

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

31 October 2023

CASE No: AIFC-C/CFI/2023/0002

MICHAEL WILSON & PARTNERS, LIMITED

Claimant

v

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

Defendants

JUDGMENT ON COSTS APPLICATION

Chief Justice of the Court

The Rt. Hon. The Lord Mance

JUDGMENT

1. The Court has before it applications by the Second and Third Defendants for orders that their costs of this litigation to date be paid by the Claimant, Michael Wilson & Partners LLP. There is no doubt, in the light of the Court's judgment dated 26 September 2023, that the Second and Third Defendants were the successful parties in this litigation. The Claimant's claim was also dismissed as against the First Defendant, but it played no active part in the case and has not made any claim to costs.
2. The Claimant's claim was to register or enforce in or through the AIFC Court English and Netherlands judgments obtained against the First, Second and, as it appeared, Third Defendants. The attempt was originally described as a claim within the express heads of the Court's jurisdiction, but was later explained as a simple application, needing no such jurisdictional basis. It was accompanied by the filing of extensive documentation, some of no apparent relevance. As against the Third Defendant it had the unpromising feature that none of the English or Netherlands judgments was against the Third Defendant. The claim was accompanied by a number of untenable submissions, e.g. regarding supposed submission to the jurisdiction or supposed general common law (or the DIFC Courts) practice to recognize foreign judgments without any Treaty or other jurisdictional basis for so doing.
3. The starting point is that the successful Second and Third Defendants, who now seek their costs, are entitled to them: see AIFC Court Rule 26.5(1). I see no basis for any different order in this case. The fact that the Second Defendant is a judgment debtor in England and/or the Netherlands does not in my view alter that. Although the present case was brought in an attempt to enforce the relevant judgments, it was and is in all other respects a separate piece of litigation, involving entirely separate issues, as the judgment handed down on the substantive issues on 26 September 2023 demonstrates. As the same judgment also indicates, the claim has been presented in an expansive and expensive way, with a number of points made proving in reality to lack any real prospect of success from the outset.
4. In the light of the Court's knowledge of the case, and the materials which have been put before the Court, and the submissions and exchanges which have taken place between the parties and the Court, since its judgment on 26 September 2023, the Court considers that this is a case where it can and should make an immediate assessment of costs under Court Rule 26, rather than postpone them for detailed assessment, by whomsoever that would take place. The following paragraphs constitute the Court's immediate assessment of the costs reasonably, necessarily and proportionately incurred by the Second and Third Defendants in their conduct of this litigation.

5. As to the quantum of costs, both the Second and the Third Defendants have produced, in my view, and despite the Claimant's attempts to raise objections (many again without apparent basis) ample documentation to explain their costs claims.
6. The Second Defendant's costs, put at USD 6,960.00 or 3,361,249 Tenge legal costs and USD 7,278.45 or 3,514,987 Tenge, appear to the Court entirely appropriate for their award in full, bearing in mind the scope, nature and importance of the questions arising in the case, and the Court orders their payment by the Claimant accordingly.
7. The Third Defendant's costs are somewhat larger, totaling USD 16,116.80 to 19 April 2023 and USD 18,011.90 thereafter, but they are supported by careful itemisations of their make-up. Again, they appear to the Court to be entirely appropriate for their award in full, bearing in mind the scope, nature and importance of the questions arising in the case. It is entirely understandable that an English company, brought to Kazakhstan to defend an unfounded attempt to have registered against it judgments against two different companies, should incur somewhat larger legal costs. I will therefore order that the Claimant also pay to the Third Defendant its costs in full.

By Order of the Court,

The Rt. Hon. The Lord Mance,
Chief Justice, AIFC Court

Representation:

The Claimant was represented by Mr. Michael Wilson, Partner, Michael Wilson & Partners, Ltd, Almaty, Kazakhstan.

The Defendant 1 was not represented.

The Defendant 2 was represented by Mr. Bakhyt Tukulov, Partner, Tukulov & Kassilgov Litigation LLP, Almaty, Kazakhstan.

The Defendant 3 was represented by Ms. Dinara Nurgazy, Partner, Kinstellar LLP, Almaty, Kazakhstan.