



IN THE COURT OF APPEAL  
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

28 January 2025

CASE No: AIFC-C/CA/2024/0046

International Academy of Medicine and  
Sciences Limited Liability Partnership

Claimant/Respondent

v.

State Institution "Health Department of Almaty Region"

Defendant/Appellant

---

JUDGMENT

---

Justice of the Court:

Justice Sir Stephen Richards

**ORDER**

**The application by the Defendant/Appellant for permission to appeal is refused.**

**JUDGMENT**

1. This is an application for permission to appeal from the decision dated 12 November 2024 of the AIFC Court of First Instance (“the CFI”) in Case No. AIFC-C/CFI/2023/0038. The case concerned a claim for management fees under a Public-Private Partnership Agreement between the Claimant, the International Academy of Medicine and Sciences LLP, and the Defendant, the State Institution “Health Department of Almaty Region”. The judge found in favour of the Claimant. The Defendant has filed an appellant’s notice seeking permission to appeal, to which the Claimant has responded with written submissions in opposition to the application. I am satisfied that the application can be fairly determined on paper without an oral hearing (see Rules 29.16 and 29.17 of the AIFC Court Rules).
2. Reference should be made to the CFI’s judgment for the details of the case. The central issue for decision by the judge was whether the Claimant had been entitled to refuse access to the hospital for an attempted inspection on 31 July 2023, having regard in particular to the terms of Clause 114(2) of the PPP agreement (whereby the Defendant was entitled to “conduct inspections of the financial and economic activities of the Private Partner, but not more than once a year, including by involving an audit organisation hereunder”). The refusal of access on that occasion was treated by the Defendant as a violation justifying suspension of payment of management fees under the agreement. The judge held in effect that the Defendant’s intention had been to carry out a wide-ranging inspection that fell outside the terms of Clause 114(2) and was not otherwise permitted by the agreement, so that the Claimant had been entitled to refuse access and the Defendant had been wrong to refuse to pay management fees.
3. By Rule 29.6 permission to appeal may be given where the appeal court considers that (1) the appeal would have a real prospect of success or (2) there is some other compelling reason why the appeal should be heard. By Rule 29.7 success on an appeal depends on establishing that the decision of the lower Court was (1) wrong or (2) unjust because of a serious procedural or other irregularity in the proceedings in the lower Court.
4. The appellant’s notice is expressed in highly derogatory terms, repeatedly accusing the judge of bias, lack of impartiality, predetermination, lack of objectivity and the like. Such accusations are wholly unwarranted. There is nothing in the papers to provide any support for them. They can be seen on analysis to be no more than intemperate ways of expressing disagreement with the judge’s reasoning and conclusions. In the circumstances, the use of such language and the framing of arguments in that way is highly regrettable. It distracts and detracts from the Defendant’s substantive case.
5. Ground (i) of appeal is that “The judge incorrectly and inconsistently concluded that the Public Partner lacks the right to inspect the Private Partner’s compliance with the Agreement, limiting the Public Partner’s rights to access only, contrary to the law and contractual terms”. That mischaracterises the judge’s conclusion: the judge acknowledged the right of inspection pursuant to Clause 114(2), distinct from the right of access under Clause 114(4), but held on the facts that the attempted inspection did not

fall within the terms of Clause 114(2), i.e. it went wider than an inspection of “the financial and economic activities” of the Claimant. Further, many of the points made in elaboration of ground (i) are plainly unsustainable, including the criticisms based on the judge’s reference to the position “if the hospital had been state-run” (paragraphs 8-12 of the appellant’s notice), the letter from the Almaty Regional Prosecutor’s Office (paragraphs 14-15), the ruling of the Administrative Affairs Judicial Panel of the Almaty City Court (paragraph 17), and the fact that Mr D.B. Zhensybaev was not called as a witness (paragraphs 29-37). Paragraphs 8-19 of the Claimant’s written submissions contain a convincing rebuttal of those points.

6. Ground (ii) is that “The judge determined that the Private Partner has the right to deny access to the Public Partner, despite this right being absent from both the Agreement and the law, providing no legal basis or justification for such a conclusion”. Again this mischaracterises the judge’s conclusion. Further, the elaboration of the ground at paragraphs 45-51 of the appellant’s notice (under the heading “The Decision contains contradictory conclusions regarding the Defendant’s rights”) contains no obvious support for the ground and contains no sustainable criticism of the judgment. In particular, the judge plainly understood and gave effect to the distinction between, on the one hand, access by state authorities performing official functions and, on the other hand, the right of the Defendant to carry out inspections in accordance with the terms of the agreement.
7. Ground (iii) is that “Due to a fundamental misunderstanding of the contractual relationship, the decision does not assess the possibility of suspending management fee payments yet deems such suspension unlawful”. The development of this ground at paragraphs 52-78 of the appellant’s notice depends essentially on the Claimant having been in breach of the agreement. If the Claimant was not in breach of the agreement, as the judge found, nothing in these paragraphs could undermine the judge’s further conclusion that the Defendant was wrong to refuse to pay management fees. Indeed, many of them are concerned only with the part of the judgment where the judge is summarising the pleaded cases of the two parties.
8. Ground (iv) is that “The judge presented distorted facts and an unsubstantiated evaluation in favour of the Private Partner”. The elaboration of the ground relates to a large extent to passages in the judgment that summarise the Claimant’s pleaded reply and the contents of the parties’ skeleton arguments. Such material does not reveal any defect in the judge’s reasoning. Towards the end of the section, at paragraph 94 of the appellant’s notice, reference is made to paragraph 49 of the judgment, where the judge sets out his finding that Professor Ismailov was an impressive witness and accepts relevant parts of the professor’s evidence. It was the judge’s function to assess the witnesses and it was plainly open to him, having seen and heard the professor give evidence, to make a favourable assessment of him. The Defendant’s description of this as reflecting “an emotional approach to evaluating evidence” and raising doubts about impartiality is without merit. The final paragraph of the section (paragraph 95 of the appellant’s notice) contains an unparticularised submission, to which no weight can be attached, that the judge ignored the Defendant’s arguments and in some places distorted the facts the Defendant presented.
9. Ground (v) is that “The judge violated the Court’s principal duty to ensure ‘fair adjudication’ by failing to provide equal conditions for both parties”. It adds nothing of substance. It is clear from the judgment itself (as well as from the written submissions of the Claimant) that the judge gave a fair opportunity to

both parties to present their case and that he gave fair consideration to the submissions and evidence put forward by each of them.

10. Ground (vi) is that “The judge breached constitutional provisions of the Republic of Kazakhstan by hindering the State’s duty to ensure equal access to safe, effective, and quality healthcare for its citizens, including an unfounded evaluation of the Public Partner’s inspection rights”. The elaboration of the ground, at paragraphs 96-99 of the appellant’s notice, under the heading “Misinterpretation of rights and obligations under the Agreement will have negative consequences for the AIFC Court and Kazakhstan”, includes assertions that the judge’s approach will allow breaches of PPP agreements by investors and that it violates the right to health protection conferred by Article 29(1) of the Constitution of Kazakhstan, obstructs the State’s ability to fulfil this constitutional provision and endangers the lives of many patients at the hospital. This is hyperbole which has as its premise that the judge misinterpreted the agreement and which does not assist the resolution of the question whether that premise is correct.
11. I have considered whether, despite those many criticisms of the appellant’s notice, there can be extracted from it a sufficiently arguable case that the judge’s conclusions were wrong. I have borne in mind that the judge himself observed that the agreement “is not as clear as it might have been as to the rights of the State Partner to gain access to the hospital” (paragraph 45 of the judgment) and that the judge’s discussion of the inspection issue is relatively brief. But he was in the best position to assess the true nature of the attempted inspection and whether it fell within the terms of Clause 114(2) as an inspection of “the financial and economic activities” of the Claimant or was otherwise permitted by the agreement. In my view there is no real prospect of establishing that his decision on the issue was wrong, nor that there was any serious procedural or other irregularity in the proceedings. Nor is there some other compelling reason why an appeal should be heard. Thus, the conditions for the grant of permission to appeal are not met and the Defendant’s application must be refused.

By the Court,

The Rt. Hon. Sir Stephen Richards

Justice, AIFC Court

**Representation:**

The Claimant/Respondent was represented by Mr. Sergei Vataev, Mr. Ilya Kirichenko and Mrs. Yelena Dvoretzkaya-Yussupova, Advocates, Legit Advocates’ Bureau, Almaty, Republic of Kazakhstan.

The Defendant/Appellant was represented by Mr. Valery Lim, Deputy Head of the State Institution “Health Department of Almaty Region”.