IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

3 February 2023

CASE No: AIFC-C/CFI/2022/0030

(1) LIU ZIJIA

(2) LEI QU

Claimants

v.

ALIBEK TULEPOV

Defendant

JUDGEMENT & ORDER

Justice of the Court:

Justice Tom Montagu-Smith KC

ORDER

1. The application for an adjournment of the hearing is dismissed.

2. The Claim is dismissed.

JUDGEMENT

1. This is a claim brought by two individuals, Liu Zijia and Lei Qu who are shareholders of an AIFC company, Grey Cattle Management Limited ("the Company"). The Claimants own 90% of the shares in the Company. The Defendant, Mr Alibek Tulepov, owns the remaining 10%.

2. The Company was incorporated on 2 February 2022. It appears that the shareholders intended it would operate as a cryptocurrency mining business. I am told that it is not now trading.

3. The Claimants seek an order compelling the Defendant to withdraw from the company. In practice, they seek an order requiring the Defendant to transfer his shares in the Company to them.

4. At the hearing, the Claimants were represented by Mr Tuyakbaev and the Defendant represented himself. I am grateful for the courteous and clear representations made by each of them.

5. At the start of the hearing, the Claimants applied for an adjournment of one month to allow them to consider new information which had been received, I was told, some three days before. A supplier to the Company had, it was said, alleged that further money was owed by the Company in respect of equipment it had purchased. I dismissed the adjournment application primarily because I could not see how that information could affect the outcome of the case. The Claimants indicated that a month would allow a window for discussion, after which the claim might be withdrawn. The Defendant pointed out that discussions could take place in any event and there was no point in delaying the conclusion if the new information would make no difference. I agreed.

6. The Claimants say that, in late 2021, they purchased for the company at their own expense the equipment necessary to set up a cryptocurrency mining operation. The cost is said to have been in excess of USD 100,000. The Claimants say that the Defendant has only contributed KZT 10,000. The Defendant disputes this. He considers his contribution was greater.

7. The Claimants attached a schedule of "administrative and capital expenses" for the period January to July 2022. According to the figures stated there, the capital costs on investments incurred are stated to be CNY 464,417, equivalent to USD 68,942 at today's exchange rate. Other costs listed include CNY 286,065 for "wages and social security contributions", CNY 11,216.19 for "spare parts", CNY 11,452.87 for "office expenses", CNY 80,467.28 for customs clearance fees, a prepayment of 50% for electricity in the sum of CNY 316,000, storage costs of CNY 19,251, a business trip at CNY 188,436.62 (nearly $28,000), CNY 9,879.78 for rent, CNY 61,979.06 for "costs at the start of the project", CNY 1,688 for an office computer, shipping costs of CNY 148,597.32, legal service costs of CNY 55,860. The total sum said to have been invested is CNY 1,655,310.35 (c. US$245,729.90).

8. The Defendant points out that these alleged expenses are not supported by documentary evidence. I also note that some of them appear very difficult to understand. The "capital expenses" are presumably the computers and associated equipment required for the mining operation. However, it is very difficult to see why it could be necessary to incur some of the other alleged expenditure or even what some of that expenditure was.

9. It appears that the Claimants paid for the expenses on behalf of the Company. It is not said that the payments were made by way of loans to the Company, creating a corresponding debt from the Company to the Claimants.

10. The Claim documents offer little explanation for why the Defendant could be ordered to give up his shares.

11. Absent some specific agreement, the question of who funded the company's purchases and activities is of only historical interest. As things stand, the Defendant owns 10% of the Company. On liquidation, he would – all things being equal – ordinarily be entitled to 10% of its net assets. The Company owns at least some assets which, although likely diminishing, are likely to have some value.

12. The Claimants say that, as a result of Covid-19, delivery of the computing equipment was delayed and the venture became unprofitable. The Company has not traded, is earning no profits and the Claimants have no further interest in pursuing business in Kazakhstan. The Claimants wrote to the Defendant asking him to withdraw from the company. Mr Tulepov accepts that he received the letter but did not respond. He saw no legal basis for the demand.

13. I asked the Claimants' counsel to explain at the hearing on what legal basis I could make an order depriving the Defendant of his shares. Counsel was unable to provide any real assistance on this point. In essence, his position was that the Defendant had not cooperated with the Claimants' request and so they had turned to the Court for help. The Defendant disputes this account. He did not reply to the letter. However, he says that he did try to contact the Claimants without success.

14. It does not much matter which account is correct. It is obviously in everyone's interests for the parties to cooperate in winding up the Company if there is no intention of it trading. However, even if a minority shareholder fails to cooperate, they cannot simply be deprived of their shares as a result.

15. Counsel for the Claimants accepted that the Defendant should be entitled to some compensation in respect of his shares. When asked about this, he said that it was probable that the Claimants had offered some compensation, but he accepted that that was only his opinion and he had no information either way. When I asked him what level of compensation the Defendant could expect, counsel appeared to suggest that he should be entitled only to the return of his initial capital contribution of KZT 10,000. On any view, that would be the wrong basis for assessing the value of the Defendant's shares. The present value of shares in a company is not measured by reference to the shareholder's initial financial contribution. There are any number of reasons why

parties should agree a different shareholding arrangement. Once the shareholding is settled, the shareholders' interest follows the fortunes of the company.

16. I do not know and am not in a position to decide what the net assets of the company are and so what the Defendant's shares are worth. That is an investigation that would normally be undertaken in a liquidation. There is no need for Court intervention when an AIFC company is wound up voluntarily under the AIFC Insolvency Regulations, Part 4, Chapter 2. It is to be hoped that, with better communication, these parties will be able to reach a fair agreement for distribution of the Company's net assets. Mr Tuyakbaev's assistance today has been extremely pragmatic and helpful. It may be that his intervention can help the parties find agreement. If they cannot, a liquidator can be appointed to do so. For present purposes, however, I can see no legal basis on which I could make an order simply requiring the Defendant to give his shares to the Claimants, and none has been explained either in writing or by counsel.

17. For those reasons, I dismiss the claim.

By Order of the Court,

Tom Montagu-Smith KC,
Justice, AIFC Court

Representation:

The Claimant was represented by Mr. Olzhas Tuyakbayev, Chief Legal Officer, PLKZ LLP.

The Defendant was represented by himself.