

**IN THE COURT OF APPEAL
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE**

3 May 2024

CASE No: AIFC-C/CA/2024/0002

FREEDOM FINANCE JSC

Appellant/Claimant

v

Mr. EGOR ROMANYUK

Respondent/Defendant

JUDGMENT

Justice of the Court:

The Rt. Hon. The Lord Faulks KC

ORDER

The application for permission to appeal is refused.

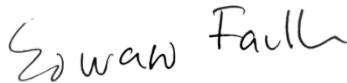
JUDGMENT

1. This is an application for permission to appeal against the judgment of Justice Sir Rupert Jackson given on 22nd November 2023.
2. He found in favour of the Claimant in the sum of USD 100,000 plus costs.
3. The Claimant seeks permission to appeal. It says that the Judge ought to have awarded USD 5,000,000.
4. The judgment was the second delivered by the Judge, arising out an agreement between the parties (SRCA) and disparaging remarks made on social media by the Defendant about the Claimant and its Group.
5. The Judge made findings about the posts relied upon by the Claimant. He rejected the arguments that the terms of the SRCA prevented the Claimant from recovering damages. He also accepted that the relevant posts were disparaging within the terms of the agreement and thus that the Defendant was in breach.
6. This left what the Judge described as the third issue, namely to what remedy was the Claimant entitled. This is the issue which forms the basis of the application for permission to appeal.
7. The Judge referred to Article 297 and 351 of the Civil Code and to his own observations in his previous judgment about these provisions.
8. Article 297 gives the Court a discretion to reduce a penalty (fine, fee) if it would be “excessively large as compared to the losses to the creditor”.
9. The Claimant says that by only awarding USD 100,000 the Judge was wrong because, in effect, he placed the burden of proving loss on the Claimant when it should have been on the Defendant. It is said that no evidence was adduced to support the lower figure and that the Claimant had been taken by surprise by the Judge’s award, and was not able to advance the legal arguments as now set out in the grounds of appeal.
10. The Claimant also maintains that his argument is consistent with the Russian Civil Code, the UNIDROIT principles and common law case law.
11. In paragraphs 6.1 to 6.10 of his judgment, the Judge carefully considered all the arguments on both sides. This involved an assessment of the facts based on what he had learned from both cases. In my judgment, he directed himself, in the light of all the relevant considerations and he recorded the rival contentions.
12. In the final analysis, he had a discretion, as set out above, and I do not consider that an appeal has real prospects of success (Rule 29.6(1) of the AIFC Court Rules).

13. I interpret the Claimant as also relying on Rule 29.6(2) of the AIFC Court Rules in that it is said that the judgment creates a “wrong precedent” for the application of Article 297, and that this provides a “compelling reason” to grant permission to appeal. In my judgment it was an application of the Code to the facts of a particular case, and the judgment does not create a precedent which would prevent a Court coming to a different conclusion in a different factual scenario.

14. In these circumstances, I refuse permission to appeal.

By the Court,



The Rt. Hon. The Lord Faulks KC

Justice, AIFC Court



Representation:

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

The Defendant was represented by Mr. Smbat Alikhanyan, “Assistent Plus” International Law Firm, Moscow, Russian Federation.