

IN THE COURT OF FIRST INSTANCE
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

15 January 2025

CASE No: AIFC-C/CFI/2023/0002

MICHAEL WILSON & PARTNERS, LIMITED

Claimant

v

(1) CJSC KAZSUBTON
(2) KAZPHOSPHATE LLP
(3) KAZPHOSPHATE LIMITED

Defendants

ORDER ON APPLICATIONS REGARDING EXECUTION ORDERS

Justice of the Court:

Justice Sir Stephen Richards

ORDER

1. The time limit set out in paragraph 2 of the Court's Directions dated 30 October 2024 ("the Directions") is extended to 14 November 2024, so that the Second Defendant's application dated 13 November 2024 but filed on 14 November 2024 was within time.
2. The two Execution Orders issued in this case on 23 February 2024 are varied by substituting the following for the details given in each under "Debtor":

MICHAEL WILSON & PARTNERS, LIMITED

Address: Craigmuir Chambers, VG 1110 Road Town, Tortola, British Virgin Islands.

BVI Company Number 291158.

Branch in Kazakhstan:

Name: Michael Wilson & Partners, Ltd. Legal Consultants in Kazakhstan;

Head of the Branch: Michael Earl Wilson;

Address: Almaty, Bostandyk district, Al Farabi Avenue, 5, "Nurly Tau" Business Centre, Building 1 A, 7-floor;

Email address: michael.wilson@mwp.kz, yermek.aubakirov@mwp.kz,
secretaries@mwp.kz, yka@mwp.kz;

Tel.: +7 (700) 165 30 15;

BIN: 980741003027.

3. The Order at paragraph 2 above supersedes the relief set out in the Directions. The stay imposed on 19 November 2024 on the operation of the Directions lapses.
4. No order as to the costs of the present applications.

REASONS

1. A costs order against the Claimant and in favour of the Second Defendant and the Third Defendant was made in this case on 31 October 2023. Execution Orders to give effect to the costs order were issued on 23 February 2024 but problems arose with regard to the process of execution. The Claimant applied for the withdrawal and re-issue of the Execution Orders in amended form so as to remove errors in them concerning its address and company registration details. On 30 October 2024 the Court issued Directions ("the Directions") which provided in paragraph 1 that the Execution Orders "are to be withdrawn and re-issued in amended form" by substituting in them amended details of the "Debtor", subject to a provision in paragraph 2 that the Second Defendant and the Third Defendant had the right to apply within 14 days (i.e. by 13 November 2024) for the Directions to be amended or set aside.

2. By an application dated 13 November 2024 but filed on 14 November 2024, the Second Defendant applied (1) to vary the Directions and (2) to strike out the Claimant's application; and by a related application dated 14 November 2024 the Second Defendant requested that the time allowed for applying pursuant to paragraph 2 of the Directions be extended to that date. By email and in two sets of written submissions the Claimant opposes the Second Defendant's applications and argues in favour of the course set out in paragraph 1 of the Directions.

Extension of time

3. Paragraph 2 of the Directions further provided that subject to any application by the Defendants within the 14 day period laid down, "the Directions are to take effect immediately thereafter". The Claimant contends that the effect of the Second Defendant missing the deadline was that the Execution Orders were withdrawn automatically and immediately in accordance with the terms of the Directions and by operation of law ("a legal guillotine") and that the Second Defendant's applications came too late and were misconceived. I reject that contention. The withdrawal and re-issue of the Execution Orders required administrative steps to be taken. Those steps had not been taken by the time of the Second Defendant's applications, nor by the time when, on 19 November 2024, I ordered a stay on the operation of the Directions pending a decision on the Second Defendant's applications. The Execution Orders have therefore remained in force to this date in their original form.
4. As a matter of principle it is open to the Court to extend the time limit set out in directions even after that time limit has expired, just as Rule 2.14 of the AIFC Court Rules provides that an extension of any time limit set by any Rule or Practice Direction may be granted after the time limit has expired.
5. Accordingly, the Second Defendant's application for an extension of time did not come too late.
6. A further objection advanced by the Claimant to the grant of an extension of time is the extent of the Second Defendant's delay. The Claimant's own application for the withdrawal and re-issue of the Execution Orders was made as long ago as 21 July 2024, yet the Second Defendant did nothing about it until given a last chance by the Directions, and even then outside the time limit laid down. The Claimant contends that by Rule 11.23 of the AIFC Court Rules the Second Defendant was obliged to reply within 28 days of the Claimant's application. I reject that specific contention: Rule 11.23 relates to the time-limit for filing a defence to a claim, whereas the Claimant's application was of a kind governed by Part 6 of the Rules. But that does not affect the force of the general point about delay (and Rule 6.14(2) contains its own 14-day time limit for evidence in answer to an application). The fact that the Second Defendant had notice of the issue for several months but was late in instructing counsel for the purposes of a response is plainly relevant to the exercise of the Court's discretion. It is not, however, decisive against the grant of the very small extension now sought. Another relevant factor, this time telling in favour of the grant of an extension, is the importance of ensuring that the Execution Orders issued by the Court are as accurate and helpful as possible.
7. Taking everything into account, I am satisfied that the extension of time sought by the Second Defendant should be granted, so that its application to vary the Directions and to strike out the Claimant's application can be considered on its merits.

The substantive issues

8. In accordance with Article 13(8) of the Constitutional Statute of the Republic of Kazakhstan on the AIFC, decisions of the AIFC Court are to be enforced in the Republic of Kazakhstan in the same way, and on the same terms, as decisions of the courts of the Republic of Kazakhstan. By Article 241(4) of the Civil Procedure Code of the Republic of Kazakhstan, the court's writ of execution shall specify, among other things, *"if the debtor is a legal entity, its name, place of factual location, bank details and business identification number"*.
9. The Claimant, Michael Wilson & Partners, Limited, is correctly named in the Execution Orders as the "Debtor" but there is a clear problem with the further details given under that name. On the information now provided by the Claimant, the Claimant's correct identity is that of a BVI company with a BVI address and BVI company number. That the BVI company is the true Claimant and the legal entity against which the CFI's costs order was made is shown by the CFI's main judgment in the case (see e.g. paragraph 2 of that judgment). Unfortunately, the Claim Form in the case (Case No. AIFC-C/CFI/2023/0002) and the subsequent application for permission to appeal (Case No. AIFC-C/CA/2023/0040) were deficient and potentially misleading in their failure to give accurate details of the BVI company. This led to the address and other details of the Branch known as "Michael Wilson & Partners, Ltd, Legal Consultants in Kazakhstan" being used in the Execution Orders without reference to the BVI information, and this led in turn to concerns by the relevant bailiffs that the details given did not correspond to the name of the Debtor. The amended details proposed in the Directions therefore included the Claimant's BVI address and BVI registration number. It is plainly right, and is accepted by the Second Defendant, that the Execution Orders should be amended to that extent at least. (The BVI address of the Claimant appears in slightly different forms in different parts of the papers now before the Court but the address used in the Order above is that of the Claimant's registered office as given in the Certificate at page 105 of the Claimant's application bundle.)
10. The Second Defendant submits that the current form of the Execution Orders should be maintained in all other respects, including the address, BIN number and other details of the Branch in Kazakhstan. Citing Article 43(3) of the Civil Code of the Republic of Kazakhstan (*"Branches and representative offices are not legal entities. They are provided with property by the legal entity that created them and act on the basis of the provisions approved by it."*), it is submitted that the Branch is not a separate legal entity but a part of the Claimant itself and that enforcement against the assets of the Branch is legitimate. It is said, moreover, that partial enforcement against the assets of the Branch has already taken place pursuant to the existing Execution Orders. The Claimant opposes the inclusion of such a reference to the Branch. It accepts that the Branch is not a juridical person *per se* but submits for various reasons that the Branch has a legal persona separate and distinct from the Claimant, that it is not party to these proceedings and is not subject to the jurisdiction of this Court.
11. I am persuaded that the approach contended for by the Second Defendant should be followed and that details of the Branch, including its BIN, should be retained in the Execution Orders, whilst making clear that those details relate specifically to the Branch and are to be distinguished from the BVI address and BVI Company Number of the Claimant as the Debtor. There is no suggestion that the Branch was created by a legal entity other than the Claimant, and it is open to argument that the Branch is not a separate

entity from the Claimant and/or that as a matter of domestic Kazakh law the process of execution as against the Claimant can extend to assets of its Branch in Kazakhstan. Such matters are for resolution, however, in the course of the execution process and fall ultimately to be determined in that context by the ordinary courts of Kazakhstan. The relevant role of the AIFC Court is limited to initiating the execution process by the issue of execution orders that meet the requirements of domestic law. It does not extend to resolving the various issues of domestic law that may arise in the course of the execution process. Whilst inclusion of the name, BVI address and BVI company number of the Claimant as the Debtor should be sufficient to comply with the relevant requirements of Article 241(4) of the Kazakh Civil Procedure Code, that provision does not preclude the inclusion of further details of potential relevance for enforcement purposes. Details of the Claimant's Branch in Kazakhstan are in my view properly included within that category.

12. I am also persuaded that, in order to avoid automatic disruption to steps already taken under the existing Execution Orders, the Court should not order the withdrawal of those Orders and their re-issue with the appropriate amendments, as proposed in the Directions, but should order the variation of the existing Orders by the substitution of amended details for those given in each case under "Debtor". That will maintain the validity of steps taken under the existing Execution Orders and will enable the enforcement process to continue pursuant to the Orders as varied, leaving it open for argument whether as a matter of domestic Kazakh law execution as against the Claimant can extend to assets of the Branch.
13. The Second Defendant requests the Court to strike out the Claimant's application for the withdrawal and re-issue of the Execution Orders. The strike-out is sought pursuant to Rules 3.10 and 3.11 of the AIFC Court Rules, on the basis that the Claimant was in breach of the Rules by failing to indicate its address in the original Claim Form and that the Claimant's application is an abuse of the Court's process and aims to obstruct the enforcement of the costs order. I refuse the strike-out application. There was an admitted problem about the details in the Execution Orders in their current form. True, it was a problem of the Claimant's own making through a deficiency in the information originally provided to the Court. But the Claimant was entitled to bring the matter back before the Court to be dealt with, and that has led to a modest variation of the existing Execution Orders rather than a complete rejection of the Claimant's application. In the circumstances to strike that application out would be to go too far.
14. Although the Third Defendant has made no application or submissions on these issues, I have no doubt that the considerations set out above call for identical treatment of both Execution Orders and that the variation ordered above should apply to both. Contrary to the Claimant's submissions, it is not too late to amend the course proposed in the Directions, and it is open to the Court of its own initiative to make such an amendment.
15. No costs order was made in favour of the First Defendant following dismissal of the original Claim and in consequence no Execution Order was made in relation to it. The First Defendant has therefore played no part in this stage of the proceedings.
16. I will make no order as to the costs of the various applications now before the Court. Neither party emerges as a clear-cut overall winner. In any event the issues are in my view not ones that make a further award of costs appropriate.



By the Court,

The Rt Hon. Sir Stephen Richards

Justice, AIFC Court

Representation:

The Claimant was represented by Michael Earl Wilson, Partner, Michael Wilson & Partners, Ltd, Almaty, Kazakhstan.

The First Defendant was not represented.

The Second Defendant was represented by Mr Bakhyt Tukulov, Partner, TKS Disputes LLP, Almaty, Kazakhstan.

The Third Defendant was not represented.