



IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

8 November 2023

CASE No: AIFC-C/SCC/2023/0022

PRIVATE COMPANY AURORA GEOPHYSICS LTD

Claimant

v

METEOR MINING COMPANY KZ (CONDUIT 21) LTD

Defendant

JUDGMENT

Justice of the Court:

Justice Tom Montagu-Smith KC

ORDER

- 1. The Defendant shall pay the Claimant the sum of KZT 47,322,067 by 4pm on 22 November 2023.**

JUDGMENT

1. In this claim, the Claimant seeks to recover sums due under three contracts for the provisions of geophysical services (“the Contracts”), numbered 225AG-2021, 252AG-2021 and 253AG-2021. Under the terms of the Contracts, the Claimant agreed to carry out geophysical surveys at three sites in the Zhana Arka District of the Karagandy Region of Kazakhstan. The first was concluded on 1 September 2021 and was amended on 28 September 2021. The other two contracts were undated but, according to the Claimant, were entered into on 22 October 2021.
2. Under the terms of the Agreements, the Defendant was obliged to pay a total of KZT 38,154,060 for the services as follows:
 - a. Under Contract 225AG-2021 (as amended), KZT 16,061,661.54;
 - b. Under Contract 252AG-2021, KZT 17,864,000;
 - c. Under Contract 253AG-2021, KZT 9,094,400.
3. By clause 3.1.1 of the Contracts, the Defendant was obliged to pay 40% of the sums due within 5 business days of signing the Contract. Subsequent payments were due within 5 business days of the parties signing a certificate of completion.
4. By clause 6.3 of the Contracts, late payment resulted in a penalty being imposed on the Defendant of 0.1% of the total amount of the Contract for each day of delay, up to a maximum of 10%.
5. The Contracts contained a jurisdiction agreement in favour of the Specialized Interdistrict Economic Court of Astana.
6. On 14 April 2022, the parties signed a certificate of completed works for each of the Contracts. The sum certified in each case was the full Contract sum referred to at paragraph 2 above. Despite this, the Defendant paid nothing for the works.
7. On 16 June 2023, the Claimant sent the Defendant a notice setting out its claim. The notice stated the sums due under the Contracts and that the Defendant had accepted the works. It demanded payment within 5 business days. The notice was signed by both parties. It appears that the Defendant’s signatory added the words “*Acknowledged with pending deliverables (i.e. final geophysical reports)*”.
8. No payment was made in response to the notice. As a result, the Claimant brought a claim in Specialized Interdistrict Economic Court. The Court however rejected the claim on grounds of jurisdiction, finding that the AIFC Court should hear the case as both parties are AIFC Establishments.
9. The Claimant therefore subsequently brought this claim in the AIFC Courts.
10. The Defendant filed a Defence. In it, the Defendant asserts that the Claimant proposed the works when it knew that the Defendant had no funds to pay. It is said that the Contracts were signed later, after work was carried out. The Defendant says that the works were carried out when both parties were

underoccupied as a result of Covid-19. The Defendant claims it has not received the completed reports from the Claimant and that, although it was not “stepping back” from the parties’ “mutual understanding”, that was nevertheless “conditional and required those reports that were going to help us get funded as Meteor was initially led to believe, to be handed to Meteor, giving it a chance to ‘at least’ review them”.

11. It was unclear whether the Defence was intended to raise any genuine dispute. On 28 September 2023, I therefore directed the Defendant to file any further or amended defence, setting out what was and was not disputed, together with any documents on which the Defendant relied. The Defendant did not respond. The Claimant responded to the directions indicating that it preferred a decision on the papers, without a hearing.
12. By AIFC Court Rule 28.39, the AIFC Court may decide a claim without a hearing. I consider that is appropriate in this case. The Defendant has been given every opportunity to submit a defence and evidence in support, but has produced only the Defence.
13. I do not consider that the Defence raises any matters which could amount to a defence to this claim.
14. The Defendant accepts that it concluded the Contracts. The assertion that this was “conditional” on the delivery of reports is unclear. The Contracts themselves were not conditional on the production of reports, as a matter of logic. The production of the reports was the subject of the Contracts. Nor were payments conditional. The Contractual terms set out the timing of payments. The Defendant signed the completion certificate and acknowledged the claim, albeit “with pending deliverables”. I do not know whether the reports were delivered. However, whether or not they were, the Contract sums fell due.
15. In the circumstances, I find that the sums claimed are clearly due from the Defendant to the Claimant and make an order accordingly. The sums have been overdue by more than 100 days. As a result, the full 10% penalty has accrued under clause 6.3 of each Contract.
16. In the circumstances, the Defendant is obliged to pay the Claimant the full sum claimed, being KZT 47,322,067, comprised of:
 - a. The principal sums due under the Contracts, amounting to KZT 43,020,061; and
 - b. The penalty of 10% of the Contract sums, being KZT 4,302,006.
17. The total sum claimed was KZT 47,325,067. It is not clear to me why the claim is KZT 3,000 more than the total due under the Contracts. This may be the result of an arithmetical error on the part of the Claimant. The Claimant has claimed its costs arising from this claim. The additional sum of KZT 3,000 may be due to that. However, I have seen nothing to support a costs claim and costs are not ordinarily recoverable in the Small Claims Court. In the circumstances, I award only the sums due under the Contracts.

By Order of the Court,

Justice Tom Montagu-Smith KC,
Justice, AIFC Small Claims Court



Representation:

The Claimant was represented by Mr. Nariman Omarov, legal counsel, Aurora Geophysics Ltd., Astana, Kazakhstan.

The Defendant was represented by Mr. Hamza Mete Izmen, CEO/Director, METEOR MINING COMPANY KZ Ltd., Astana, Kazakhstan