



IN THE COURT OF APPEAL
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

12 November 2024

CASE No: AIFC-C/CFI/2024/0018

MICHAEL WILSON & PARTNERS, LIMITED

Applicant

v

(1) CJSC KAZSUBTON
(2) KAZPHOSPHATE LLP
(3) KAZPHOSPHATE LIMITED

Respondents

COSTS ORDER

Justice of the Court:

Justice Sir Stephen Richards

ORDER

The Applicant is ordered to pay costs in the sum of KZT 1,000,000 to the Second Respondent and in the sum of USD 2,000 (KZT 985,300) to the Third Respondent.

REASONS

1. In its main judgment in this case the Court refused the Applicant's application for an oral renewal of its application for permission to appeal and ancillary relief. The Court reserved a decision on applications by the Second and Third Respondents for costs. Pursuant to the directions given by the Court, those Respondents have since filed details of the costs claimed. The Applicant has filed submissions in response which the Court has taken into account although they were not filed within the time originally allowed. A hearing of the applications is not necessary or desirable, and the Court has therefore proceeded to a decision on the papers pursuant to Rule 6.21 of the AIFC Court Rules.
2. The Second Respondent's claim for costs amounts to KZT 1,351,713.6 in respect of legal representation in connection with the case. There is no reason to doubt that those costs have been incurred.
3. The Third Respondent's claim for costs amounts to a total in excess of USD 25,000 (KZT 12,316,250), comprising USD 15,497.64 (KZT 7,634,912.35) in respect of legal representation and USD 10,000 (KZT 4,926,500) in respect of work by Deloitte on tax and legal advice, including advice on the significance of a BIN (Business Identification Number) for the question of legal presence in Kazakhstan. Again there is no reason to doubt that those costs have been incurred.
4. The Court has a wide discretion under Rules 26.4 and 26.5 of the AIFC Court Rules as to the award of costs. Whilst it can be helpful to receive submissions from a respondent in opposition to an application for permission to appeal, the Court's power to award costs in respect of such submissions can be expected to be exercised sparingly even where permission to appeal is then refused. Moreover, in the present case permission to appeal had already been refused on the papers, and the Applicant was simply seeking to renew its application for permission at an oral hearing. At the stage of refusal on the papers, the Second Respondent and the Third Respondent had both filed written submissions in opposition to the application for permission. The application for an oral renewal was not an appropriate occasion for the Respondents to go over the same ground again in their further submissions, let alone for detailed elaboration of their position.
5. The further submissions of the Second Respondent had a valid focus, in that they identified and addressed the central question as to whether there existed any right of oral renewal following refusal of permission to appeal on the papers.
6. The Third Respondent, on the other hand, did not address that question but submitted a lengthy application for an order that the Court did not have jurisdiction over it – an application that was not appropriate to the occasion and that the Court found it unnecessary to consider in its judgment. In so far as the submissions dealt with the BIN issue which had been raised specifically by the Applicant as a

new point in support of the requested oral renewal, it formed a relatively small part of the overall submissions and the work done went beyond anything appropriate at this stage of the proceedings.

7. There is a request for additional costs to be awarded under Rule 26.12 on the ground that the Applicant behaved unreasonably. Although the application for an oral renewal was found by the Court to be misconceived, it was the first time that the point had arisen before the Court and I do not consider that the circumstances call for an award under Rule 26.12 on this occasion.
8. In all the circumstances I take the view that a very modest award of costs should be made and that it can and should be the subject of an immediate assessment under Rule 26.13.
9. Having regard to the matters set out above and to the requirement under Rule 26.11 that costs be reasonably and necessarily incurred and, very importantly, that they be proportionate to the matters in issue, I will order the Applicant to pay costs in the sum of KZT 1,000,000 to the Second Respondent and in the sum of USD 2,000 (KZT 985,300) to the Third Respondent.
10. I refuse the Applicant's request that the award of costs be stayed until debts owed by the Respondents to the Applicant have been paid or that the Court should order the award to be set off against such debts.

By the Court,
The Rt Hon. Sir Stephen Richards
Justice, AIFC Court

Representation:

The Appellant was represented by Mr. Michael Wilson, Partner, Michael Wilson & Partners, Limited.

The First Respondent was not represented.

The Second Respondent was represented by Mr. Bakhyt Tukulov, Partner, Tukulov Kassilgov Shaikenov Disputes LLP, Almaty, Republic of Kazakhstan.

The Third Respondent was represented by Ms. Dinara Nurgazy, Associate, Kinstellar LLP, Almaty, Republic of Kazakhstan.