



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

2 May 2023

CASE No: AIFC-C/CFI/2023/0003

Qosil Limited Private Company

Appellant

v

Kozhabay Abdilda Alibekuly

Respondent

JUDGMENT

Justice of the Court:

Justice Sir Stephen Richards

ORDER

The application for permission to appeal is refused.

JUDGMENT

1. By a judgment dated 19 December 2022 in Case No. AIFC-C/SCC/2022/0021 the AIFC Small Claims Court (“the SCC”) allowed a claim by Mr Abdilda Kozhabay (“the Claimant”) for damages against Qosil Limited (“the Defendant”) in connection with the termination of what he said was an employment contract between them. The claim was brought in reliance on the AIFC Employment Regulations, AIFC Regulations No.4 of 2017 (“the Employment Regulations”). As recorded in the judgment, the SCC had the benefit of written evidence and submissions from each party, which were elaborated at a remote hearing via Zoom at which the Claimant represented himself and Mr Batykov represented the Defendant. Two issues were identified for determination by the Court: (1) did the Claimant have an employment contract to which the Employment Regulations were applicable? and (2) if so, what if any damages was the Claimant entitled to? The Court answered the first question in the affirmative and held in relation to the second question that the Claimant was entitled to payment of 648,538 tenge.
2. By an application form issued on 23 February 2023 the Defendant applied to the AIFC Court of First Instance for permission to appeal that decision. The Claimant filed a bare objection to the application, choosing not to exercise to any greater extent his right under Rule 29.13 of the AIFC Court Rules to make written submissions in opposition to an application for permission to appeal.
3. In its application form the Defendant has requested an oral hearing. I am satisfied, however, that the application can be fairly determined on paper without an oral hearing (see Rule 29.17 of the AIFC Court Rules).
4. Rule 29.6 of the AIFC Court Rules provides that permission to appeal may be given where the appeal Court considers that (1) the appeal would have a real prospect of success or (2) there is some other compelling reason why the appeal should be heard. By Rule 29.7 success on an appeal depends on establishing that the decision of the lower Court was (1) wrong or (2) unjust because of a serious procedural or other irregularity in the proceedings in the lower Court.
5. The first set of submissions made by the Defendant in support of the application comes under the heading “The factual circumstances of the case asserted by the court in the Decision are untrue”. The core of the challenge is to a series of findings about the Defendant’s offer of a job to the Claimant. The Claimant’s statements accepted by the Court are variously described as untrue, unsupported by evidence, unsubstantiated and not valid. It is submitted that the Court was wrong to accept them, that the Court committed a serious procedural violation in failing to demand proof of the Claimant’s allegations, that the Court was not in a position to make an objective and fair decision, and further that there was a failure to follow the procedures set out in Part 18 of the AIFC Court Rules concerning matters of evidence. In my judgment, however, none of those points is arguable. Hearings in the

SCC are intended to be informal and the strict rules of evidence do not apply (see, for example, Rules 28.29-28.35 of the AIFC Court Rules; see also Rule 28.7(6), by which the only provisions of Part 18 that are specifically applied to small claims are the powers in Rules 18.1 and 18.6 to control evidence). The Court has a wide discretion in the matter. I am satisfied that there was nothing wrong with the Court's approach to the evidence in this case and that the factual findings made by the Court, including in particular its acceptance of the Claimant's statements, were properly open to it.

6. The second set of submissions in support of the application for permission to appeal comes under the heading "The court's position on the validity of the Employment Contract". This concerns the SCC's finding of the existence of an employment contract on either or both of two bases: (i) ostensible or apparent authority, on principles derived from *Freeman & Lockyer (A Firm) v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 786 and subsequent case-law, principles that the Court considered were to be applied in the context of the Employment Regulations; and (ii) through conduct the Defendant assumed the terms of the contract and/or was estopped from denying that it was bound by the terms of the contract. The Court also advanced purposive reasons for interpreting the Employment Regulations in the way it did. The Defendant's challenge under this heading is based primarily on its criticisms, already considered, of the factual findings made by the Court; and it is submitted that the conditions in *Freeman & Lockyer* were not met. I am satisfied, however, that on the factual findings properly made by the Court the conditions for a finding of ostensible or apparent authority were met and that the Court was correct to apply those principles in the context of the Employment Regulations: the contrary argument has no real prospect of success. Since that provides a sufficient basis for the Court's finding of an employment contract, it is not necessary to consider the Defendant's further criticisms of the alternative basis considered by the Court or of the purposive reasons advanced (though I do not accept the validity of any of those criticisms).
7. The third set of submissions in support of the application for permission to appeal comes under the heading "Calculation of the amount to be recovered". The Defendant takes issue with the SCC's finding that, in addition to the wages due under the contract for the period during which the Claimant worked for the Defendant, he was entitled to 7 days' paid notice, and therefore an additional sum of 86,538 tenge, pursuant to Regulation 60(2) of the Employment Regulations. Regulation 60(2) provides that if the Employee has been continuously employed by the Employer for 1 month or more, "the notice required to be given by the Employer ... to terminate the Employee's employment must not be less than (a) 7 days, if the period of continuous employment is less than 3 months". The Defendant argues that the provision does not determine that the period of notice is *paid*. There is no substance to that point: it is obvious that the period of notice laid down is a period of continued employment for which the Employee is entitled to be paid. The Defendant also refers to Regulation 65 of the Employment Regulations, but that simply provides that an Employee has no rights to compensation or payments from the Employer on the termination of employment apart from rights under the Regulations, rules made under the Regulations and the contract of employment itself. It does not alter the effect of Regulation 60(2), upon which the SCC correctly relied for the finding that the Claimant was entitled to the additional sum of 86,538 tenge.

8. Accordingly, I am satisfied that an appeal from the decision of the SCC would have no real prospect of success. Nor is there any other compelling reason why an appeal should be heard. It follows that the application for permission to appeal must be refused.

By the Court,

Representation:

The Appellant was represented by Mr. Rauan Batykov, lawyer, ILFA & A International Law Firm.

The Respondent was represented by himself.