



IN THE COURT OF APPEAL
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

28 March 2025

CASE No: AIFC-C/CA/2025/0001

JSC “NATIONAL COMPANY QAZAVTOJOL”

Claimant/Respondent

v

KAZAKHSTAN BRANCH OF JSC WITH LIMITED LIABILITY
“SINOHYDRO CORPORATION LIMITED”

Defendant/Appellant

JUDGMENT AND ORDER

Justice of the Court:

Justice Sir Stephen Richards

ORDER

The application for permission to appeal is refused.

JUDGMENT

1. By a decision dated 5 December 2024 in Case No: AIFC-C/CFI/2023/0044 the AIFC Court of First Instance (“the CFI”) ordered the Defendant to pay sums found due to the Claimant pursuant to decisions of a disputes board and engineer under a construction contract. The Defendant applies for permission to appeal from the CFI’s decision. Written submissions in opposition to the application have been filed by the Claimant.
2. The application has been determined on the papers in accordance with Rule 29.16 of the AIFC Court Rules: the case does not require or justify the direction of an oral hearing pursuant to Rule 29.17.
3. 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: see Rule 29.6. Success on 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: see Rule 29.7.
4. For the relevant facts and contractual framework, reference should be made to the CFI’s judgment of 5 December 2024 and to its prior judgment of 19 September 2024 by which the Court decided a number of preliminary issues on the basis of which it ruled that the Claimant was entitled to bring the claim to challenge the decisions of the disputes board and the engineer.
5. The application for permission to appeal states that the power of attorney of the Defendant’s legal representative had expired on 31 August 2024 and was not further authenticated until 3 January 2025. This did not in practice affect the legal representation of the Defendant before the CFI, nor does it affect the validity of the CFI’s decisions of 19 September 2024 and 5 December 2024.
6. In so far as the delay in authentication, together with the time taken for translation, is put forward as an explanation for the late filing of the application for permission to appeal from the CFI’s decision of 5 December 2024 – the application was filed only on 10 February 2025, several weeks outside the time limit laid down by Rule 29.10(2) – neither factor provides a sufficient reason for an extension of time.
7. An even greater procedural problem, as explained below, is that the submissions advanced by the Defendant go to the preliminary issues decided by the CFI in its judgment of 19 September 2024. The Defendant did not seek to appeal that decision at the time and has not sought to do so by the terms of its present application. Even if the present application could be read as raising a challenge to that decision, such a challenge would be far out of time and the delay would be inexcusable.

8. The first point made under the grounds of appeal is that the contract between the parties was entered into voluntarily and the Claimant is bound by its terms. In itself, the point is uncontentious. But it takes the Defendant nowhere, since the Claimant's entire claim was based on the terms of the contract, including the variation agreed by Addendum No.3, the effect of which is considered below.
9. The main submission advanced under the grounds of appeal is that the Claimant's claim was made outside the contractual time limit for dispute settlement and outside the statutory limitation period, having been filed at the Court 1 year and 8 months after the date of the disputes board's decision of 24 March 2022. That submission faces insurmountable difficulties:
 - (i) The relevant issues were decided against the Defendant by the CFI's decision of 19 September 2024, as the second and third of the preliminary issues dealt with on that occasion (see paragraphs 12-23 of that judgment). As already stated, the present application does not challenge that decision and any such challenge would be too late.
 - (ii) So far as concerns the contractual time limit for dispute settlement, the CFI held (at paragraphs 16-18 of the judgment of 19 September 2024) that the effect of Clause 20.4 of the General Conditions, which provided that any disagreement with a decision of the disputes board needed to be raised within 28 days of the decision, was displaced by the variation made by Addendum No.3, by Clause 2 of which the Defendant expressly agreed that the Claimant was entitled to apply to the Court to review the decision, without imposing a deadline for such an application. That finding was plainly correct.
 - (iii) So far as concerns the statutory limitation period, the CFI held (at paragraphs 19-20 of the judgment of 19 September 2024) that the claim was well within the three-year default limitation period in Article 178 of the Civil Code of the Republic of Kazakhstan. That was plainly correct on the basis of the arguments advanced at the time. The application for permission to appeal raises a new argument, that Article 162(2) of the Civil Code applies a limitation period of one year from the date when the Claimant learned or should have learned of the violation of its right. The point is, however, misconceived. Article 162(2) is concerned with the limitation period for disputes related to the invalidity of a transaction on the grounds specified in Article 159(9)-(10), namely matters such as fraud, violence, threat or malicious collusion. It has nothing to do with the circumstances of the present case, where the claim is brought on the basis of a contract the validity of which is not in dispute. It provides no reason to doubt the correctness of the decision of the CFI on the statutory limitation issue.
10. The CFI's decision of 19 September 2024 also considered and dismissed (at paragraphs 21-22 of the judgment) a further argument advanced by the Defendant, that the Claimant had effectively abandoned any right to challenge the decisions of the disputes board and engineer by continuing with the contract, making payments and permitting sums to be released from escrow. If and in so far as the application for permission is to be read as raising such an argument, the same procedural objections apply as discussed above and there is again no basis for doubting the correctness of the CFI's decision on the issue.

11. The remaining points under the grounds of appeal relate to Claim No.2, Claim No.3, Claim No.4 and Claim No.5, which were considered at length at paragraphs 89-149 of the CFI's judgment of 5 December 2024. In each case the Defendant refers to the decision of the disputes board or the engineer as to the sums payable by the Claimant to the Defendant and seemingly takes issue with the assessment of different sums by the CFI. But the argument goes no further than that. It is unnecessary to consider the detailed points made in the Claimant's written objections, concerning the powers of the engineer and factual limitations in the decisions of the disputes board and the engineer. It is sufficient to note that the application for permission makes no attempt to engage with the reasons given by the CFI for reducing the amounts awarded by the engineer in respect of each of the claims and for holding that the Claimant was entitled to the consequential recovery of monies from the Defendant. It does not begin to show any arguable error in the Court's decision on those matters.
12. Accordingly, the application for permission is out of time and does not in any event have a real prospect of success or otherwise meet the conditions for the grant of permission to appeal. The application must therefore be refused.
13. It should be recorded that a further document was sent to the Court's Registry by the Defendant on 20 March 2025. It may be a copy of a document submitted originally to the CFI; but if it was intended to be submitted in support of the application for permission to appeal, it was far out of time, not tied in with the grounds of appeal and not clearly directed towards the reasons given by the CFI for its decision. The document does not alter in any way the conclusions set out above.

By the Court,

The Rt Hon. Sir Stephen Richards

Justice, AIFC Court

Representation:

The Claimant/Respondent was represented by Ms Ayim Kolzhanova, Chief Manager of the Department of Legal and Personnel Work of JSC "National Company QazAvtoJol", Astana, Republic of Kazakhstan

The Defendant/Appellant was represented by Ms Irina Li, Director, Limited Liability Partnership "ASSESSOR" Law Company, Almaty, Republic of Kazakhstan