



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

2 July 2025

CASE No: AIFC-C/CFI/2024/0035

Freschette Limited

Claimant

v

(1) ENEGIX Limited Liability Partnership
(2) Prime Capital RE Alakol Limited Liability Partnership
(3) Prime Capital Real Estate Limited Liability Partnership
(4) Qaz-Ak-Kus Limited Liability Partnership

Defendants

JUDGMENT NO. 3

Justice of the Court:

Justice Sir Rupert Jackson

This judgment is in seven parts, namely:

- Part 1. Introduction
- Part 2. The facts
- Part 3. The present proceedings
- Part 4. The issues of principle
- Part 5. Review of the evidence and decisions
- Part 6. Costs
- Part 7. Conclusion

Part 1. INTRODUCTION

- 1.1 This is a claim for the recovery of a debt arising from previous arbitration proceedings, together with orders for foreclosure in respect of properties pledged in support of that debt. The claimant also seeks an order that any costs awarded by the Court be recovered from the proceeds of selling the pledged properties. This litigation gives rise to some important issues of principle. It has been hard fought at every stage. In February 2025 there was a challenge to the jurisdiction of this Court. On two occasions there have been attempts to derail these proceedings by the commencement of parallel litigation in the Specialised Interdistrict Economic Court of Almaty. Both attempts failed.
- 1.2 Freschette Limited (“Freschette”), a company established under the laws of Antigua and Barbuda, is the claimant. Enegix Limited Liability Partnership (“Enegix”), a company registered under the laws of the Republic of Kazakhstan and the principal debtor in this case, is the first defendant.
- 1.3 Prime Capital RE Alakol LLP (“Prime Capital RE”), Prime Capital Real Estate LLP (“Prime Capital Real Estate”) and Qaz-Ak-Kus LLP (“Qaz”) are all legal entities registered under the laws of the Republic of Kazakhstan. They are the second, third and fourth defendants. I shall refer to them collectively as “the pledgors”.
- 1.4 In this judgment I shall use the following abbreviations:
- (i) “AIFC Court Regulations” means the AIFC Court Regulations, Resolution of the AIFC Management Council dated 5 December 2017.
 - (ii) “Almaty Court” means the Specialised Interdistrict Economic Court of Almaty.
 - (iii) “Civil Code” means the Civil Code of the Republic of Kazakhstan, General Part dated 27 December 1994 and special Part dated 1 June 1999, as amended.
 - (iv) “Civil Procedure Code” means the Civil Procedure Law of the Republic of Kazakhstan (31 October 2015 No. 377-V, amended in 2018).
 - (v) “Colliers” means Colliers Kazakhstan LLP.
 - (vi) “Constitutional Statute” means the Constitutional Statute of the Republic of Kazakhstan on the Astana International Financial Centre, Constitutional Statute No. 438-V ZRK of 7 December 2015 with amendments of 30 December 2022.
 - (vii) “Enforcement Law” means the Law of the Republic of Kazakhstan “On Enforcement Proceedings and the Status of Enforcement Agents”, dated 2 April, 2010 № 261-IV.
 - (viii) “Ministerial Order” means the Order of the Minister of Finance of the Republic of Kazakhstan “On approval of requirements for the form and content of the assessment report “ dated May 3, 2018 No. 501.
 - (ix) “Mortgage Law” means the Law of the Republic of Kazakhstan No. 2723 “On Mortgage of Immovable Property” dated 23 December 1995, as amended.
 - (x) “Regulatory Resolution” means Regulatory resolution of the Supreme Court of the Republic of

Kazakhstan “On judicial practice in considering civil cases on disputes arising from bank loan agreements” dated November 25, 2016 No. 7.

(xi) “Rules” means the Rules of the AIFC Court.

1.5 The Civil Code contains the following provisions which are relevant to the enforcement of pledges:

“Article 299:

1. Pledge shall be recognized as a method of securing the execution of an obligation, by which a creditor (pledge holder) has the right, in the case of failure by the debtor to execute the obligation secured with the pledge, to receive satisfaction from the value of the pledged property, in a priority procedure before the other creditors of the person to whom that property belongs (pledger), with the exceptions established by this Code.

...

2. The pledge of enterprises, buildings, installations, apartments, rights to land plots and any other immovable property (mortgage) shall be regulated by the Law of the Republic of Kazakhstan Concerning Mortgage of Immovables. The general rules concerning pledge, which are contained in this Code shall apply to mortgage in the cases where the Law of the Republic of Kazakhstan Concerning Mortgage does not stipulate any other rules.

Article 302:

1. Unless it is otherwise stipulated by the agreement or legislative acts, the pledge shall secure a claim in the volume which it has at the moment of the actual satisfaction, including remuneration (interest), and compensation of losses incurred by delay in the execution, damages (fine, penalty), the necessary expenses associated with the maintenance of the pledged property, and also the compensation for the costs associated with the collection.

Article 317:

1. Claims on pledged property for the satisfaction of claims of the pledge holder (creditor) may be imposed in the case of a failure to execute or improper execution by the debtor of the obligation secured with the pledge for which he is liable.

Article 318:

1. Satisfaction of a claim of a pledger out of the value of pledged property shall be carried out in accordance with the judicial procedure, unless it is otherwise stipulated in this Code or other legislative acts or the agreement.

2. In cases stipulated by the Pledge Agreement, as well as the present Code and other legislative acts, the Pledgee shall be entitled to independently dispose of the property pledged as collateral out of court by holding auctions (auctions). The same right shall be vested in the pledgee bank for the sale of the pledged object, securing the monetary loan. Extrajudicial sale of pledged immovable property is not allowed in cases stipulated by the legislative act of the Republic of Kazakhstan on mortgage of immovable property.

Article 319:

1. The sale of pledged property upon which in accordance with Article 20 of this Code a claim is imposed, shall be carried out by way of selling through public auctions in accordance with the procedure which is established by the procedural legislation, unless legislative acts stipulate any other procedure.

1-1. In the pledge of money and rights (requirements) on the money liabilities, the selling of that pledged property shall be conducted by way of transferring of money to the pledge holder, which is the subject of the pledge or which is owed to the pledged rights (requirements) for the money liabilities, and when the transfer of money at the moment of levying of execution for the subject of pledge is impossible - by way of transferring to the pledge holder of the right of the pledger for the subject of pledge.

If a sum of money, which is the subject of the pledge or which is owed to the pledged rights (requirements) for the money liabilities, exceeds the size of the requirement of the pledge holder



secured by pledge, the margin shall be returned to the pledger. If a sum of money is insufficient to cover the requirements of the pledger, he shall have the right, in the absence of another instruction in the legislative acts or in the agreement, to take the deficit from the other property of the debtor, without using the advantage, based on the pledge.

...

3. Upon the request of the pledger, the court shall have the right to postpone the same in the public auction in the decision on foreclosure on the pledged property, for a period of up to one year for the pledged property of individuals and for a period of up to one month for the pledged property of legal entities. The postponement shall not affect the rights and obligations of the parties to the obligation secured by the pledge of this property, and shall not release the debtor from reimbursement of the losses of the creditor that have increased during the postponement and the penalty amounts.”

1.6 Article 21 of the Mortgage Law provides:

“1. Realization of a mortgage in judicial procedure shall be carried out in accordance with a court decision at the suit of a pledge holder. By this a property sale, being a subject of a mortgage, shall be carried out by public sale according to the procedure, established by the procedural legislation.

2. Foreclosure of property pledged under a mortgage contract may be refused if the breach of principal obligation by the debtor is insignificant and the pledge holder's claim is thereby manifestly disproportionate to the value of the pledged property.

3. Accepting decision in execution upon property to the immovable property, pledged by a mortgage contract, the court shall determine and specify in the decision:

1) all amounts payable to the pledge holder from the value of the mortgaged property, except of the expenses of amount on the protection and realization of the immovable property, which shall be determined at the end of its realization. For the amounts, calculated in a percentage rating, shall be specified the amount on which remuneration is charged, the amount of remuneration and period for which they subject to charge;

2) being a subject of a mortgage of immovable property, from the value of which the requirements of a pledge holder are satisfied;

3) primary sale price of a mortgaged property upon its realization...”

1.7 The Ministerial Order sets out the requirements for the form and content of that evaluation reports.

Clause 12 of the Ministerial Order provides:

“The appraiser shall indicate information in the report if:

the customer has denied access to the object of assessment, as well as to the full documentation required to carry out the assessment;

the customer refused to provide additional information necessary to carry out the assessment;

third parties have refused, in written or oral form, to provide information necessary for conducting the assessment, with the exception of information constituting state secrets, commercial secrets and other secrets protected by law that significantly affect the reliability of the assessment results.”

1.8 Having outlined the nature of this litigation and set out the most relevant legislative provisions, I must now turn to the facts.

PART 2. THE FACTS

2.1 In 2019 Freschette engaged Enegix to provide the hosting and operation of cloud computer services. A dispute arose concerning the services which Enegix had provided. That dispute went to arbitration. The parties resolved their dispute in the manner set out in a settlement deed dated 29 October 2021.

2.2 Under clause 1 of the settlement deed, Enegix agreed to pay Freschette USD 4,016,113 in 24 monthly instalments, as set out in clause 1.5.1. In clause 1.6 of the deed Freschette agreed that its payment of that sum would be secured by property pledge agreements in respect of thirteen properties, as therein

specified.

2.3 Clause 3 of the settlement deed provided:

“3 Governing law and jurisdiction

This Settlement Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

The parties agree that the Astana International Financial Centre Court in Nur-Sultan, Kazakhstan, has jurisdiction to resolve any dispute arising out of or in connection with this Settlement Deed.”

2.4 There were various amendments to the settlement deed, which culminated in a “Deed of amendment and restatement relating to settlement deed dated 29 October 2021”, dated 20 December 2021. I shall refer to this as the “deed of amendment and restatement”. The deed of amendment and restatement was approved by the sole arbitrator as terminating the arbitration proceedings.

2.5 Under clause 1.1 of the deed of amendment and restatement, Enegix agreed to pay Freschette USD 8 million (“the settlement amount”) in 24 monthly instalments, as set out in clause 1.2.1. Clause 1.3 of the deed of amendment and restatement provided:

“If Enegix fails to pay any outstanding part of the Settlement Amount to Freschette within 5 business days after Enegix breaches by more than 60 days any payment obligation set forth in clause 1.2.1 of this Settlement Deed, the entire outstanding part of the Settlement Amount shall be transferred as one payment no later than the next business day.”

2.6 Clause 1.4 of the deed of amendment and restatement provided that Enegix’s obligation to pay the settlement amount would be secured by property pledges agreements as there set out.

2.7 Clause 3 of the deed of amendment and restatement provided:

“3 Governing law and jurisdiction

3.1. This Settlement Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

3.2 The Parties agree that the Astana International Financial Centre Court in Nur-Sultan, Kazakhstan, has jurisdiction to resolve any dispute arising out of or in connection with this Settlement Deed.”

2.8 On 20 December 2021 the three pledgors entered into pledge agreements to secure Enegix’s liability to Freschette as follows:

1) Prime Capital RE pledged the following immovable property:

- (i) Land plot with cadastral number 03-255-056-1469 (PKA0202000222577821): this plot covers a total area of 0.7280 hectares and pertains to lands of specially protected natural areas, earmarked for health-improving, recreational, historical, and cultural purposes. The designated use for this plot is the construction and maintenance of a cottage, and it is divisible. The property is located at: building 375A, a.q. 056, Akshi village, Yrgaitinskiy rural district, Alakolskiy district, Almaty region, Republic of Kazakhstan;
- (ii) Land Plot with Cadastral Number 03-255-056-1367 (PKA0202100417320083): this plot, covering a total area of 1.000 hectares, is similarly classified as land within specially protected natural areas, with its intended use being health-improving, recreational, historical, and cultural activities. The plot is designated for the construction and maintenance of a rest zone and is divisible. It is located at: building 378, a.q. 056, Akshi village, Yrgaitinskiy rural district, Alakolskiy district, Almaty region, Republic of Kazakhstan;
- (iii) Land Plot with Cadastral Number 03-255-056-307 (PKA0201800077565223): with a total area of 1.000 hectares, this plot is also categorized as land within specially protected natural areas, intended for health-improving, recreational, historical, and cultural purposes. The plot is designated for the construction and maintenance of a rest zone and is divisible. It is located at building 309, a.q. 056, Akshi village, Yrgaitinskiy rural district, Alakolskiy district, Almaty region,

Republic of Kazakhstan;

- (iv) Land Plot with Cadastral Number 03:255:056:1368 (PKA2201700121999238) this plot, with a total area of 1.000 hectares, falls within the category of specially protected natural areas, intended for health-improving, recreational, historical, and cultural uses. It is designated for the construction and maintenance of a rest zone and is divisible. The plot is situated at plot number 373A, a.q. 056, Akshi village, Yrgaitinskiy rural district, Alakolskiy district, Almaty region, Republic of Kazakhstan.

2) Prime Capital Real Estate pledged the following immovable property:

- (i) Land Plot with cadastral number 03-047-141-706 (PKA 0201800071104929): this plot covers an area of 14.6000 hectares, is classified as agricultural land and is intended for commercial agricultural activities. The plot is located at: building 706, a. q. 127, Koktogan village, Eltai rural district, Karasayskiy district, Almaty region, Republic of Kazakhstan;
- (ii) Land plot with Cadastral Number 03-047-141-705 (PKA2201600083240509): this plot covers an area of 6.8900 hectares, this land plot is also categorized as agricultural land with a designated use for commercial agriculture. This plot is divisible and is located at: plot 705, a.q. 127, Koktogan village, Eltai rural district, Karasayskiy district, Almaty region, Republic of Kazakhstan.

3) Qaz pledged the following immovable property:

- (iii) Land Plot with Cadastral Number 03:046:032:064 (PKA0201700069019167): this plot covers an area of 31 hectares and is classified under the category of agricultural land. It is designated for commercial agricultural purposes. The plot is located at: building 64, Chapayev village, Chapayev rural district, Iliyskiy district, Almaty region, Republic of Kazakhstan;
- (iv) Land Plot with Cadastral Number 03-046-032-063 (PKA2201800147022079): This plot covers an area of 114.8396 hectares and is similarly classified as agricultural land, designated for commercial agricultural use. The property is divisible and situated at: plot 63, Chapayev village, Chapayev rural district, Iliyskiy district, Almaty region, Republic of Kazakhstan.

2.9 Clause 1.1 of each pledge agreement defined "event of default" as:

- "a) failure of the Debtor to pay an amount of USD 8,000,000 (eight million Dollars) (the **Settlement Amount**) to the Pledgeholder by 1 January 2024; and/or
- b) failure of the Debtor to pay the Settlement Amount or any outstanding part of it to the Pledgeholder within 5 business days after the Debtor breaches any payment obligation set forth in the payment schedule provided in Schedule II of this Agreement by more than 60 (sixty) days."

2.10 Clause 6.2 of each pledge agreement stated:

"If an Event of Default has occurred under the Deed, the Pledgeholder may levy execution upon the whole or any part of the Collateral in accordance with the procedures established by the laws of the Republic of Kazakhstan through either:
a compulsory non-judicial procedure through tender sales (auction);
at the sole option of the Pledgeholder, a judicial procedure."

2.11 Clause 14 of each pledge agreement provided:

"14. Governing law and jurisdiction

- 14.1 This Agreement shall be governed by and construed in accordance with the substantive laws of the Republic of Kazakhstan.
- 14.2 The Parties agree that the Astana International Financial Centre Court shall have jurisdiction to resolve any disputes arising from or in connection with this Agreement."

2.12 Enegix subsequently defaulted on its payment obligations under the deed of amendment and restatement. In those circumstances Freschette commenced the present proceedings.

PART 3. THE PRESENT PROCEEDINGS

- 3.1 I shall recount the history of these proceedings in some detail, because this narrative is relevant to the assessment of costs, which will be undertaken in Part 6 below.
- 3.2 By a claim form issued in the AIFC Court dated 23 September 2024 Freschette claimed against Enegix the balance of the sums due under the deed of amendment and restatement. Freschette claimed against the three pledgors foreclosure of the various pledged properties.
- 3.3 On 2 December 2024 Enegix applied to the AIFC Court to declare that the Court had no jurisdiction to try these proceedings and to set aside the claim form. The basis of this application was the contention that clause 3 of the settlement deed, clause 3 of the deed of amendment and restatement and clause 14.2 of the three pledge agreements were void because they conflicted with mandatory provisions of the Civil Procedure Code.
- 3.4 On 5 December 2024 Enegix commenced proceedings in the Almaty Court seeking to invalidate the dispute resolution clauses in the settlement deed, the deed of amendment and restatement and the pledge agreements. On 13 December 2024 Judge Baskanbayeva gave preliminary directions in the Almaty proceedings.
- 3.5 On 20 December 2024 Freschette served (i) its submissions on jurisdiction and (ii) its particulars of claim in these proceedings. In its submissions on jurisdiction Freschette argued that the AIFC Court had jurisdiction in this matter by reason of article 13.4.3 of the Constitutional Statute and the express agreement of the parties.
- 3.6 On 11 January 2025 Freschette applied to this Court to grant an anti-suit injunction restraining Enegix from pursuing its parallel proceedings in the Almaty court.
- 3.7 On 13 January 2025 Qaz applied to this Court to dismiss the present proceedings on the grounds that only the Almaty Court had jurisdiction to deal with the foreclosure proceedings.
- 3.8 On 15 January Enegix applied to this court to stay the present proceedings until the Almaty Court had determined the validity of the parties' agreement to refer disputes to the AIFC Court.
- 3.9 On 4 February 2025 there was a hearing in this court to determine the jurisdiction issues. Mr Iminov appeared for the claimant, assisted by Ms Idayatova. Mr Tukulov appeared for Enegix. Mr Tsay, counsel for Qaz, appeared at the hearing remotely.
- 3.10 The hearing on 4 February 2025 began with Mr Tukulov's application that I should stay the present proceedings until such time as the Almaty Court had determined the validity of the parties' agreements concerning dispute resolution. I rejected that application, because it was for this Court to determine its own jurisdiction: see Article 26(9) of the AIFC Court Regulations.
- 3.11 On 7 February 2025 the Court delivered its first judgment in these proceedings. The Court held that, under the Constitutional Statute and AIFC Court Regulations it had jurisdiction to deal with the current foreclosure proceedings. The Court's full reasoning is set out in its judgment dated 7 February 2025, which can be found on the Court's website. The Court also granted an anti-suit injunction to restrain the first defendant from pursuing its proceedings in the Almaty Court.
- 3.12 On 20 February 2025 the Court delivered its second judgment in this matter. Judgment No.2 included case management directions leading up to the final disposal of these proceedings. In particular, the Court directed that the parties should agree a valuer, to value the eight pledged properties. In default



of agreement, the Court would select and appoint an appropriate valuer. The Court fixed Tuesday 24 June as the date for trial.

- 3.13 The parties were unable to reach agreement on the selection of a valuer. By order dated 31 March 2025, the Court appointed Colliers Kazakhstan LLP to value the eight pledged properties. The third defendant duly granted Colliers access to its two pledged properties. The second and fourth defendants, in breach of the Court's order, refused to grant Colliers access to their pledged properties.
- 3.14 On 8 May 2025 Justice Sir Stephen Richards considered the first defendant's application for permission to appeal against the Court's judgment on jurisdiction dated 7 February 2025. The judge refused to grant permission to appeal.
- 3.15 Colliers, using all material available to them, duly prepared and delivered their valuation reports on the eight pledged properties. They delivered those reports to the AIFC Court Registry and the parties on 23 May 2025.
- 3.16 On 9 June 2025 the fourth defendant commenced proceedings against Colliers in the Almaty Court, seeking to challenge Colliers' report relating to the fourth defendant's two pledged properties. As soon as the claimant became aware of those proceedings, it applied to this Court for an anti-suit injunction.
- 3.17 Late in the evening of 23 June 2025 the fourth defendant applied for an order that the trial on 24 June be adjourned. That application was immediately referred to myself. At 22:57 on 23 June the Court made an order refusing the application.
- 3.18 This action came on for trial on 24 June 2025. Mr Farukh Iminov, Ms Ardak Idayatova and Mr Usen Tastanbekov represented the claimant. Mr Bakhyt Tukulov and Ms Mariya Petrenko represented the first defendant. Mr Ismail Srailov represented the second and third second defendants. The fourth defendant was neither present nor represented. I am grateful to all advocates for their assistance.
- 3.19 Before the main hearing got underway, the Court dealt with the application for an anti-suit injunction. The Court granted an order requiring the fourth defendant to withdraw its claim in the Almaty Court.
- 3.20 During the hearing on 24 June the Court heard oral evidence from the bailiff who had been refused access to the fourth defendant's properties. The Court received evidence in writing from the bailiff who had been refused access to the second defendant's properties. The two valuers from Colliers, who had been appointed by the Court, gave oral evidence.
- 3.21 The second and third defendants applied for permission to rely upon three valuation reports prepared by Sarzhan Invest Group LLP, which had been prepared on 27 May 2025 and sent to the AIFC Court Registry on 10 June 2025. The claimant strongly opposed that application. After hearing argument, I said that I would deal with that application in my judgment.
- 3.22 Having set out the course of the proceedings, I must next deal with the issues of principle which arise.

PART 4. THE ISSUES OF PRINCIPLE

- 4.1 The first issue of principle. The fourth defendant contends in its written "Objections" to Freschette's claim that the claimant cannot enforce the collateral security, because it has not yet attempted to enforce its claim against Enegix. Thus, the first issue of principle which arises is whether the claimant is obliged to recover as much as it can from the first defendant, Enegix, before it can enforce against the pledged properties. Since the fourth defendant did not attend court to argue its case, I invited counsel to comment on the fourth defendant's contention. I pointed out to counsel that Enegix is the primary



debtor; the liability of the three pledgors only arises if and when Enefix defaults on payment. It would be somewhat harsh if the claimant recovers the entirety of its entitlement from the secondary debtors and the primary debtor escapes unscathed.

- 4.2 Ms Idayatova on behalf of the claimant submitted that clause 6.2 of each pledge agreement (set out in Part 2 above) was a complete answer to this point. Under that clause, the claimant is entitled to enforce its rights immediately against the pledgors and the pledged properties. I accept that is what clause 6.2 provides. But clause 6.2 also states that the pledgeholder must proceed “in accordance with the procedures established by the laws of the Republic of Kazakhstan”. Thus the question arises whether Kazakhstan law requires the creditor to exhaust its remedies against the primary debtor before proceeding to enforce the pledges.
- 4.3 Mr Srailov on behalf of the second and third defendants submitted that in the first instance the claimant must pursue its remedies against Enefix as the primary debtor. Mr Srailov maintained that Enefix had substantial assets in Kazakhstan on which the claimant could enforce. There is no evidence before the Court concerning the extent of Enefix’s assets (if any) in Kazakhstan. Therefore I cannot make any finding one way or the other about this aspect of the case.
- 4.4 Mr Srailov drew the Court’s attention to the Regulatory Resolution. The Regulatory Resolution includes the following provisions:
“16. Fulfilment of an obligation under a bank loan agreement may be secured by a penalty, pledge, guarantee, surety and other methods provided for by law or the agreement (clause 1 of Article 292 of the Civil Code, Article 35 of the Law on Banks).
...
19. When considering disputes on debt collection and foreclosure on collateral (pledged) property, it is necessary to take into account that, in accordance with Article 299 of the Civil Code, the creditor (pledgee) has the right, in the event of the debtor’s failure to fulfil the obligations secured by the pledge, to receive satisfaction from the value of the pledged property preferentially before other creditors.
This right of the creditor (pledgee) does not deprive him of the opportunity to obtain satisfaction of his claims at the expense of other property of the debtor that is not in pledge. In this case, the creditor is deprived of the right of preferential satisfaction of his claims before other creditors”.
- 4.5 Ms Idayatova submitted that article 57 of the Enforcement Law is also relevant. Article 57 provides:
“1. A mortgaged property may be levied in case of insufficiency of other property of a debtor for the full satisfaction of all due to it claims, not secured by mortgage, with the compliance of established by the civil legislation of the Republic of Kazakhstan encumbrance’s rights.
...
2. On insufficiency of a debtor’s property, not in pledge for satisfaction of due claims of a recoverer, not having the right on a property of a debtor, collection on mortgaged property, except a property that is collateral for the secured bonds, and real estate held as collateral for residential mortgage loan obligation, may be levied for the benefit of non- mortgagees claimants whose claims take precedence over the requirement of the mortgagee, on the basis of a court decision...”
- 4.6 The effect of these provisions and their interaction with the provisions of the Civil Code set out in Part 1 above was the subject of some debate between counsel and the Court. Having considered counsel’s submissions, I conclude that, when read together, the effect of the various legislative provisions is:
- (i) The creditor is entitled to enforce its pledges against the pledgors and the pledged property, at the same time as claiming the sum owed from the primary debtor.
 - (ii) However, that is hardly a fair way to proceed, if the creditor focuses primarily on the collateral and makes little effort to recover against the primary debtor. One way for the court to encourage the creditor to garner what it can from the primary debtor would be to give judgment for the amount of the debt against the primary debtor, but to postpone the foreclosure. The



Court may, in the exercise of its discretion under Article 319.3 of the Civil Code, postpone foreclosure for up to one year in the case of property pledged by individuals and up to one month in the case of property pledged by legal entities.

- (iii) When recovering the sums due from the sale of pledged property, the creditor must give credit for any sums which it has in fact recovered from the primary debtor.

- 4.7 Mr Tukulov on behalf of Enegix told me that the normal practice in Kazakhstan is for the court to give a single judgment against both the primary debtor and the pledgors. The bailiffs would then set about recovering what they can from the primary debtor and organising auctions in respect of the pledged properties. Because it takes some time to arrange auction sales, in practice the bailiffs are often able to make some recoveries against the assets of the primary debtor before the pledged properties are sold. Mr Tastanbekov on behalf of the claimant said that he agreed with Mr Tukulov's account of the normal practice.
- 4.8 I am glad to hear that the normal practice facilitates recovery against primary debtors, thereby reducing the liability of the pledgors. I propose to create an extra incentive in this case, to encourage enforcement against the assets of Enegix, by exercising my powers under article 319.3 of the Civil Code to postpone foreclosure on the pledged properties by a period of one month from the date of judgment.
- 4.9 The second issue of principle. The second issue of principle arises from the fact that, on my arithmetic and using current exchange rates, the value of the pledged properties exceeds the debt secured by rather more than USD 4 million. When I raised this point during opening speeches, Ms Idayatova acknowledged that there appeared to be surplus of that order.
- 4.10 When a pledged property is sold, Article 319.1-1 of the Civil Code provides for the secured debt to be repaid and the balance of the sale proceeds to be returned to the pledgor. That is a perfectly satisfactory arrangement in the general run of cases. In the present case, however, we have three pledgors and eight pledged properties of high value. I am told that what will happen in practice is that the bailiffs will proceed with selling the various properties by auction and will stop when they have raised sufficient funds to discharge Enegix's liability to Freschette.
- 4.11 I am concerned that this state of affairs is likely to lead to injustice as between the three pledgors. There are various possible permutations. For example, the sale of the properties of two pledgors may discharge all liabilities to Freschette, with the result that the third pledgor escapes unscathed. I have raised the question whether there is anything the Court can do to avoid injustice as between the second, third and fourth defendants.
- 4.12 Counsel submitted that any pledgor who pays more than his fair share of the secured debt will have remedies against the other pledgors. They submitted that this Court has no jurisdiction to make any order in advance to protect the position of any pledgor who may lose out.
- 4.13 I have looked through the Civil Code and the various legal materials submitted by the parties. It seems to me that this Court has no power to make an order in advance which will remedy the unfairness between pledgors that is liable to arise as and when the pledged properties are progressively sold. I do not know in what order the eight properties will be sold or what sums will be realised in practice. The eight properties have separate cadastral numbers. Mr Tukulov thinks that they are likely to be sold in eight separate lots. Mr Tastanbekov suggested that some properties may be amalgamated and sold in larger groups.
- 4.14 I cannot, therefore, make an order which will ensure that the three pledgors share their financial burdens proportionately. Nevertheless, I do draw attention to the difficulties which arise when there are multiple properties and multiple pledgors.

- 4.15 It may in the future be considered appropriate to insert a provision into the Civil Code which would enable the court to direct that the financial burdens be shared equally between pledgors, and that the liabilities of the pledgors to one another be secured upon any pledged property which remains unsold after discharge of the debt to the creditor.
- 4.16 Having reviewed the issues of principle, I must now turn to the evidence in this case and reach a decision on the claims before the Court.

PART 5. REVIEW OF THE EVIDENCE AND DECISIONS

- 5.1 It has been established on the evidence and agreed between the parties that, after giving credit for payments made, the outstanding debt owed by Enegix to Freshette is USD 6,735,000. There must therefore be judgment against the first defendant for that sum.
- 5.2 The claimant is also entitled to recover its litigation costs, as assessed by the Court under Part 26 of the Rules. The pledges granted by the second, third and fourth defendants also secure the “costs associated with the collection”: see the last part of Article 302 of the Civil Code. Accordingly, the costs to be assessed in Part 6 below will form part of the debt secured by the pledged properties.
- 5.3 Article 21.3 of the Mortgage Law requires me to determine and specify in my judgment:
- (i) the amounts payable to the pledgeholder from the value of the pledged properties;
 - (ii) the primary sale prices for the pledged properties.
- 5.4 The amounts payable to the claimant, as pledgeholder, by the second, third and fourth defendants are USD 6,735,000 plus costs, minus whatever sums the bailiffs recover from the first defendant.
- 5.5 In order to determine the primary sale price of the pledged properties, I must consider the valuation evidence before the Court. It is to that I now turn.
- 5.6 Colliers, the valuation experts appointed by the Court, have assessed the values of the pledged properties as follows:
- The four land plots in Akshi village with cadastral numbers 03-255-056-1368, 03-255-056-1367, 03-255-056-307, 03-255-056-1469: KZT 1,256,407,000.
 - The land plot in Koktogan village with cadastral number 03-047-141-705: KZT 97,728,000.
 - The land plot in Koktogan village with cadastral number 03-047-141-706: KZT 1,426,656,000.
 - The two land plots in Chapayev village with cadastral numbers 03-046-032-063 and 03-046-032-064: KZT 2,996,746,000.
- 5.7 As explained in Part 3 above, during the trial the second and third defendants applied for permission to rely upon reports by Sarzhan Invest Group LLP. These reports arrive at significantly higher values for the four properties in Akshi village and the two properties in Koktogan village. The claimant submits that the Court should not receive these reports in evidence.
- 5.8 I have decided to refuse the second and third defendants’ application to admit these reports in evidence for three reasons:
- (i) The second and third defendants did not seek permission to adduce this expert evidence in accordance with rule 19.6 of the Rules. Instead, without prior warning, they sent these reports to the Court on 10 June 2025, which was two weeks before trial.
 - (ii) It appears that all three reports were prepared in two days by the same person. As Mr Tastanbekov observed, that is not sufficient time to inspect and value those six properties properly. Apparently, it takes about 8 hours to travel between Akshi village and Koktogan village.

(iii) The reports appear to have been prepared in a rush and without proper consideration. For example, page 7 of the report on plot No. 706 in Koktogan village states that the property is for recreation use. That is incorrect. The property is agricultural land intended for commercial agricultural activities.

5.9 I have read the valuation reports prepared by Colliers and find them to be well reasoned and thorough.

5.10 The second defendant criticises the report relating to the land in Akshi village because Colliers did not inspect the property. I reject that criticism for three reasons:

- (i) The second defendant refused to grant Colliers access to the four plots in Akshi village. In those circumstances, the second defendant can hardly complain about Colliers' failure to inspect.
- (ii) Clause 12 of the Ministerial Order (set out in Part 1 above) permits a valuer to prepare a report on property to which he was denied access, provided that he states this fact in his report. The Colliers report on the Akshi properties complies with this requirement in paragraph 1.4.
- (iii) I have heard oral evidence from Mr Abay Kurmangaliyev of Colliers, the valuer who appraised the four Akshi properties. I am satisfied that he gathered sufficient evidence from other sources and from walking around the outside of the Akshi properties to arrive at a reasonable and reliable valuation.

5.11 Mr Kurmangaliyev also valued the two properties in Koktogan village. He gained admission to these two properties and was able to inspect them thoroughly. I am satisfied that his valuation of the two Koktogan properties is reasonable and reliable.

5.12 Ms Gaisha Shulenbayeva of Colliers prepared the valuation report on the two properties in Chapayev Village. The fourth defendant refused to allow her access to those properties. The fourth defendant did not trouble to attend the trial or to send a representative. Had anyone represented the fourth defendant at trial, I anticipate that they would have criticised the report on the ground that Ms Shulenbayeva was unable to go inside the property. I would reject any such criticism on the same grounds as I have rejected the second defendant's criticisms. Having read Ms Shulenbayeva's report and heard her short oral evidence-in-chief (no-one sought to cross-examine her), I am satisfied that her valuation report concerning the two Chapayev properties is reasonable and reliable.

5.13 I have carefully considered all the written and oral evidence relating to the eight pledged properties. I accept Colliers' valuations and propose to adopt those figures as the primary sale prices for the purposes of Article 21.3 (3) of the Mortgage Law.

5.14 Pursuant to Article 20-1 of the Mortgage Law, the pledged properties cannot be sold for less than 75% of the appraised values, which I am adopting in this judgment as the primary sale prices. However, there is nothing to prevent the properties from being sold for more than the primary sale prices. Indeed, any sales achieved at higher figures would be advantageous for both the claimant and the defendants.

5.15 The final matter that I must address is the quantum of costs which the claimant is entitled to recover from the defendants, secured upon the pledged properties.

PART 6. COSTS

6.1 The claimant claims the following sums in respect of costs:

- (i) USD 69,462.92 - legal representation costs incurred by the claimant, which should be borne jointly and severally by all defendants as the unsuccessful parties under Rule 26(5) of the Rules;
- (ii) EUR 30,114 - fees for valuation services rendered by Colliers Kazakhstan in relation to the pledged properties also recoverable from all defendants as unsuccessful parties;
- (iii) USD 22,793.11 - legal costs incurred by the claimant in connection with the anti-suit injunction proceedings and the parallel proceedings initiated in the courts of Kazakhstan;

- (iv) USD 9,175.75 - legal costs recoverable from the second, third, and fourth defendants arising from their failure to cooperate with the valuation process, as well as from their objections to the valuation results;
- (v) USD 2,414.60 - costs recoverable from the second defendant, arising from the necessity for the claimant's legal representatives to travel to Akshi village and conduct a site visit;
- (vi) USD 575 - costs recoverable from the third defendant, arising from the necessity for the claimant's legal representatives to travel to Koktogan village and conduct a site visit;
- (vii) USD 3,037.00 - costs recoverable from the fourth defendant, including those related to the site visit and legal costs arising from the anti-suit Injunction proceedings and parallel litigation initiated by the fourth defendant in the Almaty Court.

- 6.2 The claimant supports this application with seven pages of detailed argument. The first defendant has lodged a forthright response, stating that the total sum claimed is excessive and disproportionate. The first defendant makes numerous criticisms of the individual heads of costs claimed. In particular, Mr Tukulov points out that the amount of Enegix's debt to Freschette was agreed on 6 June. He submits that thereafter there was no dispute between the claimant and the first defendant requiring judicial determination. He also says that this Court cannot award costs incurred in proceedings before the Almaty Court.
- 6.3 I directed that costs issues should be debated after the Court had heard all the evidence and argument relating to the substantive issues. It must be said that when we reached that stage of the hearing (late afternoon), the advocates on both sides perked up and argued their costs points with vigour. Indeed, I had some difficulty in drawing this particular debate to a close.
- 6.4 Admittedly the costs award will be secured upon the pledged property. Nevertheless, the costs claimed only represent about 2% of the sum in issue, as Mr Iminov pointed out in his submissions. I propose to adopt a broad brush approach to the assessment of costs.
- 6.5 A costs award partly in USD and partly in euros adds unnecessarily to the bailiffs' tasks. Adopting current exchange rates, I shall treat the disbursements claim in relation to Colliers' fees as being for USD 35,000.
- 6.6 I do not accept that a series of specific sums of costs should be awarded against individual defendants. The liability of the second, third and fourth defendants only arises because Enegix as primary debtor has defaulted in making payments that it had contracted to pay. That gave rise to the need to instruct valuers and to make site visits. Some journeys to sites took longer than others, but that can hardly be held against individual defendants. Even where access to sites was refused, Colliers still needed to visit the area and see the property from the outside. It is true that the fourth defendant drove up the costs of these proceedings by starting parallel litigation in the Almaty Court, but so did the first defendant, Enegix. The costs which Enegix generated by its jurisdiction challenge form part of the "costs associated with the collection" within the meaning of Article 302.1 of the Civil Code. The jurisdiction challenge raised difficult issues, and it was not inevitable that the challenge would fail.
- 6.7 Nor do I accept that there was no need for Enegix to be represented at trial, once the amount of the debt had been agreed on 6 June. There were difficult points which needed to be resolved. There were issues (raised by the fourth defendant in writing) as to whether the claimant should first enforce against Enegix, before it could foreclose, as well as the other matters discussed above. Mr Tukulov and Ms Petrenko were of considerable assistance to the Court in dealing all those matters.
- 6.8 This has been a substantial piece of litigation, involving difficult questions concerning jurisdiction and how the legislation about pledges should apply to a case concerning multiple pledgors and multiple high value properties. The claimant has had to deal with defendants, who kept trying to move this case to the Almaty Court, without giving advance notice of their intentions, and who refused access to most of

the pledged properties.

- 6.9 I can see force in some of the first defendant's detailed criticisms. In particular, I accept Mr Tukulov's argument that the claimant cannot recover in these proceedings costs incurred in the proceedings before the Almaty Court. After considering the submissions of all parties, and adopting the guidance in Part 26 of the Rules, I assess the costs which the claimant is entitled to recover in the sum of USD 110,000. Out of this sum the claimant's solicitors must pay (if they have not already paid) 30,114 euros to Colliers for valuation services.
- 6.10 The sum of USD 110,000 will be added the first defendant's debt to the claimant, bringing the total debt up to USD 6,845,000. To the extent that the bailiffs fail to recover that sum from the first defendant or from enforcement upon the first defendant's assets, that sum can be recovered out of the sale proceeds from the pledged properties.
- 6.11 The costs issues are the last matter which require the Court's decision. I can now, therefore, draw this judgment to a conclusion.

PART 7. CONCLUSION

7.1 For the reasons set out above, the Court makes:

- (i) An order directing the First Defendant, Enegix LLP, to pay the Claimant, Freschette Limited, the outstanding principal sum of USD 6,735,000 plus costs of USD 110,000, making the total sum USD 6,845,000.
- (ii) An order for foreclosure and enforcement over the following property pledged by the Second Defendant - Prime Capital Re Alakol LLP:
 - 1. Buildings and structures with a land plot of 0.7280 hectares (cadastral number 03-255-056-1469), located at: Almaty Region, Alakol District, Yrgaity Rural District, Akshi village, cadastral block 056, building 375A;
 - 2. Buildings and structures with a land plot of 1 hectare (cadastral number 03-255-056-1367), located at: Almaty Region, Alakol District, Yrgaity Rural District, Akshi village, cadastral block 056, building 378;
 - 3. Buildings and structures with a land plot of 1 hectare (cadastral number 03-255-056-307), located at: Almaty Region, Alakol District, Yrgaity Rural District, Akshi village, cadastral block 056, building 309;
 - 4. Land plot of 1 hectare (cadastral number 03-255-056-1368), located at: Almaty Region, Alakol District, Yrgaity Rural District, Akshi village, cadastral block 056, plot 378A.The primary sale price to be set for the above four properties shall be KZT 1,256,407,000;
- (iii) An order for foreclosure and enforcement over the following property pledged by the Third Defendant - Prime Capital Real Estate LLP:
 - 1. Land plot of 14.6 hectares (cadastral number 03-047-141-706), located at: Almaty Region, Karasai District, Yeltai Rural District, Koktogan village, cadastral block 127, plot 706 – the primary sale price to be set is KZT 1,426,656,000;
 - 2. Land plot of 6.89 hectares (cadastral number 03-047-141-705), located at: Almaty Region, Karasai District, Yeltai Rural District, Koktogan village, cadastral block 127, plot 705 - the primary sale price to be set is KZT 97,728,000;
- (iv) An order for foreclosure and enforcement over the following property pledged by the fourth defendant – QAZ-AK-KUS LLP:
 - 1. Land plot of 31 hectares (cadastral number 03-046-032-064), located at: Almaty Region, Ili District, Chapayevsky Rural District, Chapayev village, building 64;
 - 2. Land plot of 114.8396 hectares (cadastral number 03-046-032-063), located at: Almaty Region, Ili District, Chapayevsky Rural District, Chapayev village, plot 63.The primary sale price to be set for the above two properties shall be KZT 2,996,746,000;



- (v) An order that the amount of USD 6,845,000, representing the First Defendant's outstanding debt, shall, in so far as not recovered from the first defendant or from enforcement upon the first defendant's assets, be payable to the claimant from the proceeds of sale of the pledged properties referred to in sub-paragraphs (ii) to (iv) above.

7.2 Pursuant to Article 319.3 of the Civil Code the Court directs that the sale of the pledged properties referred to in paragraph 7.1 (ii) to (iv) above be postponed for one month. The purpose of this postponement is to enable the bailiffs to recover as much of the said debt of USD 6,845,000 as possible from the first defendant and/or from enforcement on the assets of the first defendant, before proceeding to recover the balance from the proceeds of sale of the pledged properties.

By the Court,

Sir Rupert Jackson,
Justice, AIFC Court

Representation:

The Claimant was represented Mr Farukh Iminov, Ms Ardak Idayatova and Mr Usen Tastanbekov, Lawyers, Kinstellar LLP, Almaty, Republic of Kazakhstan.

The First Defendant was represented by Mr Bakhyt Tukulov, Partner, and Ms Mariya Petrenko, Associate, TKS Disputes LLP, Almaty, Republic of Kazakhstan.

The Second and Third Defendants were represented by Mr Ismail Srailov, Lawyer, Almaty, Republic of Kazakhstan.

The Fourth Defendant was not present.