



IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

19 March 2025

CASE No: AIFC-C/SCC/2024/0032

IZMAGAMBETOV TOKHTAR IZIMOVICH

Claimant

v

(1) PRIVATE COMPANY "PROPORTUNITY MANAGEMENT COMPANY LTD."

(2) SPECIAL-PURPOSE COMPANY "PROJECT SI SPC LTD."

Defendants

JUDGMENT

Justice of the Court:

Justice Patricia Edwards

ORDER

UPON the commencement of a Claim on 24 September 2024;

AND UPON the filing of a Defence on 22 November 2024;

AND UPON the Court's First Order dated 10 January 2025;

IT IS ORDERED that:

1. The Second Defendant must, by 16:00 Astana time on 26 March 2025, pay to the Claimant 12,475,000 KZT.
2. No order as to costs.

JUDGMENT

- 1 On 23 May 2023, the Claimant and the Second Defendant entered into a contract for the investment of 5,000,000 tenge in the project "Clubhouse" ("the Agreement"). On 22 May 2023, this sum was transferred to the First Defendant, which is the parent company of the Second Defendant.
- 2 On 22 May 2023, the Claimant and the First Defendant entered into a contract relating to an online real estate investment platform operated by the First Defendant. However no claim appears to arise under this agreement.
- 3 On 19 November 2024, the Claimant amended the claim to add the Second Defendant.
- 4 The Agreement included the following provisions:

1.1 The Parties agree to ensure realization of the investment project "Club House" (hereinafter referred to as the "Investment Project") by joint efforts in accordance with the rules of the International Finance Center "Astana".

1.2 SPC undertakes to invest the money invested by the Investor in the real estate.

1.3 The Investor undertakes to make Investments in the amount according to p.2.1 of this Agreement into the Investment Project within 2 (two) working days after signing of this Agreement.

1.4 Terms of realization of the Investment project: 12 months from the moment of signing of the present Agreement.

...

2.1 The Investor provides financing of the Investment Project ... amounting to 5 000 000 (five million tenge). ...

...

2.3 SPC shall repay the amount of the Investment in the amount specified in clause 2.1 within the period from the twelfth to fourteenth month of the Investment Project realization period.

2.4 Dividends shall be paid to the Investor after the project completion within 3 (three) banking days in the amount of 30 (thirty)% per annum after taxes and other obligatory payments to the budget obligatory payments to the budget. [sic]

...

3.1 When executing this Agreement, the Investor shall have the right to:

3.1.1 request and receive information from SPC on the progress of the Investment Project realization project.

...

4.2 When executing the Agreement, SPC shall:

4.2.1 Upon expiration of the term set forth in clause 2.3 of this Agreement return the amount of the Investment in accordance with the procedure and terms stipulated by this Agreement

4.2.2 Dividends shall be paid to the Investor after each sale transaction in the amount proportional to his/her percentage of the Investments specified in clause 2.1, if such transactions are carried out. SPC does not guarantee the Investor the payment of dividends under this Agreement.

...

4.2.4 Return the investment amount and dividends within the terms and in the amounts stipulated by this Agreement.

4.3 The return of the received amount of the Investment shall be made by SPC in the following order:

4.3.1 not later than 2 (two) months after the expiration of the Investment period specified in clause 1.4 of this Agreement, SPC shall transfer the amount of the Investment to the Investor's account specified in this Agreement.

...

8.3 In case of impossibility to resolve disputes through negotiations between the Parties, the Parties shall apply to the Astana International Financial Centre Court for dispute resolution, in accordance with paragraph 2, item 7 of the Astana International Financial Centre Rules "On Agreements"."

5 In correspondence to the Court on 22 October 2024, the Claimant said that in response to requests for proof and photographs of the construction of the clubhouse in Astana, the head of the First Defendant assured him that construction had started and promised to send photos, but never in fact did so.

6 According to the Claimant, in a WhatsApp message sent on 29 December 2023, Arman Bayev of the Defendants said that the Claimant would receive the dividends before the New Year.

7 A letter from Arman Bayev to various investors dated 13 Feb 2024 said:
"Projects of CIA-REPE type (Club house) are declared completed. Payments will start from May, 20th according to contracts."

8 The Claimant also says that on 16 August 2024 Arman Bayev said the payments would be made in order and, on 19 August 2024, Karymsakova Aliya (manager of the Defendants) told the Claimant that the payments should be made by the end of August. However, no payments have been made to the Claimant.

Jurisdiction

9 Pursuant to clause 8.3 of the Agreement, the parties have agreed that disputes should be resolved by the AIFC Court.

10 The Claimant claims 6,850,000 KZT. This is equivalent to approximately US\$13,067. As this is less than US\$150,000, it is appropriate that the claim be determined in the Small Claims Court pursuant to Rule 28.1(1) of the AIFC Court Rules.

Return of investment

- 11 On 22 November 2024, the Defendants wrote to the court including the following:
“... the company does not dispute or deny the fact of receiving investments. However, the amount of dividends indicated in the application in the amount of 1,500,000 tenge cannot be recovered, since the implementation of the project did not depend on the company. The investor, when investing money, had to understand the risks associated with the investment project. Moreover, the statement does not contain calculations for dividends, penalties and moral damages. There is also no information on the justification of these amounts.”
- 12 The investment amount was to be repaid within two months of the expiration of the investment period, which expired on 23 May 2024. Accordingly, repayment was due by 23 July 2024. In breach of contract the Second Defendant has failed to repay this sum. This does not appear to be disputed. The Claimant is therefore entitled to the return of its 5,000,000 tenge investment.

Dividends

- 13 The Claimant claims *“Return of dividends in the amount of 30 (thirty) % per annum for the term of the Project realization. This is 1500000 (one million five hundred thousand) tenge”*.
- 14 Under clause 2.4 of the Agreement, *“Dividends shall be paid to the Investor after the project completion within 3 (three) banking days in the amount of 30 (thirty)% per annum after taxes and other obligatory payments to the budget obligatory payments to the budget.”* The return on investment is dealt with in other provisions of the Agreement too, including clause 4.2.2 which notes that *“SPC does not guarantee the Investor the payment of dividends”*.
- 15 The Defendants’ letter to the Court dated 21 November 2024 observes that there are no calculations or justification for the amount of dividends claimed. However they have given no further explanation or provided any evidence in relation to the investments or returns made, despite this being within their control.
- 16 On 10 January 2025, I made an Order providing for the parties to file further evidence and submissions. The Second Defendant was specifically ordered to disclose documents showing how the Claimant’s investment was invested, when the Club House was completed, the Claimant’s proportion of the overall investment, and documents in relation to each sale transaction contemplated by clause 4.2.2 of the Agreement, including all documents evidencing any proceeds of sale.
- 17 In paragraph 9 of my Reasons, I noted that any failure to disclose relevant documents or provide relevant evidence may lead to adverse inferences being drawn against the Defendants. In paragraph 10, I asked the parties to make further submissions, including addressing the amount of dividends to which the Claimant is entitled, if any.
- 18 No further evidence or submissions were received from any of the parties.
- 19 Given that all of the relevant documents and knowledge relating to the investments lie within the control of the Defendants, and in light of their failure to provide further submissions or any evidence, in my judgment it is appropriate to infer that the Claimant’s funds were successfully invested and returns made. This inference is supported by the correspondence referred to by the Claimant, in which the Defendants talked about the completion of the project and indicated that repayment of the principal sum and dividends would be made. Although I have not seen copies of all of the

messages in question, the Claim Form has a signed statement of truth and these matters were not denied by the Defendants.

- 20 The clearest guidance in the Agreement as to the amount of the return that was contemplated by the parties, and I infer was in fact made, is 30% per annum.
- 21 The investment period was for one year. A 30% return on 5,000,000 tenge would amount to 1,500,000 tenge. Accordingly the Claimant's claim for this amount of dividends is allowed.

Penalty

- 22 Clause 5 of the Agreement provided penalties for late payment. The Claimant claims: *"For untimely return of the principal amount of Investments to pay me a penalty at the rate of 0.5% (zero point five percent) of the amount of investments for each day of delay. In general this amounts to 250 000 (two hundred fifty thousand) tenge"*.
- 23 Clause 5.5 provides *"SPC shall pay to the Investor a penalty at the rate of 0.5% (zero point five percent) of the Investment amount for each day of delay for untimely return of the principal amount of the Investment"*.
- 24 The return of the investment has been delayed and the Claimant is entitled to this penalty. 0.5% of 5,000,000 tenge amounts to 25,000 tenge per day. Repayment of the investment sum was due by 23 July 2024. As of the date of this judgment, repayment is 239 days late, amounting to a penalty due of 5,975,000 tenge.

Moral damage

- 25 Finally, the Claimant claims *"Compensation for moral damage in the amount of 100000 (one hundred thousand) tenge"*. No basis or explanation has been provided for this claim, despite my inviting further submissions on the point in paragraph 10 of the Reasons in my First Order. Accordingly, this element of the claim does not succeed.

Conclusion

- 26 The claim is allowed against the Second Defendant in respect of the principal sum claimed, dividends and penalty, but not in respect of moral damages.
- 27 No order as to costs.

By the AIFC Small Claims Court,

Patricia Edwards,
Justice, AIFC Small Claims Court



Representation:

The Claimant was represented by himself.

The Defendants were represented by the common director of PROPORTUNITY MANAGEMENT COMPANY LIMITED and PROJECT SI SPC LTD, Mr. Arman Bayev.