, the regulation applicable to the subject of the dispute is the CISG, insofar as it is consistent with the provisions of Islamic law.

VII. Procedural Matters

- a. **Arbitration venue and regulation applicable to arbitration proceedings**
42. Pursuant to Article 9 of the Contract, the arbitration venue is Gulf City, Arab Gulf State. Therefore, the regulation applicable to the arbitration proceedings is the Arab Gulf State



arbitration law, which adopted the 1985 UNCITRAL Model Law on International Commercial Arbitration in full and as amended in 2006.

b. **Arbitration rules**

43. Pursuant to Article 9 of the Contract, the Arbitration Rules shall be the SCCA arbitration rules in effect upon the commencement of arbitration proceedings. Thus, the Arbitration Rules are the SCCA arbitration rules that took effect on 31 July 2016.

c. **Language of arbitration**

44. Pursuant to Article 9 of the Contract, arbitration shall be conducted in Arabic.

VIII. Formation of the Arbitral Tribunal

45. Pursuant to Article 9 of the Contract and Article 11 of the Arbitration Rules, the arbitral tribunal consists of three arbitrators. Each party shall nominate one arbitrator whom SCCA shall appoint, and the third arbitrator is selected by the arbitrators nominated by the parties.
46. The Claimant nominates as an arbitrator in these arbitral proceedings:

Mr. Basil Mahmoud

Ross & Partners Law Firm and Legal Consultancy

Address: 123 Suits Avenue, New York, NY

Telephone: +1 (212) 555-8989

Fax: +1 (212) 555-8900

Email: basilmahmoud@ross.com

IX. Requests

47. The Claimant petitions the arbitral tribunal to:
- (أ) Require the Respondent to pay the delay penalty for each day of delay, a total of SAR 1,120,000 (one million one hundred twenty thousand Saudi Riyals).
 - (ب) Require the Respondent to compensate the Claimant for losses arising out of the non-conforming glass, a total of SAR 4,280,689.00 (four million two hundred eighty thousand six hundred eighty-nine Saudi Riyals).
 - (ت) Require the Respondent to bear all the costs of arbitration as well as the Claimant's legal expenses.
 - (ث) Take any other decision the arbitral tribunal deems fair.
48. The Claimant maintains its right to amend its defenses and/or requests in subsequent memoranda during this arbitration.



1 May 2020

Acting for the Claimant

Law Firm of Turki Abdulhakim in association with Will & Smith LLP



Claimant Exhibit 1.

Artwork Design and Supply Contract

On 1 June 2019, this agreement was signed between:

- 1) Saudi Museum of Modern Art LLC, located in Art City, P.O. Box 67380, Riyadh, Kingdom Saudi Arabia; represented in this agreement by Mr. Montaser Abdullah in his capacity as the creative director for the Museum

(First Party)

and

- 2) Artists Coalition LLC, located 12 Coalition Street, Arab City, Arab Gulf State; represented in this agreement by Hamad Al-Nasser in his capacity as a partner in Artists Coalition and the commissioned artist

(Second Party)

Preamble

First Party is the first museum of its kind in the Kingdom of Saudi Arabia, specializing in modern art.

Second Party is a limited liability company. It is one of the world's most important art organizations and consists of several artists from various countries specializing in modern art, particularly fine arts. Artists Coalition was incorporated on 7 March 2004 in accordance with the laws in force in the Arab Gulf State.

Therefore, the parties have agreed that Second Party will design and supply a unique artwork to First Party in accordance with the following:



Clause 1:

The Preamble is an integral part of this Contract.

Clause 2: Specifications of the Artwork

2.1 – The two parties agree that Second Party shall design a unique artwork (“**Piece**” or “**Artwork**”) in the form of a collection of date palms (a key component and symbol of Saudi culture) made from high-quality stainless steel and high-quality glass and shall supply the Artwork to First Party. The Artwork shall be placed in a location at Saudi MOMA to be determined by agreement between the parties.

The Piece shall be fabricated in the following stages:

- Completion of final design
- Purchase of raw materials
- Fabrication of Artwork
- Supply of Artwork and issuance of ownership certificates for Artwork

2.2 – The Artwork may vary slightly from the design due to the conversion of the Artwork from an artistic vision to a physical work, but Second Party shall ensure that the approved vision is conveyed by the Artwork.

2.3 – The technical specifications can be found in Clause 5 of this Contract.

Clause 3: Contract Price

3.1 – Second Party shall design and supply the Artwork in consideration of SAR 12,405,000 (“**Price**”) to be paid by First Party as follows:

- (أ) SAR 5 million after the final approval of the Artwork (“**First Installment**”)
- (ب) SAR 5 million after the purchase of raw materials and the start of fabrication (“**Second Installment**”)
- (ت) SAR 2,405,000 following the supply of the Piece to the Museum and delivery of the certificate of ownership (“**Third Installment**”)

3.2 – Second Party shall deliver the Piece on 15 February 2020 (“**Delivery Date**”). If the Second Party does not deliver the Artwork by the Delivery Date, it shall pay delay damages in the amount of 80,000 Saudi Riyals for every day of delay, provided that the total delay damages shall not exceed 10% of the Contract Price.

Clause 4: Technical Specifications of the Artwork

4.1 – The parties agree that Second Party shall approve a final design based on the preliminary concept presented to First Party’s management.



4.2 – The parties agree that the materials used to fabricate the Artwork shall be subject to subsequent agreement, but they have reached an initial agreement that stainless steel and Bohemian glass shall be used.

4.3 – The Artwork must conform to the agreed technical specifications, and it shall be delivered as follows:

- (أ) Second Party’s representative shall inspect the site and shall advise whether it is appropriate for the Artwork.
- (ب) Second Party shall deliver the Artwork with instructions for care and cleaning.
- (ت) Second Party guarantees not to duplicate the Artwork for any third party. Ownership of the Artwork shall transfer to First Party pursuant to a certificate of ownership endorsed and approved by Second Party and the artist.
- (ث) The Artwork shall be warranted for a period of one year from the date of receipt against any damage except as a result of misuse or clear contravention of the care and cleaning instructions.

Clause 5: Notices

5.1 – Notices between the parties and claims and data relating to this Contract shall be written in Arabic and sent via email to the addresses listed and to each party’s representative authorized for that purpose in Clause 6.2.

5.2 – For notices, the below individuals shall represent the parties:

- First Party:
Montaser Abdullah
Creative Director
montaser@momasa.sa
- Second Party:
Hamad Al-Nasser
Partner and Commissioned Artist
hn@art.com.gcc

Clause 6: Force Majeure

6.1 – If either party fails to perform its contractual obligations it shall not be considered a breach of the Contract if such failure is a result of Force Majeure, provided that such party has taken all reasonably precautions and necessary care to perform its obligations, and shall give notice to the other Party as soon as possible. For purposes of this Contract, Force Majeure means events outside the control of the Parties, including wars, revolutions, natural disasters such as earthquakes or floods.

6.2 – Force Majeure does not include a Party’s failure or delay due to its own shortcomings, or of its subcontractors, or a shortage in resources or material by the Party or inefficiency of the works, unless the same is a direct result of Force Majeure.

Clause 7: Entire Agreement

This Contract was signed by legally competent individuals authorized to sign it by the parties. This Contract is complete and includes everything agreed upon by the parties. This Contract represents the



will of the parties, and they have fully understood it. Each party received a copy in order to act accordingly and reference it when necessary.

Clause 8: Applicable Law

The parties agree that the law applicable to this Contract is the United Nations Convention on Contracts for the International Sale of Goods, insofar as it is consistent with the provisions of Islamic Sharia.

Clause 9: Dispute Resolution

9.1 – If a dispute arises between the parties regarding any matter related or linked to the interpretation or execution of this Contract, the parties shall seek amicable resolution of the dispute. If the Parties are unable to resolve the dispute amicably, then either of the Parties may refer the dispute to arbitration.

9.2 – Any dispute, disagreement, or claim arising from or related to this Contract, or from a breach of the Contract, or its termination or validity, shall be settled through arbitration administered by the Saudi Center for Commercial Arbitration (SCCA) in accordance with its arbitration rules before a tribunal of three arbitrators. Each party shall nominate an arbitrator, and these two arbitrators shall nominate a chairperson for the arbitral tribunal to be appointed by the SCCA. The language of arbitration shall be Arabic, and the arbitration shall be seated and the hearing venues shall be in Arab City, Arab Gulf State.

Clause 10: Copies of Contract

This Contract has been prepared in duplicate and signed by each party. Each copy is an original of the Contract and shall be enforceable with regard to the parties.

First Party
Saudi Museum of Modern Art
Signature: **Montaser Abdullah**
Date: 1 June 2019

Second Party
Artists Coalition
Signature: **Hamad Al-Nasser**
Date: 1 June 2019



Claimant Exhibit 2

Gulf Today

International News

15 August 2019

This morning, in a catastrophe underway in the country of Greater Central Europe due to the aftermath of the recession and national financial crisis, factories were completely shut down in many cities and regions of the country. Workers are staging a strike while demanding uniform labor rules and regulations, particularly for blue-collar workers. About 100,000 workers are on strike in the industrial sector.

This upheaval was preceded by worker strikes and demonstrations five months ago, but the warnings went unheard by Parliament, which ignored their demands. That has prompted workers to mount a sweeping strike in pursuit of a solution to the issue of pensions and retirement. The preliminary demands are for larger financial contributions and a 10% increase in the minimum wage to improve living conditions, as well as amendments to pension laws.

Bridget Jones, a journalist at Channel 7, indicated that the country is studying other possibilities for funding the pension reserve fund, but the failure of parliamentary negotiations over unified pension regulations has played out in public. The negotiations would have led to replacing the laws in force in the country.

So far, there is no sign of an end to this crisis, as the workers have threatened to continue the strike until their demands are met.

This gridlock will create serious consequences for businesses and suppliers and will undoubtedly affect the volume of exports to neighboring countries. It threatens to create an economic crisis in the country if the situation is not brought under control quickly.



Claimant Exhibit 3

From: hn@art.com.gcc
Date: 16 August 2019, 11:00 a.m.
To: montaser@momasa.com.sa
Re: Saudi Museum of Modern Art

Dear Mr. Montaser,

Greetings,

There have been repeated reports in the last few days, confirmed yesterday, of labor strikes in Greater Central Europe, the source of the Bohemian glass we ordered for the artwork to be delivered to the Museum. The glass was due to be received and the work shaping the glass to begin on 10 August.

But we received this news 10 days ago via social media, and since then we have been waiting for the news that came yesterday in the Gulf Today newspaper. As a result, we at the Artists Coalition have contacted the glass supplier, but we have not yet received a response. According to the news circulating, no solutions to Greater Central Europe's labor crisis have been reached or even discussed, and we do not know when it will end.

As we discussed earlier, Bohemian glass is rare, and we cannot import it from elsewhere under the same terms as agreed with the supplier in Greater Central Europe. The Greater Central Europe crisis is therefore expected to affect the delivery of the artwork, though we currently do not know to what extent.

Sincerely,

Hamad Al-Nasser
Founding Member
Artists Coalition
+964 567 432 1111

ARTISTS COALITION
Stay Creative



Claimant Exhibit 4

From: montaser@momasa.com.sa
Date: 16 August 2019, 3:27 p.m.
To: hn@art.com.gc
Re: RE: Saudi Museum of Modern Art

To: Mr. Hamad Al-Nasser

Greetings,

Your message requesting to delay the delivery of the artwork due to reported events has unquestionably angered officials at the Museum, especially because we have stressed, since the beginning of negotiations between us, the importance of receiving it on that date, as the piece would be the centerpiece and essence of the Museum on its opening day.

On top of that, we have repeatedly made clear the consequences of any delay by imposing a delay penalty for each day of delay that necessitates such a penalty. This is occasioned by the harm that the Museum would suffer from delaying its opening past 25 February 2020. The opening will be packed with dignitaries invited to see this exact piece, and we furthermore have other contractual obligations arising from this opening date, including the event management company that has been hired.

Therefore, it is impossible for us to accept a delay in delivery beyond the agreed date, and we absolutely reject any agreement to the contrary. We understand the gravity of the situation and the difficulty of finding other suppliers of Bohemian glass. This does not, however, alter any of the obligations incumbent upon you and or the necessary precautions you ought to have taken to avoid difficulty. You have extensive technical expertise in fine arts and the associated demands, which is one of the reasons you were awarded the contract.

Sincerely,
Montaser Abdullah





Case No.: SCCA1610A23
Claimant: Saudi Museum of Modern Art LLC
Respondent: Artists Coalition LLC
Date: 30 May 2020
(sent by email - fax - postal mail)

To: Mr. Turki Abdulhakim

We are writing you in this letter to inform you of the Saudi Center for Commercial Arbitration's appointment of the arbitrator Basil Mahmoud as a member of a three-member arbitral tribunal in the above case, pursuant to your nomination in the Request for Arbitration. You will find attached to this letter a copy of the notice of the arbitrator's appointment, signed by the arbitrator.

An arbitrator operating in accordance with the SCCA rules must be impartial and independent. The arbitrator has submitted the disclosure¹ detailed in the appointment notice and its annexes, which are enclosed with this letter. If you wish to challenge the arbitrator, please inform the SCCA no later than 15 June 2020. Please note that based on Article 14-3 of the SCCA rules, the SCCA must be informed of any challenge within 15 days of the notice of the arbitrator's appointment, i.e. from the date of this letter. The challenge must be for cause, and the other party shall be informed of the challenge. If one of the parties challenges an arbitrator, the other party must respond to the challenge within seven days. In accordance with its absolute discretion, the SCCA will make a decision regarding the challenge as stipulated in the SCCA rules. It is not permitted to send a copy of the challenge to the arbitrator, or to reveal or make available to the arbitrator the challenge, responses to the challenge, or comments on the arbitrator's disclosure.

We would like to inform you that direct communication with the arbitral tribunal, whether by telephone or another means of communication, is prohibited. Communication concerning matters related to the challenge of arbitrators, as well as any administrative or financial matter, may take place only through the case consultant named below.

Sincerely,

Case Consultant:

Royaa Jameel

Signature:

Royaa Jameel

Enclosures:

- **Notice of arbitrator appointment (not attached)**
- **Arbitrator's disclosure**



Acceptance of Appointment

Arbitrator's name: Basil Mahmoud

I affirm that the curriculum vitae that I provided to the Saudi Center for Commercial Arbitration, which the SCCA submitted to the Parties in this case, is valid, current, accurate, and complete.

I affirm that I have conducted a thorough and careful investigation and examination of any possible conflict of interest, including a comprehensive review of the information I have obtained on the case up to the date of this declaration. I have then made any necessary disclosure as stipulated in the SCCA rules and in accordance with the Code of Ethics for Arbitrators and any applicable law.

I affirm that I am fully aware that examining any conflict of interest is an obligation that continues throughout my term as an arbitrator in this case. If any circumstances arise at any stage of the arbitration that would cause doubts of the sort mentioned, I will disclose them immediately. Failure to disclose conflicts of interest in a timely manner may result in my dismissal as an arbitrator or in my removal from the SCCA roster of arbitrators.

1- Acceptance of Appointment

I accept my appointment as an arbitrator in this case pursuant to the Saudi Center for Commercial Arbitration rules. I pledge to hear this case and decide on it justly and fairly and in accordance with the SCCA Arbitration Rules, the Code of Ethics for Arbitrators, and the Parties' agreement. I pledge to devote sufficient time to working as an arbitrator in this case. I accept the fees in this case as per the Arbitration Costs and Fees Addendum. I affirm that there are no separate arrangements regarding fees between me and the parties to the case.

2- Rejection of Appointment:

I decline to accept appointment as an arbitrator in this case. (In the event of a refusal, it is not necessary to fill out this form except for name and signature.)

Date: 25 May 2020

Signature: *Basil Mahmoud*



المركز السعودي للتحكيم التجاري
Saudi Center for Commercial Arbitration

Commencement of Arbitration Letter

Case No.: SCCA1610A23

Claimant: Saudi Museum of Modern Art LLC

Respondent: Artists Coalition LLC

Date: 5 May 2020

To: Hamad Al-Nasser, founding partner and general director of Artists Coalition LLC

Dear Sir,

On 3 May 2020, the Saudi Center for Commercial Arbitration received a Request for Arbitration dated 1 May 2020. The RFA concerns a dispute between the above-named Parties and is based on an arbitration clause. Advance copies of the RFA were sent to the Respondent, and the arbitration proceedings are considered to have commenced on the day on which the SCCA received the RFA.

The above-named Parties are receiving this letter based on the information that the SCCA has obtained from the Claimant. If you have received this letter and are not the principal or a representative of any party to this dispute, please contact the SCCA immediately.

Case consultant Ms. Royaa Jameel will conduct all case administration. She may be contacted by email at royaa.jameel@sadr.org. From this point forward, please communicate with the case consultant and send a copy of the correspondence to the other party.

We wish to inform the Parties that this case will be subject to the Saudi Center for Commercial Arbitration's arbitration rules that took effect as of 26 Shawwal 1437 / 31 July 2016 unless the Parties agree otherwise. A copy of the Arbitration Rules can be found at <https://www.sadr.org/ADRServices-arbitration-arbitration-rules?lang=ar>.

Based on Article 5-1 of the SCCA Arbitration Rules, the Respondent must send a response to the RFA to the administrator, the Claimant, and any other party within 30 days of the commencement of arbitration. If the Respondent wishes to initiate a counterclaim or claim for set-off, a copy must be sent to the Claimant and to the SCCA with supporting documentation and the appropriate filing fee.

Enclosed with this letter is a conflict of interest disclosure statement. All parties should name any witness, expert, person, or entity having an interest in or connection to this dispute. This list will assist the arbitrators in disclosing any potential conflict of interest. Please note that the disclosure list is confidential and should be sent only to the SCCA. Do so within 15 days of the date of this letter.

Please also note that proceedings in this case will be in keeping with the attached Code of Ethics for Parties and Representatives. Please read and sign the pledge to adhere to the Code.

Finally, enclosed with this letter are general instructions on arbitration and arbitration proceedings with the SCCA. The SCCA will provide the Parties with information on the stages of arbitration as the case progresses.



المركز السعودي للتحكيم التجاري
Saudi Center for Commercial Arbitration

The SCCA encourages the Parties to contact it at any time to request additional information or discuss the arbitration proceedings, in order to assist Parties in best resolving the dispute.

We look forward to working with you and providing you with all possible assistance throughout the arbitration proceedings.

Sincerely,

Case Consultant

Royaa Jameel

Signature:

Royaa Jameel

Enclosures:

- Conflict of Interest Disclosure Statement (not attached)
- General information on SCCA arbitration and arbitration proceedings (not attached)
- Pledge to observe the Code of Conduct for Parties and Representatives (not attached)
- Copy of Request for Arbitration (not attached)
- SCCA Arbitration Rules (not attached)

Saudi Center for Commercial Arbitration
Arbitration Case No.: SCCA1610A23

Answer to Request for Arbitration
(Under Article 5 of the Saudi Center for Commercial Arbitration
arbitration rules effective 31 July 2016)

Saudi Museum of Modern Art LLC
("Claimant")

v.

Artists Coalition LLC
("Respondent")



I. Introduction

1. Artists Coalition LLC (“**Respondent**”) received a request for arbitration submitted by Saudi Museum of Modern Art LLC (“**Claimant**”) on 1 May 2020 pursuant to the arbitration clause in the 1 June 2019 contract between the parties (“**Contract**”).
2. In the request for arbitration, the Claimant requested that the Respondent be required to pay SAR 5,400,689 for alleged delay in the delivery of the agreed piece of art in accordance with the Contract and for the piece’s alleged non-conformity with the agreed specifications, plus arbitration expenses.
3. The Respondent rejects all the Claimant’s allegations and submits its defense, below, to the Claimant’s action.

II. Respondent’s Representative

4. In this dispute, the Respondent is represented by Huda Hussain Law Firm and Legal Consultancy, at the following address:

Postal address

Avenue Jonathan 564

2000 Brussels

Belgium

Huda Hussain

Huda@HHussainlaw.com

III. Facts of the Dispute

In addition to the facts mentioned in the request for arbitration, the Respondent is providing information on the following facts:

5. During meetings with several artists, the Claimant was impressed with the proposed artwork presented by Mr. Hamad Al-Nasser, one of the founders of the Artists Coalition. Mr. Hamad Al-Nasser presented a concept for a piece in the form of a date palm tree, with the palm frond to be made from glass and the dates from stainless steel.
6. Mr. Hamad Al-Nasser’s presentation emphasized the importance of using two specific types of glass to execute the artwork, especially the fronds. The two types are Bohemian glass and optical glass.
7. Although the two types of glass match in quality and description (except for some specifications), the parties agreed in the Contract that the artwork would be fabricated from



- Bohemian glass because it is used in a famous piece of art in one of the parks in the capital of Greater Central Europe.
8. The Respondent stressed the importance of holding periodic meetings during the design and execution stage to enable it to obtain approvals and adoption of the final design, so that it would be able to make a decision on the procurement of raw materials as soon as possible. That is because the quantity and type of materials can be determined only after the final design is completed.
 9. During the design period in June, the Claimant's representative and project manager, Mr. Montaser Abdullah, attended regular meetings with the Respondent to discuss the progress of the design and work. In a number of meetings about the design of the artwork, there was discussion of some of the obstacles that could the Respondent could face regarding the importation of Bohemian glass because of labor unrest in Greater Central Europe, and Mr. Montaser Abdullah confirmed at these meetings that the museum's administration would be informed and the design approved as soon as possible.
 10. Contrary to what is claimed in paragraph 24 of the request for arbitration, the Respondent was not late in ordering raw materials. It very carefully completed the final design and obtained the necessary approvals from the Museum after the design was presented several times to the project team, then the project management, and finally the senior management at the Museum. This took about a month and a half following the start of the project.
 11. On 15 August 2019, there was news that all factories in Greater Central Europe had been shut down due to a national strike by all workers in the country, in protest of labor laws. The Respondent proactively informed the Claimant of the strike the next day.
 12. On 20 August 2019, the Claimant was informed of the Respondent's recommendation to wait for a maximum of one month, and alternative solutions would be found if the strike in Greater Central Europe was not ended.
 13. As mentioned in the request for arbitration, the parties were able to reach an alternative plan of action, which involved delaying the start of the plan of action for an additional month until the situation in Greater Central Europe stabilized.
 14. When it became clear to the Respondent that the conditions in Greater Central Europe causing the delay would not cool off in time to import the glass and complete the artwork, the Claimant was informed that due to recently occurring circumstances of force majeure, substitute glass had been purchased and would achieve the same result and desired artistic purpose.
 15. On 1 February 2020, the Respondent informed the Claimant that it had been able to obtain Bohemian glass from Greater Central Europe because the situation had stabilized and the factory had started manufacturing and supply operations, which had not previously been possible. The Respondent asked the Claimant to extend the delivery date to 1 March 2020.
 16. Despite the fact that the strike and delay in receiving the glass were beyond the Respondent's control, and despite the fact that the Respondent acquired the Bohemian glass in good faith to make the artwork from this glass (at least in part), the Respondent received a surprising response from the Claimant, which refused to postpone the delivery of the piece and argued that the Respondent must pay delay penalties regardless of the force majeure circumstances of a strike in Greater Central Europe.



17. Because of the circumstances encountered by the Respondent, the artwork was delivered on 1 March 2020, and the Claimant was provided with care instructions for the piece, a certificate of ownership, and all the necessary documents (Respondent Exhibit 1).
18. Mr. Hamad Al-Nasser himself went to the installation site to verify the location, deliver the artwork, and obtain the certificate of delivery from the Claimant (Respondent Exhibit 2).
19. On 1 April 2020, the Respondent was surprised to receive a notice from the Claimant stating that the Respondent delivered a piece of art that violated the agreed specifications, as some of the glass pieces in the artwork cracked.
20. After the Respondent sent Mr. Hamad Al-Nasser himself to look at the piece, it found that the cracks resulted from the Claimant's contravention of the care instructions provided by the Respondent for the artwork, particularly with regard to the placement of the artwork and its exposure to heat and natural light. Therefore, the Respondent refused to repair the piece at no additional cost, as the warranty clause in the Contract does not cover damage resulting from misuse.

IV. Response to the Analysis of the Facts

21. The Claimant alleges that it is entitled to the delay penalty for each day the Respondent was late in delivering the artwork. In response to the Claimant's allegation that the strike in Greater Central Europe does is not an instance of force majeure as provided in the Contract, this is not a valid claim. The interpretation of force majeure cannot be limited, particularly in the light of the law applicable to the Contract, namely the United Nations Convention on Contracts for the International Sale of Goods.
22. The Respondent cites Article 79(1) of the CISG, which provides that a party is not liable for a failure to fulfill its obligations if it is proven that the failure to perform a contractual obligation was "*due to an impediment beyond his control and that he could not reasonably be expected to take into account at the time of the conclusion of the contract...*" This applies to the strike in Greater Central Europe.
23. In any event, the Claimant's losses do not reach the level of the delay penalties claimed, which is inconsistent with Islamic law. This is despite the provision in the Contract wherein both parties agreed to apply the CISG **insofar as it is consistent with Islamic law.**
24. As for the Claimant's allegation that we provided a piece not in conformity with the contractual specifications, because of the cracking of some of the glass, this is also contrary to fact, as the Claimant neglected the Respondent's recommended care instructions for the artwork. The Respondent reserves the right to prove its defense at the oral hearings stage by experimenting with glass and placing it in similar and different circumstances from the Claimant, in order to prove the Claimant's misuse of the glass. The Claimant directly exposed the piece to sunlight, causing the glass to react to the hot sunlight and crack. The Claimant is therefore solely responsible for the cracks that have appeared in the artwork because it violated those instructions.
25. It should be noted that even if the Respondent did not use the Bohemian glass completely throughout the Artwork, it did use glass of the same quality and it is impossible that the cracks were caused by the poor quality of the glass.



V. Formation of the Arbitral Tribunal

26. In accordance with Article 9 of the Contract and Article 11 of the Arbitration Rules, the Respondent nominates as an arbitrator in this arbitration claim:

Mr. Fahd Abdullah
Independent International Arbitrator
Address: 221B Baker Street, London, UK

Telephone: +442079460612

Fax: +442079460612

Email: fahed@fahedarbitration.com

VI. Requests

27. The Respondent petitions the arbitral tribunal to:
- (أ) Dismiss the Claimant's action to charge the Respondent delay penalties.
 - (ب) Dismiss the Claimant's action to require the Respondent to pay SAR 5,400,689 due to the alleged non-conformity of the Artwork.
 - (ت) Require the Claimant to bear all the costs of arbitration as well as the Respondent's legal expenses.
 - (ث) Take any other decision the arbitral tribunal deems fair.

2 June 2020

Acting for Respondent

Huda Hussain Law Firm and Legal Consultancy



Respondent Exhibit 1

1 March 2020

GUIDELINES FOR CLEANING AND CARE OF ARTWORK - PROVIDED BY ARTISTS COALITION

Use and handling:

- Just like paintings and any other form of decorative art, this artwork (despite its strong structure) should be treated in the same manner as fragile decorative art. The artwork should not be touched directly without special gloves when it is moved, installed, or cleaned, because fingerprints, food, or other stains may contain acids and other chemicals that can corrode metal or the Bohemian glass. Do not touch, brush, or scratch the artwork. If there are fingerprints on any part of the artwork for any reason, please clean it immediately by following the cleaning instructions below.

Cleaning:

- Dust all exposed areas of metal and glass with a clean, dry cotton cloth. The entire artwork can be washed using lukewarm water (do not use hot or cold water to wash the artwork, as very hot or cold temperatures may cause scratches and cracks in the Bohemian glass used in the artwork).
- If the artwork is scratched by mistake, it should be cleaned immediately with a cotton cloth dampened with a small amount of a good glass cleaner diluted with lukewarm water (dilute a small amount of powdered cleaner in two large cups of water). Rub the spot with a gentle circular motion and dry immediately with a dry cotton cloth.
- Do not use products containing alcohol or bleach to clean any part of the artwork, as it may affect the engravings or coloration.

Natural sunlight - suggestion

- We suggest that artwork made from natural metal and Bohemian glass should be displayed near a window or other source of sunlight as this will highlight the artwork's dynamism and colors, especially at sunrise or sunset.
- Note that this artwork is not intended for exposure to extreme environmental conditions and has not been tested in atmospheric and environmental conditions other than weather similar to that of Greater Central Europe.



Respondent Exhibit 2

Written testimony by Hamad Al-Nasser

My name is Hamad Al-Nasser, and I am a founding partner of the Artists Coalition LLC. I studied fine arts at the University of Ancient Art, and with two colleagues I founded Artists Coalition LLC in 2010. One of my most important tasks is to formulate and present proposals and ideas to our clients and potential clients, and to oversee the execution of these artistic proposals with the required quality and care. This includes the artwork designed for the Claimant, for which I was the commissioned artist.

After overcoming a number of problems in importing Bohemian glass, we were eventually able to execute the artwork in question during an extended period prior to delivery. During that period, I personally supervised the transportation and delivery of the piece of art to the museum, and I was responsible for providing certificates and a guide to caring for the piece to the museum's representative, Mr. Montaser Abdullah. I delivered these to him by hand.

On the day the artwork was delivered, before the final handoff, I asked Mr. Montaser Abdullah to show me to the place where it would be displayed to make sure that it would be appropriate. The intended location was in a semi-outdoor courtyard at the museum, which was partly exposed to natural sunlight. There was a shaded, air-conditioned area. The courtyard was still under construction. I told him that the location would be suitable because it had an appropriate amount of sunlight, which would be reflected in the Bohemian glass and highlight the beauty of the artwork.

After making sure that the display location would be suitable for the artwork, and explaining the most important cleaning instructions to Mr. Montaser, I handed him the certificate of ownership for the piece and the cleaning and care instructions. The last thing he said during the delivery was that he would ensure that the instructions would be observed with the utmost care.

On 1 April 2020, I received a letter stating that we had not complied with the technical specifications provided in the contract. This was due to the appearance of cracks in the glass of the artwork. Based on this letter, I went back to inspect the artwork.

When I arrived at the museum, I was surprised to find that the location of the artwork exposed it almost directly to sunlight, at odds not only to my oral recommendations when I delivered the artwork, but also to the cleaning and care instructions provided.

I affirm that everything stated herein is true to the best of my knowledge and memory.

Signature: Hamad Al-Nasser

2 June 2020





المركز السعودي للتحكيم التجاري
Saudi Center for Commercial Arbitration

Case No.: SCCA1610A23

Claimant: Saudi Museum of Modern Art LLC

Respondent: Artists Coalition LLC

Date: 20 June 2020

(sent by email - fax - postal mail)

To: Ms. Huda Hussain

We are writing you in this letter to inform you of that the Saudi Center for Commercial Arbitration has appointed the arbitrator Fahed Abdullah as a member of a three-member arbitral tribunal in the above case, pursuant to your nomination in the Answer to the Request for Arbitration. You will find attached to this letter a copy of the notice of the arbitrator's appointment, signed by the arbitrator.

An arbitrator operating in accordance with SCCA rules must be impartial and independent. The arbitrator has submitted the disclosure¹ detailed in the appointment notice and its attachments, which are enclosed with this letter. If you wish to challenge the arbitrator, please inform the SCCA no later than 4 July 2020. Please note that based on Article 14-3 of the SCCA rules, the SCCA must be informed of any challenge within 15 days of the notice of the arbitrator's appointment, i.e. from the date of this letter. The challenge must be for cause, and the other party shall be informed of the challenge. If one of the parties challenges an arbitrator, the other party must respond to the challenge within seven days. In accordance with its absolute discretion, the SCCA will make a decision regarding the challenge as stipulated in the SCCA rules. It is not permitted to send a copy of the challenge to the arbitrator, or to reveal or make available to the arbitrator the challenge, responses to the challenge, or comments on the arbitrator's disclosure.

We would like to inform you that direct communication with the arbitral tribunal, whether by telephone or another means of communication, is prohibited. Communication concerning matters related to the challenge of arbitrators, as well as any administrative or financial matter, may take place only through the case consultant named below.

Sincerely,

Case Consultant:

Royaa Jameel

Signature:

Royaa Jameel

Enclosures:

- **Notice of arbitrator appointment (not attached)**
- **Arbitrator's disclosure**



Acceptance of Appointment

Arbitrator's name: Fahed Abdullah

I affirm that the curriculum vitae that I provided to the Saudi Center for Commercial Arbitration, which the SCCA submitted to the Parties in this case, is valid, current, accurate, and complete.

I affirm that I have conducted a thorough and careful investigation and examination of any possible conflict of interest, including a comprehensive review of the information I have obtained on the case up to the date of this declaration. I have then made any necessary disclosure as stipulated in the SCCA rules and in accordance with the Code of Ethics for Arbitrators and any applicable law.

I affirm that I am fully aware that examining any conflict of interest is an obligation that continues throughout my term as an arbitrator in this case. If any circumstances arise at any stage of the arbitration that would cause doubts of the sort mentioned, I will disclose them immediately. Failure to disclose conflicts of interest in a timely manner may result in my dismissal as an arbitrator or in my removal from the SCCA roster of arbitrators.

3- Acceptance of Appointment

I accept my appointment as an arbitrator in this case pursuant to the Saudi Center for Commercial Arbitration rules. I pledge to hear this case and decide on it justly and fairly and in accordance with the SCCA Arbitration Rules, the Code of Ethics for Arbitrators, and the Parties' agreement. I pledge to devote sufficient time to working as an arbitrator in this case. I accept the fees in this case as per the Arbitration Costs and Fees Addendum. I affirm that there are no separate arrangements regarding fees between me and the parties to the case.

4- Rejection of Appointment:

I decline to accept appointment as an arbitrator in this case. (In the event of a refusal, it is not necessary to fill out this form except for name and signature.)

Date: 15 June 2020

Signature: *Fahed Abdullah*



Arbitrator Nomination and Request for Disclosure

In Case No.: SCCA1610A23

Claimant: Saudi Museum of Modern Art LLC

Respondent: Artists Coalition LLC

Date: 29 June 2020

To: Ms. Badreya Ahmad

Further to our previous communication, we have the honor of informing you that you have been nominated as chairman of an arbitral tribunal (consisting of three arbitrators) in the case mentioned above. We are of the understanding that you have devoted suitable time to studying the case and its disposition. We would like to note that this claim is being administered in accordance with the Saudi Center for Commercial Arbitration's arbitration rules that took effect as of July 2016, as well as the SCCA Code of Ethics for Arbitrators. You can read these documents on the SCCA website at www.sadr.org.

Prior to your appointment as an arbitrator in this case, you are well aware that it is essential for an arbitrator to be impartial and independent. To underscore this point, and pursuant to the requirements of Article 13 of the SCCA Arbitration Rules, we hope that before accepting your appointment in this case, you will disclose any circumstances that would cause reasonable doubt about your impartiality or independence, including disclosure of any financial, professional, social, or other relationship between you and the Parties or potential witnesses, whether such relationship is current or past, and direct or indirect. Disclosure is an obligation that continues throughout the duration of the case. Furthermore, the Parties are not permitted to communicate individually with arbitrators or arbitrator candidates concerning the case. If this occurs, the other Parties and arbitrators must be informed immediately of the content and grounds for such communication. We wish to alert the arbitrator that any change to the curriculum vitae submitted to the SCCA must also be disclosed.

Please be informed that the Claimant in this action is represented by the Office of Councilor Turki Abdulhakim in cooperation with Will & Smith LLP, while the Respondent is represented by Huda Hussain Law Firm and Legal Consultancy. The arbitrators nominated along with you in this case are Mr. Basil Mahmoud from Ross & Partners Law Firm and Legal Consultancy and Mr. Fahed Abdullah, independent international arbitrator. Attached are the arbitrator candidates' CVs.

It should be noted that disclosure by an arbitrator or party does not necessarily imply a conviction that the information disclosed is cause for reasonable doubt about the arbitrator's impartiality or independence.

If there is any hesitancy about whether something should be disclosed, disclosure must be made. In the event of direct or indirect communication with some of the parties to the case, please use the below form to describe the communication. It should also be noted that failure to disclose in a timely manner may result in the arbitrator being denied payment of fees in the case.

The SCCA will deliver the disclosure statement to the Parties.



المركز السعودي للتحكيم التجاري
Saudi Center for Commercial Arbitration

The Saudi Center for Commercial Arbitration has created this template for appointing an arbitrator in a case administered by the SCCA in accordance with its Arbitration Rules. The arbitrator must adhere to any other applicable laws or rules that may exist.

Enclosures:

Parties' Disclosure Statement (not attached)

Arbitrator candidate CVs (not attached)



المركز السعودي للتحكيم التجاري
Saudi Center for Commercial Arbitration

Turki Abdulhakim

Office of Councilor Turki Abdulhakim
in association with Will & Smith LLP
Emaar Tower
30th Floor
P.O. Box 20765
Riyadh
Kingdom of Saudi Arabia
Turki.abdulhakim@willsmithlaw.com

Huda Hussain

Huda Hussain Law Firm and Legal Consultancy
564 Jonathan Ave.
Brussels 2000
Belgium
Huda@HHussainlaw.com

Case No.: SCCA1610A23

Claimant: Saudi Museum of Modern Art LLC

Respondent: Artists Coalition LLC

Date: 1 July 2020

(sent by email - fax - postal mail)

We refer to our letter dated 5 May 2020 concerning the above case.

Pursuant to the Request for Arbitration dated 1 May 2020, the Claimant nominated Mr. Basil Mahmoud from Ross & Partners Law Firm and Legal Consultancy, located at 123 Suits Avenue, New York, NY, as an arbitrator in the current arbitration case.

Pursuant to the answer to the RFA dated 2 June 2020, the Respondent nominated Mr. Fahed Abdullah, an independent international arbitrator with an address of 221B Baker Street, London, United Kingdom, as an arbitrator in the current arbitration case.

After both arbitrator candidates submitted the disclosure detailed in the appointment notice, and pursuant to Article 12-2 of the Arbitration Rules, the SCCA appointed the two candidates nominated by the Parties. Pursuant to the arbitration agreement between the Parties, the arbitrators nominated as chairwoman of the arbitral tribunal Ms. Badreya Ahmad, whose address is Dubai International Arbitration Centre, Office 2033, Dubai, United Arab Emirates. After Ms. Ahmad submitted her disclosure, the SCCA appointed her as chairwoman of the arbitral tribunal to consider the above case. Attached you will find the arbitrator appointment notice and her disclosure.

An arbitrator operating in accordance with SCCA rules must be impartial and independent. The arbitrator has submitted the disclosure¹ detailed in the appointment notice and its attachments, which are enclosed with this letter. If you wish to challenge an arbitrator, please inform the SCCA no later than 16 July 2020. Please note that under Article 14-3 of the SCCA rules, the SCCA must be informed of any challenge within 15 days of the notice of the arbitrator's appointment, i.e. from the date of this letter. The challenge must be for cause, and the other party shall be informed of the challenge. If one of the parties challenges an arbitrator, the other party must respond to the challenge within seven days. In accordance with its absolute discretion, the SCCA will make a decision regarding the dismissal request as stipulated in the SCCA rules. It is not permitted to send a copy of the dismissal request to the arbitrator, or to reveal or make available to the arbitrator the dismissal request, responses to the dismissal request or comments on the arbitrator's disclosure.

Sincerely,

Case Consultant

Royaa Jameel

Signature:

Royaa Jameel

Enclosures:

- **Notice of arbitrator appointment (not attached)**
- **Arbitrator's disclosure**

Turki Abdulhakim
Office of Counsellor Turki Abdulhakim in association with Will & Smith LLP

Emaar Tower
30th Floor
P.O. Box 20765
Riyadh
Kingdom of Saudi Arabia

Date: 1 August 2020

Via email and registered postal mail

Ms. Badreya Ahmad
World Trade Centre
Office No. 2033
Dubai
United Arab Emirates

Mr. Basil Mahmoud
Ross & Partners Law Firm and Legal Consultancy
123 Suits Avenue
New York, NY
USA
basilmahmoud@ross.com

Mr. Fahed Abdullah
Independent International Arbitrator
221B Baker Street
London
United Kingdom
fahed@fahedarbitration.com

Re: Arbitration Case SCCA1610A23 – Request for virtual hearings

Greetings,

In the light of the worldwide travel restrictions resulting from the coronavirus pandemic, and the fact that it is not projected that the pandemic will end in the near future, the Claimant respectfully requests that you allow hearings involving questioning of witnesses to take place via a virtual platform.



Article 24-5 of the Saudi Center for Commercial Arbitration arbitration rules provides: "The Tribunal may direct that witnesses be examined through means that do not require their physical presence."

Therefore, we ask you to accept our request and allow hearings that involve questioning of witnesses to be held virtually.

Sincerely,

Turki Abdulhakim

cc: Office of the lawyer Huda Hussain



Huda Hussain
15th floor, Suite 1503
P.O. Box 20543
Arab City
Arab Gulf State
Huda@HHussainlaw.com

Date: 5 August 2020

Via email and registered postal mail

Ms. Badreya Ahmad
World Trade Centre
Office No. 2033
Dubai
United Arab Emirates

Mr. Basil Mahmoud
Ross & Partners Law Firm and Legal Consultancy
123 Suits Avenue
New York, NY
USA
basilmahmoud@ross.com

Mr. Fahed Abdullah
Independent International Arbitrator
221B Baker Street
London
United Kingdom
fahed@fahedarbitration.com

Re: Re: Arbitration Case SCCA1610A23 – Request for virtual hearings

Greetings,

As to the Claimant's request to hold hearings and question witnesses virtually, we ask that the Claimant's request be dismissed on the following grounds.



Article 351 of the Gulf Civil Procedures Law (No. 5 of 2001) provides:

“The Court shall have the power to assess the competence of witnesses and weigh their testimony. In this regard,

the Court shall take into account:

[...]

(2) The witness’s body language and behavior while on the stand”

According to Gulf State Court of Cassation precedent, this article is tantamount to a mandate that a witness shall be physically present before the judge, otherwise the testimony is inadmissible. In Case No. 4543 of 2015, the Court of Cassation set aside an arbitration award in accordance with Article 34 of the Arbitration Law. The award had emerged from domestic arbitration proceedings in which the arbitral tribunal held the hearing and questioned witnesses virtually. The court found that because of the virtual questioning, the arbitral tribunal was unable to evaluate the witness’s language and behavior as required under Article 351, and the arbitration award was therefore void.

In June 2020, when the number of coronavirus cases began to rise, thus causing concern in the government, the Gulf State courts decided to halt all proceedings in an attempt to contain the virus until they were able to hold normal hearings. With the exception of hearings in criminal proceedings and urgent petitions, which cannot accommodate any delay whatsoever, the courts have ruled out virtual hearings. This reaffirms the importance of the above consideration in the questioning of witnesses. For circumstances in which witness testimony is determined to be necessary, the court issued the following directives:

- 1- *All hearings in judicial and arbitral proceedings involving witness questioning shall be held in person as follows:*
 - أ. *Hearings shall be held in person and filmed with a high-quality video camera for transcription by the clerk afterward.*
 - ب. *Each party shall select one lawyer to attend the hearing on its behalf.*
 - ت. *Only one witness at a time may be present at the hearing.*
 - ث. *If the case is heard by a single judge or arbitrator, he or she must attend the hearing in person to verify that witness questioning has taken place in accordance with legal rules.*
 - ج. *If the case is heard by a panel of judges or arbitrators, the presiding officer of the panel shall attend the hearing in person to verify that witness questioning has taken place in accordance with legal rules. The presiding officer shall not rule on*



the parties' objections at the hearing. Such objections shall be recorded in the video and then decided by all members of the panel jointly after they have watched the video and deliberated among themselves.

2- *The preceding paragraph shall apply only if the Arab Gulf State is the domicile of the witness and each of the parties.*

Therefore, if the arbitral tribunal were to hold a virtual hearing in a commercial case contrary to the parties' agreement, which is the cornerstone of any arbitral procedure, the arbitral tribunal would be risking nullification of the final award under Article 34 of the Gulf Civil Procedures Law, which provides that an arbitration award shall be set aside (without a request by either party) if the court finds "that the arbitral tribunal's decision is contrary to the public policy of this State"; or if one party establishes that the arbitral procedure was contrary to the parties' agreement or that that party was unable to present its case.

The Respondent here cites the duty of the arbitral tribunal under Article 18 of the Arbitration Law, as well as Article 20 of the SCCA rules, which provides that the parties shall be treated equally and that each party shall be given a full opportunity to present its case. For example, Mr. Al-Nasser's testimony involves presenting the glass for examination before the tribunal in order to compare the conditions to which the glass is exposed in the museum and contrast this with the required conditions.

Accordingly, the Respondent strongly objects to the Claimant's request to hold hearings virtually in March 2020, and requests that the hearing be postponed to a time when it can present its defense.

Sincerely,

Huda Hussain, Attorney
Respondent's Representative

cc: Office of Counsellor Turki Abdulhakim in association with Will & Smith LLP



Procedural Order No. 1
In the case between
Saudi Museum of Modern Art LLC
&
Artists Coalition LLC

1. After the arbitral tribunal received the case file and reviewed it, the tribunal held a preliminary meeting with the Parties by phone on 20 August 2020 to agree on arbitration procedures.
2. Below, the arbitral tribunal documents the points agreed upon or mentioned by one or both of the Parties that are likely to affect the proceedings:
 - The Parties agreed to apply the United Nations Convention on Contracts for the International Sale of Goods, signed in 1988, regardless of the fact that the Parties' premises are located in countries that did not sign the Convention. With the exception of Article 78, the entire Convention is applicable to the subject matter of the Contract. The Parties agreed that the Respondent's supply obligation was the fundamental piece of the Contract, so there was no argument about the design obligation being the fundamental piece of the Contract.
 - As proposed by the arbitral tribunal, the Parties agreed that the arbitration proceedings shall be divided. Thus, no pleas will be submitted concerning the amount of the Claimant's claim; all pleas on that question shall be reserved for a subsequent stage of proceedings, especially with regard to the Claimant's claim concerning the quality of the glass.
3. Following review of the case file, the arbitral tribunal requests that the Parties submit their memoranda based on and in response to the following questions. The memoranda should not go beyond answering the following questions:
 - أ. Is the delay penalty clause contrary to the provisions of Islamic law, or is the agreement of the Parties binding?
 - ب. If the delay penalty clause is binding, must the Respondent pay the delay penalty in the Contract, or is it exempted from delivery of the artwork under Article 79 of the UN Convention on Contracts for the International Sale of Goods?
 - ج. Did the Respondent deliver a piece of art that fails to conform to the Contract specifications, based on the cracks?
 - د. With regard to procedural plea, is it possible for the arbitral tribunal to conduct oral hearings that involve questioning of witnesses (including Mr. Hamad Al-Nasser) virtually, i.e. by using modern visual communication tools?
4. For the purpose of discussing the above-mentioned issues, the Parties agreed that the hearings held according to the agreed date below will be held using modern visual communication tools.



5. Any representative of the Parties (i.e. the participating universities) may direct any questions concerning the subject of the case and its proceedings via the team's registered account at www.ArabicMoot.sadr.org no later than 11:59 p.m. Saudi time on 30 November 2020.
6. The Claimant must submit its memorandum no later than 11:59 p.m. Saudi time on 14 January 2021.
7. The Respondent must submit its memorandum no later than 11:59 p.m. Saudi time on 28 February 2021.
8. The hearings for this case shall take place on 4-8 April 2021.

26 August 2020

On behalf of the arbitral tribunal

[Badriya Ahmed](#)

Ms. Badriya Ahmed

Chairwoman of the Arbitral Tribunal

cc: Saudi Center for Commercial Arbitration



Procedural Order No. 2
17 December 2020
In the case between
Saudi Museum of Modern Art LLC v. Artists Coalition LLC

1. The contract did not mention the percentages of Bohemian glass and optical glass to be used. What is the agreement on which the Claimant is relying and which it alleges has been violated?
Clause 2 of the Artwork Design and Supply Contract, Specifications of the Artwork, referred to the use of high-quality glass in the art piece. As for the percentage of each type of glass, it was discussed between the parties (through multiple rounds of correspondence and meetings) as described and outlined in the case file.

2. The Claimant stated in the request for arbitration that it had arranged several obligations based on the opening, including the contract that the Claimant entered into with the event management company. What is the cost of this contract? And what is the nature and cost of the other obligations?

The Claimant concluded a contract with an event management company to manage and coordinate the opening, at a cost of SAR 113,000 in addition to a food and beverage services contract with a value of SAR 22,000. It also concluded several contracts with hotels to host artists and activists in the field so they could attend the opening, and these contracts total SAR 75,000. None of these contracts can be terminated without significant damage to the Claimant. Some required a (nonrefundable) down payment equivalent to half or three-quarters of the contract value.

3. When did Hamad Al-Nasser (the artist) receive the Bohemian glass from Greater Central Europe?

He received it on 1 February 2020, the same day that the artist informed the Claimant of the expected delay in delivery of the piece.

4. Who proposed the force majeure clause in the contract?

During pre-contract negotiations, the Respondent's representative in the negotiations, Mr. Abdulrahman Al-Khamis, put the clause in the contract. He mentioned that they have expertise in the field of creating artworks that require special, rare materials. Force majeure conditions, especially natural disasters such as floods and earthquakes, have affected the Respondent before when it imported materials from East Asia. Since then, Artists Coalition has instituted force majeure clause for any natural disasters that would affect the course of their work.

5. When did the situation settle and business resume in Greater Central Europe?

The situation in Greater Central Europe stabilized starting on 5 November 2019, but the country remained under transitional government rule, and elections were not held until April 2020. During that time, most businesses were able to resume working, as the transitional government established workplace regulations in response to strike that had taken place. Supply and export operations have not been expected since the demonstrations began.

6. Why did the Respondent not go to the other country that makes Bohemian glass?

The contract with the Claimant was not the only contract under which the Respondent was affected as a result of labor strikes in Greater Central Europe; the Respondent performed several contracts with the same supplier for other clients. Because it imported other types of glass and



therefore incurred enormous costs taken from the company's budget, it was unable to make an agreement with another supplier. After all of the Respondent's transactions were interrupted due to the crisis, the company's financial position forced it to apply for preventive composition in order to avoid bankruptcy. Due to the confidential nature of the company's transactions, some facts about the proceedings are still unknown: the date of application (before or after the delivery of the artwork), whether it was accepted, and whether a court order has been issued or the application rejected.

7. How large and how visible are the cracks in the artwork?

The cracks are moderate in size and can be seen at a distance of about 2 meters from the artwork, but they are difficult to see from far away.

8. It is necessary to stick to the wording of the claim and the parties' arguments in the case?

The participating teams are not limited to the arguments and defenses put forward in the case file; they are free to expand on their defenses and to rely on comparative justice applications and practices broadly.

9. At the end of Clause 9 of the contending parties' agreement, regarding dispute resolution, it is stated that the venue of arbitration and the associated hearings shall be in Arab City, Arab Gulf State. Is the phrase "Arab City, Arab Gulf State" correct in this formulation?

Article 9 of the Artwork Design and Supply Contract, Dispute Resolution, is correct, as the countries, cities, addresses, and names of parties mentioned in the case file are hypothetical names for the purposes of the case in question only.

10. What is the SCCA-approved Sharia reference that serves as the basis for a mechanism for examining issues at arbitration that are contrary to Islamic law?

The schools of Sharia are numerous, and interpretations of the details of Sharia vary from school to school. The SCCA relies first and foremost on the provisions of the Holy Quran and validated hadiths, and it uses and buttresses the interpretation thereof with decisions and judgments from Islamic authorities recognized by Muslim imams, e.g. the International Islamic Fiqh Academy, the General Presidency of Islamic Research and Ifta, and so on. We note, however, that one of the most important objectives of this competition is to stimulate the skills of research and digging for answers and explanations for complex legal issues. Therefore, any defenses and interpretations will be accepted as long as they are supported by valid and reliable sources, whatever those may be.

11. The Parties' representatives communicated some clarifications or modifications to the case file:

- Clause 3 of the design and supply contract (on page 19 of the case file) is corrected as follows: "Second Party shall deliver the Piece on 15 February 2020 ("Delivery Date"). If Second Party is late in delivering the Artwork past the agreed Delivery Date, it shall pay a delay penalty of SAR 80,000 for each day of delay, provided that the total delay penalty does not exceed 10% of the contract value."
- The Respondent's answer on pages 44-46 is corrected as follows: "Accordingly, the Respondent strongly objects to the Claimant's request to hold hearings virtually in March 2021, and requests that hearings be postponed to a time when it can present its defense."



17 December 2020

On behalf of the arbitral tribunal

Badriya Ahmed

Ms. Badriya Ahmed

Chairwoman of the Arbitral Tribunal

cc: Saudi Center for Commercial Arbitration

