



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

20 February 2025

CASE No: AIFC-C/CFI/2024/0035

Freschette Limited

Claimant

v

(1) ENEGIX Limited Liability Partnership
(2) Prime Capital RE Alakol Limited Liability Partnership
(3) Prime Capital Real Estate Limited Liability Partnership
(4) Qaz-Ak-Kus Limited Liability Partnership

Defendants

JUDGMENT NO. 2

Justice of the Court:

Justice Sir Rupert Jackson

JUDGMENT

1. Following this court's judgment No. 1, dated 7 February 2025, the first defendant ('Enegix') continued to pursue its proceedings in the Almaty Interdistrict Economic Court. When it was suggested that this was a breach of this court's order, Mr Tukulov (Enegix's counsel) responded as follows by email dated 14 February 2025:
"Our client maintains that the claim before the state court is not identical to the matter before the AIFC Court and falls outside the AIFC Court's jurisdiction, as it concerns the validity of the submission clause (while the validity of the submission clause was not raised in this Court). Our client believes that the Court's Order conflicts with its constitutional right to judicial protection."
2. I do not accept that contention. The case which Enegix is pursuing in the Almaty Court is essentially the same as the case which it presented in this court at the hearing on 4 February 2025: namely the contention that Enegix is not bound by its agreement to litigate in the AIFC Court. This court rejected that contention in its judgment dated 7 February 2025 and issued an anti-suit injunction. It follows that Enegix's continued conduct of the proceedings in the Almaty Court was a breach of the anti-suit injunction.
3. On 18 February 2025 the Almaty Court dismissed Enegix's claim without consideration of its substance. Mr Tukulov says that Enegix, now represented by different lawyers in the Almaty Court, will appeal against the decision dated 18 February and seek to revive its proceedings in the Almaty Court. If Enegix takes that course, it will be in breach of the anti-suit injunction issued by this court.
4. A case management conference took place in the AIFC Court proceedings on 19 February 2025, so that I could give directions for the future conduct of this litigation. Mr Tukulov for Enegix and Mr Tsay for the fourth defendant ('Qaz') stated that their clients intended to appeal my judgment dated 7 February. They are, of course, fully entitled to apply for permission to appeal and, if permission is granted, to pursue such an appeal.
5. It would be of great assistance if the judges dealing with the application for permission to appeal and (if granted) any subsequent appeal could expedite those appellate proceedings. In the meantime, I must case-manage the proceedings up to trial on the basis of my judgment dated 7 February. Indeed, no counsel suggested during the case management conference that the first instance proceedings should be suspended while any appeal is pursued.
6. Counsel for the claimant, the first defendant and the fourth defendant have agreed that:
 - (i) I should give directions for the appointment of valuers and the preparation of valuation reports in relation to the eight pledged properties the subject of these proceedings.
 - (ii) Thereafter the AIFC Court should give its final judgment on the basis of the documents, alternatively following a remote hearing. This agreement is set out in an email (copied to all parties) to the AIFC Court Registry dated 18 February 2025.
7. Having considered the issues raised and the substantial sums at stake, as well as the restrictions imposed by the Land Code, I think that I must reach my final judgment after a hearing, rather than on the papers. In his original written submissions Mr Tukulov proposed a one day in-person hearing. But I note that in their draft directions the parties favour a remote hearing. I shall reach a decision at a later stage whether the hearing should be in person or remote.
8. At the case management conference on 19 February 2025 there were slight differences between the parties as to the time which should be allowed for the various steps. I have decided to adopt the more generous allowances proposed, in order to avoid the risk of any party later seeking an extension of time.

9. The main matter in dispute at the case management conference was the application by the claimant ('Freschette') for an arrest of Eneqix's property up to the value of USD \$7.09 million (the amount of the claim). Ms Idayatova, for Freschette, submits that the AIFC Court ought to grant this relief because the pledged properties may not be of sufficient value to satisfy the claim and there is a risk of dissipation of assets by Eneqix. The amount of tax paid by Eneqix in recent years indicates that it is not a company of substantial resources. Also, there are other creditors with rights over the pledged properties. Ms Idayatova relies in particular upon the claimant's response to the first defendant's defence at pages 450-470 of the trial bundle.
10. Mr Tukulov for Eneqix argues that there is no proper evidence to support a freezing injunction and no evidence of dissipation of assets. The order which Ms Idayatova seeks would paralyse Freschette's business. Also, it is likely that sale of the eight pledged properties will suffice to cover Eneqix's liability on the claim. Because of the pledge agreements, Freschette will take priority over all other creditors who may seek to enforce against the pledged properties. The pledged properties will have increased in value since the pledges came into existence. The AIFC Court should respect the parties' bargain, under which the pledged properties were regarded as sufficient security for the debt.
11. I have considered the competing arguments, and all of the evidence relied upon. I have concluded that it is not appropriate to issue a freezing injunction or an order for arrest against Eneqix, at least at the present stage before the pledged properties have been valued.
12. It appears from the agreed directions that no party will be seeking disclosure of documents from any other party. Therefore, I make no provision for disclosure in the case management directions.

ORDER

13. Having considered counsel's submissions and all the material before me, I order and direct as follows:
 - (1) Each party shall on or before 28 February propose a valuer to value the eight pledged properties.
 - (2) The parties shall agree upon a valuer to carry out those valuations on or before Friday 7 March.
 - (3) If the parties fail to agree upon a valuer, each party shall send to the court the name of the valuer who it proposes and the reasons why it says that that valuer should be appointed, by Friday 14 March. The Court will select and appoint an appropriate valuer by Friday 21 March.
 - (4) The valuer who has been agreed by the parties or selected by the Court shall carry out his valuations of the eight pledged properties and submit his valuation reports to the Court and the parties within 6 weeks, namely by 2 May 2025.
 - (5) There shall be hearing on Tuesday 24 June to resolve finally all issues in this litigation. The Court will decide at a later date whether that hearing will be remote or in person.
 - (6) If any party proposes to rely upon any evidence other than the valuation reports referred to above and the material currently before the Court, that party shall provide to the other parties and the Registry (a) any witness statements relied upon and (b) any documents relied upon by 2 May 2025.
 - (7) The parties shall agree a supplementary bundle of documents for the hearing (i.e. relevant documents not contained in the current bundle) by 9 May 2025.
 - (8) Between 9 May and 23 May 2025, the parties shall negotiate and attempt to agree what order the Court should make for the final resolution of these proceedings. Any agreement reached shall be notified to the Court by 30 May 2025.



- (9) Unless this litigation is resolved by agreement between the parties, each party shall lodge its written submissions for use at the hearing by 11 June 2025.

By the Court,

Sir Rupert Jackson,
Justice, AIFC Court

Representation:

The Claimant was represented Mr Farukh Iminov and Ms Ardak Idayatova, Lawyers, Kinstellar LLP, Almaty, Republic of Kazakhstan.

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

The Second and Third Defendants were not represented.

The Fourth Defendant was represented by Mr Farkhad Tsay, Lawyer, Almaty, Republic of Kazakhstan.