



IN THE SMALL CLAIMS COURT
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

23 October 2023
Hearing date: 3 October 2023
CASE No: AIFC-C/SCC/2023/0010

DOCUMENTOLOG GLOBAL LIMITED PRIVATE COMPANY

v

Claimant

AUTOMATION TECHNOLOGY AND SOLUTIONS LLP

Defendant

JUDGMENT AND ORDER

Justice of the Court:
Justice Tom Montagu-Smith KC

ORDER

1. **The Defendant shall by 18:00 Astana time on Monday 6 November 2023 pay the Claimant the sum of KZT 4,667,022.77.**

JUDGMENT

1. This is a claim for a debt made under a contract entered into by the parties on 8th June 2021 (*“the Contract”*). Under the terms of the Contract, the Claimant provided the Defendant with access to an electronic document management and business process automation system. The Defendant subsequently made those services available to its client, Tengizchevroil LLP. The Claimant’s case is that the Defendant failed to pay for the second year of service, as a result of which the Claimant suspended the services. The Claimant claims for the part of the fee attributable to the period for which the system was available to the Defendant and its client.
2. I ordered that any party wishing to rely on witness evidence should file and serve witness statements by 28 July 2023. Neither party produced any witness statements. At the hearing, the Defendant asked to be allowed to produce evidence from one of its directors, Mr Erzhan Nurtazin. Despite the lateness of this, the Claimant did not object, so I indicated to counsel that the Defendant could call its witness. At that point, the witness left the hearing and did not return. The Defendant’s counsel indicated that we should proceed without him. As a result, I have been invited to decide this case on the basis of the documents and submissions.
3. The Contract was subject to certain terms of service – the Terms of Service of Documentolog Electronic Document Management and Business Process Automation Information System (*“the Terms of Service”*) and was to run for 2 years from 25 May 2021.
4. By clause 3.1 of the Terms of Service, the Defendant was obliged to pay in advance for each year of the contract. By clause 4.1.2, the total sum due in respect of each calendar year was KZT 26,867,011.
5. Clause 4.8 of the Terms of Service provided:
“In the event that the [Defendant] does not pay for the System Service within the period specified in this Agreement... the System Service becomes unavailable to the [Defendant] until he fully repays the debt for the System Service.”
6. The Defendant paid for the first year in advance. The Claimant issued an invoice to the Defendant for the second year requiring payment by 15 July 2022. The Defendant failed to pay. As a result, on 31 July 2022, the Claimant suspended the service. The Claimant says that the parties agreed to recalculate the sum due for the system service so that the Defendant would pay only for the period used. Ultimately, the Defendant did not pay despite, the Claimant says, the Defendant receiving payment from Tengizchevroil LLP.
7. In its original defence, the Defendant disputed the jurisdiction. I rejected that application. On the merits, the Defendant said that it did not *“recognise the claim in full”* and intended to file counterclaims and call witnesses to give evidence.

8. In a further document filed on 10 July 2023, the Defendant asserted that the Claimant had concluded a contract directly with Tengizchevroil LLP. It asserted that the termination of the Contract was unilateral and not accepted by the Defendant.
9. In response, the Claimant said:
 - a. The Contract was terminated because the Defendant failed to comply with conditions of the Contract to:
 - i. Employ suitably qualified personnel; and
 - ii. Include provisions in its contracts with its end users protecting the Claimant's copyright in the system; and
 - b. The Claimant's contract with Tengizchevroil LLP was concluded on 15 December 2022, more than 4 months after service was suspended.
10. I do not need to make any findings on these issues for the purposes of this claim.
11. The Defendant accepts that it signed the Contract. It accepts that it did not pay for the second year of service but that its customer had access to the system between 26 May 2023 and 31 July 2023.
12. As a result of non-payment, the Claimant was entitled to suspend service – this was expressly provided for in the Contract and the Defendant can have no complaints.
13. The Claimant claims only for that part of the fee attributable to the period in which the Defendant used the service. It might have been entitled to claim the whole of the annual fee. This reduced claim might be the result of the agreement it says it reached with the Defendant. It might be that it has managed to recoup its loss, in part, by supplying services directly to Tengizchevroil LLP. Whatever the reason, it appears that at least the sum claimed was due.
14. When asked whether the Defendant accepted that something was due for the period of use, the Defendant's counsel said that there needed to be a reconciliation. He said that insufficient documentary evidence had been produced to support the sum claimed.
15. I reject that submission. The fee was calculated simply by apportioning the annual fee over the period of use.
16. The Defendant also suggested that there was some difficulty because the Claimant had "*parallel*" contracts with the end user, Tengizchevroil LLP. It did not. It terminated the Contract and then entered into a fresh contract with Tengizchevroil LLP. In any event, the debt from the Defendant to the Claimant had already arisen and could not be extinguished by the Claimant's subsequent contract with the end user.
17. The Defendant suggested that the Claimant should look to Tengizchevroil LLP to pay for the service. However, the Claimant's contract in the relevant period was with the Defendant. The debt was the Defendant's. The Claimant has also been told by Tengizchevroil LLP that it paid the Defendant for the service. Whether or not that is the case, it does not alter the debt which had been incurred by the Defendant to the Claimant.

18. The Claimant also claims the sum of KZT 222,239.18 for late payment. By clause 6.5.5, the Defendant was liable to pay a penalty of 0.1% for each calendar day of delay in payment, up to a maximum of 5%. Payment is more than 50 days late. As a result the full 5% penalty has accrued.

19. In the circumstances, the Defendant is liable to pay the Claimant a total of KZT4,667,022.77, being:

- a. KZT 4,444,783.59 in respect of fees for the service; and
- b. KZT 222,239.18 as a penalty for late payment.

By Order of the Court,

Justice Tom Montagu-Smith KC,
Justice, AIFC Court

Representation:

The Claimant was represented by Ms. Ayan Kabenova, Documentolog Global Limited Private Company, Astana, Republic of Kazakhstan.

The Defendant was represented by Mr. Denis Mishin, Lawyer, Akmola Region Bar Association, Astana, Republic of Kazakhstan.