



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

7 February 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

Justice of the Court:

Justice Sir Rupert Jackson

JUDGMENT

This judgment is in seven parts, namely:

- Part 1. Introduction
- Part 2. The facts
- Part 3. The present proceedings
- Part 4. Summary of the parties' submissions on jurisdiction
- Part 5. Analysis and decision on jurisdiction
- Part 6. Freschette's application for an anti-suit injunction
- Part 7. Conclusion.

Part 1. INTRODUCTION

- 1.1 This is a judgment following the trial of a preliminary issue to determine whether this court has, and should exercise, jurisdiction in proceedings concerning foreclosure of pledged immovable property.
- 1.2 As became clear during argument, the preliminary issue in this litigation raises questions of considerable importance as to the proper remit of this court and the boundary between the work of this court and the long-established courts of the Republic of Kazakhstan.
- 1.3 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.
- 1.4 Prime Capital RE Alakol LLP ("Prime Capital RE"), Prime Capital Real Estate LLP ("Prime Capital Real Estate") and Qaz-Al-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".
- 1.5 In this judgment I shall use the following abbreviations:
 - a) "AIFC Court Regulations" means the AIFC Court Regulations, Resolution of the AIFC Management Council dated 5 December 2017.
 - b) "Almaty Court" means the Specialised Interdistrict Economic Court of Almaty.
 - c) "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.
 - d) "Civil Procedure Code" means the Civil Procedure Law of the Republic of Kazakhstan (31 October 2015 No. 377-V, amended in 2018).
 - e) "Land Code" means the Land Code of the Republic of Kazakhstan dated 20 June 2003, No. 442.
 - f) "Supreme Court Resolution of 15 April 2021" means the Resolution of the Plenary Session of the Supreme Court of the Republic of Kazakhstan dated 15 April 2021, No. 5.
- 1.6 Article 13 of the Constitutional Statute provides:

"1. The judicial settlement of disputes specified by paragraph 4 of this article is to be undertaken exclusively by the AIFC Court. The purpose of the Court is to protect the rights, freedoms and legal interests of the parties and to ensure that the Acting Law of the AIFC is implemented.

2. The AIFC Court is independent in its activities and is not a part of the judicial system of the Republic of Kazakhstan.

3. The AIFC Court consists of two instances: the court of first instance and the court of appeal.

3-1. The Chief Justice and other judges of the AIFC Court are appointed and removed by the President of the Republic of Kazakhstan on the recommendation of the Governor of the AIFC.

4. The AIFC Court has exclusive jurisdiction in relation to the hearing and adjudication of the following disputes, but does not have jurisdiction in criminal and administrative proceedings:

1) disputes between AIFC Participants, AIFC Participants and AIFC Bodies and an AIFC Participant or AIFC Body and its expatriate Employees;

2) disputes relating to activities conducted in the AIFC and governed by the Acting Law of the AIFC;

3) disputes transferred to the AIFC Court by agreement of the parties.

5. The activities of the AIFC Court are governed by the resolution of the Council “*On the Court of Astana International Financial Centre*”, which is based on the principles and legislation of the law of England and Wales and the standards of leading global financial centres.

The Resolution of the Council “*On the Court of Astana International Financial Centre*” determines the composition of the AIFC Court, the procedure for the appointment and removal of court officials, qualification requirements for judges and court officials, and other matters related to the functioning of the AIFC Court.

6. In adjudicating disputes, the AIFC Court is bound by the Acting Law of the AIFC and may also take into account final judgements of the AIFC Court in related matters and final judgements of the courts of other common law jurisdictions”.

1.7 Article 26 of the AIFC Court Regulations provides:

“Jurisdiction of the Court

(1) The Court has exclusive jurisdiction, as provided by Article 13 of the AIFC Constitutional Statute, in relation to:

(a) any disputes arising between the AIFC’s Participants, Bodies, and/or their foreign employees;

(b) any disputes relating to operations carried out in the AIFC and regulated by the law of the AIFC;

(c) any disputes transferred to the Court by agreement of the parties; and

(d) the interpretation of AIFC Acts.

(2) The reference to “disputes” between the parties mentioned in this Article applies to civil or commercial disputes arising from transactions, contracts, arrangements or incidences.

(3) The reference to “transferred to the Court by agreement of the parties” in this Article applies to all parties, including parties not registered in the AIFC, such that all parties may “opt in” to the jurisdiction of the Court by agreeing to give the Court jurisdiction pre or post-dispute.

(4) The Court does not have jurisdiction in relation to any disputes that are of a criminal or administrative nature.

...

(9) Any issue as to whether a dispute falls within the jurisdiction of the Court shall be determined by the Court whose decision shall be final.

(10) The Court shall consider the express accord of the parties to a case that the Court shall have jurisdiction and if the Court considers it desirable or appropriate, it may decline jurisdiction or may refer any proceedings to another Court within the Republic of Kazakhstan.”

1.8 Article 24 of the Civil Procedure Code provides:

“A dispute falling under the jurisdiction of a court, arising from civil legal relations, may, by written agreement of the parties, be resolved through mediation, a participatory procedure, or referred to arbitration or the Astana International Financial Centre Court, in cases where this is not prohibited by law.”

1.9 The Supreme Court Resolution of 15 April 2021 includes the following section:

“II. Referral of Disputes to the AIFC Court

Question 3: Which disputes can be referred by the parties to the IFC [sic] Court?

Answer: A dispute (conflict) within the jurisdiction of the court, arising from civil law relations, may be referred to the AIFC Court by written agreement of the parties, provided that such referral is not prohibited by law.

A referral to the AIFC Court can occur either before filing with a domestic court or while a case is already under consideration by a court.

In issues of referring a dispute, the laws of the Republic of Kazakhstan and the established jurisdiction of the AIFC Court must be followed.

The decision on whether to accept or reject a dispute for consideration by the AIFC Court is made exclusively by the AIFC Court.

The AIFC Court does not engage in criminal or administrative proceedings.

Thus, any disputes arising from civil law relations may be referred to the AIFC Court if they fall within the court's jurisdiction and are not prohibited by the laws of the Republic of Kazakhstan.”

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

PART 2. THE FACTS

- 2.1. In 2019 Freschette engaged Enefix to provide the hosting and operation of cloud computer services. A dispute arose concerning the services which Enefix 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, Enefix 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 thereof specified.
- 2.3. Clause 3 of the settlement deed 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.”
- 2.4. 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, Enefix 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 Enefix fails to pay any outstanding part of the Settlement Amount to Freschette within 5 business days after Enefix 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 provided that Enefix’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:

(a) 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.

(b) 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.

(c) Qaz pledged the following immovable property:

- i) 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;
- ii) 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:
6.2.1 a compulsory non-judicial procedure through tender sales (auction);
6.2.2 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 obligations under the deed of amendment and restatement due under the deed of amendment and restatement. In those circumstances Freschette commenced the present proceedings.

PART 3. THE PRESENT PROCEEDINGS

- 3.1 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.
- 3.2 In the following weeks, there were some delays and issues about service, which are no longer relevant and which I will not recite.
- 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.
- 3.5 There was a remote case management conference in the present proceedings in this court on 9 December 2024, at which I made the following order, that was drawn up and issued on 12 December 2024:
“In relation to the jurisdiction issues:
1. Claimant do serve its submissions on jurisdiction by 20 December 2024.
2. Defendants do serve their submissions on jurisdiction by 10 January 2025.

3. Claimant do serve its submissions in reply on jurisdiction (limited to points not previously made by the claimant) by 17 January 2025.
4. The parties must agree (i) a bundle of relevant documents and (ii) a bundle of relevant legal materials by 24 January 2025.
5. Two hardcopies of both bundles must be lodged with the Court by 29 January 2025. Also, electronic copies of both bundles must be sent to the Court by 29 January 2025.
6. There will be an in-person hearing at the AIFC Court in Astana on Tuesday 4 February 2025 to determine the jurisdiction issues.

In relation to the substantive litigation:

7. The Claimant do serve its full particulars of claim by 20 December 2025.
8. The Defendants do serve their defences by 17 January 2025.
9. The Claimant do serve its reply to the defence (if any) by 24 January 2025.
10. These statements of case shall be included within the bundles to be provided to the Court for use at the hearing on 4 February 2025.”

- 3.6 On 13 December 2024 Judge Baskhanbayeva gave preliminary directions in the Almaty proceedings.
- 3.7 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.
- 3.8 On 10 January 2025 Enefix served its submissions on jurisdiction in these proceedings.
- 3.9 On 11 January 2025 Freschette applied to this court to grant an anti-suit injunction restraining Enefix from pursuing its parallel proceedings in the Almaty court.
- 3.10 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.
- 3.11 On 15 January Enefix 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.
- 3.12 On 17 January 2025 Enefix served its substantive defence in these proceedings.
- 3.13 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 Enefix. Mr Tsay, counsel for Qaz, appeared at the hearing remotely. I am grateful to all counsel for their helpful skeleton arguments and oral submissions.
- 3.14 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 is for this court to determine its own jurisdiction: see Article 26(9) of the AIFC Court Regulations.
- 3.15 Having outlined the history of the proceedings, I must now summarise the Parties’ submissions on the jurisdiction issue.

PART 4. SUMMARY OF THE PARTIES’ SUBMISSIONS ON JURISDICTION

- 4.1 I summarise Mr Tukulov’s arguments on behalf of Enefix as follows:

- (i) Article 13.4.3 of the Constitutional Statute and Article 26(1)(c) of the AIFC Court Regulations provide that the AIFC Court has exclusive jurisdiction in relation to disputes transferred to that court by agreement of the parties. Nevertheless, the Supreme Court Resolution of 15 April 2021 adds a qualification to those provisions, namely “provided that such referral is not prohibited by law”.
- (ii) Article 24 of the Civil Procedure Code contains a similar qualification, namely “in cases where this is not prohibited by law”.
- (iii) Articles 31 and 467 of the Civil Procedure Code make it clear that the courts of Kazakhstan in the location of the pledged properties (or at least one of the pledged properties) have exclusive jurisdiction in this case.
- (iv) Accordingly, the parties’ agreement in the various deeds and pledges referred to in Part 2 above that the AIFC Court has jurisdiction in relation to their disputes is an agreement “prohibited by law”. Therefore, the AIFC Court cannot give effect to that agreement and does not have jurisdiction.
- (v) The only immovable property over which the AIFC Court has jurisdiction is that situated within the area of the Astana International Financial Centre.
- (vi) The AIFC Court has a discretion whether to accept cases referred to it by agreement: see Article 26 (10) of the AIFC Court Regulations. In considering whether to accept a case referred to the AIFC Court by agreement, the court should exercise its discretion and not take too expansive a view of its jurisdiction.
- (vii) Public policy considerations militate against the AIFC Court accepting jurisdiction in cases like this.
- (viii) The AIFC Court was created to promote foreign investment in Kazakhstan and to promote the Astana International Financial Centre. Claims for foreclosure on pledged property have nothing to do with that.

4.2 I summarise Mr Tsay’s arguments on behalf of Qaz as follows:

- (i) Mr Tsay adopts Mr Tukulov’s arguments.
- (ii) Articles 24 and 66 of the Land Code contain provisions which it is appropriate for the Almaty Court to apply and inappropriate for this court to apply. Many of the plots in this case comprise agricultural land. There are restrictions upon who can own such land. Freschette as a foreign company cannot own, alternatively cannot own for more than three months, agricultural land.

4.3 I summarise Mr Iminov’s arguments on behalf of Freschette as follows:

- (i) The Constitutional Statute is at the top of the hierarchy of relevant legislation. It takes precedence over the other provisions which have been cited.
- (ii) The only types of case excluded from the AIFC Court’s jurisdiction are those specified in the opening words of Article 13.4 of the Constitutional Statute, namely “criminal and administrative proceedings”. The present foreclosure proceedings do not fall within that category.
- (iii) Article 31 of the Civil Procedure Code does not say that only the Kazakhstani courts (as opposed to the AIFC Court) have jurisdiction in respect of the subject matter of that article. Article 31 is dealing with venue. It determines in which particular courts such cases should be dealt with, if they are proceeding within the Kazakhstani court system.
- (iv) Article 467 of the Civil Procedure Code means, in effect, that foreign courts cannot deal with cases concerning real property within Kazakhstan. The AIFC court is not a foreign court. The AIFC Court is a Kazakhstan institution, set up under legislation of the Republic of Kazakhstan, but (as stated in Article 13.2 of the Constitutional Statute) it is separate from the judicial system of Kazakhstan. Therefore, Article 467 of the Civil Procedure Code does not prohibit the AIFC Court from dealing with the present proceedings.
- (v) No public policy considerations militate against the AIFC Court dealing with this case.
- (vi) The AIFC Court has previously accepted jurisdiction in a claim for foreclosure on immovable property: see Limited Liability Partnership “Polymettech” v Limited Liability Partnership “BalkhashPolymetal” AIFC-C/CFI/2024/0007.
- (vii) The fact that all parties agreed that the AIFC Court should have jurisdiction is a strong argument in favour of the court accepting jurisdiction in this case.

4.4 Having summarised the competing submissions of counsel, I must now analyse those submissions and reach a decision.

PART 5. ANALYSIS AND DECISION ON JURISDICTION

5.1 I accept Mr Iminov's submission that the Constitutional Statute takes precedence over all the other legislative provisions which have been cited. Indeed, very sensibly, Mr Tukulov does not argue otherwise.

5.2 Accordingly, as set out in Article 13.4 of the Constitutional Statute, this court does not have jurisdiction in criminal or administrative proceedings. The present case does not involve criminal or administrative proceedings. Furthermore, this case has been assigned to the AIFC Court by the express agreement of all five parties, namely Freschette, Eneqix, Prime Capital Re, Prime Capital Real Estate, and Qaz. Therefore, on a simple application of Article 13.4.3 of the Constitutional Statute, it would seem clear that this Court has jurisdiction in the present case.

5.3 That, however, is not the end of the matter. Mr Tukulov relies heavily upon (i) the proviso in the Supreme Court Resolution dated 15 April 2021 "provided that such referral is not prohibited by law" and (ii) the words in Article 24 of the Civil Procedure Code "in cases where this is not prohibited by law". Mr Iminov, on the other hand, submits that those words do no more than refer to the exclusion of criminal and administrative proceedings, as set out in Article 13.4 of the Constitutional Statute.

5.4 In my view, those words in the Supreme Court Resolution and in Article 24 of the Civil Procedure Code do more than simply reiterate the exclusion of criminal and administrative proceedings. If that is all they did, there would not be any need for those words at all. In my view, those words envisage the possibility that other legislation might exclude certain categories of litigation from the jurisdiction of the AIFC Court.

5.5 The next question is whether Articles 31 and/or 467 of the Civil Procedure Code have the effect of prohibiting the AIFC Court from dealing with claims for foreclosure on real property outside the boundary of the Astana International Financial Centre. I do not think they do have that effect, for the following reasons:

- (i) I accept Mr Iminov's submission that Article 31 deals with venue for handling cases which are already within the regular Kazakhstani court system.
- (ii) The AIFC Court is not a foreign court. It is a Kazakhstani institution, set up under legislation of the Republic of Kazakhstan, although not one of the regular Kazakhstani courts. The AIFC Court is an international commercial court based in Kazakhstan, of a similar character to other international commercial courts which have sprung up around the world in recent years. Indeed, the AIFC Court is dealing with an international commercial case in this instance, since the Claimant is an overseas party seeking relief in a commercial dispute. The AIFC Court is such an integral part of the Kazakhstan legal system that it is not prohibited from dealing with this case by Article 467 of the Civil Procedure Code.
- (iii) Pledges and mortgages of real property are very often provided as security for financial liabilities and commercial debts. It would be most surprising if this Court, which has been established principally to deal with financial and commercial disputes, is prohibited from dealing with cases where financial liabilities or commercial debts are secured upon real property.
- (iv) Since Mr Tukulov accepts that the AIFC Court can deal with disputes concerning real property within the boundaries of the Astana International Financial Centre, he must accept that the AIFC Court has no inherent inability to deal with land law issues in Kazakhstan.

- (v) Mr Tsay rightly draws attention to the restrictions imposed by Articles 24 and 66 of the Land Code. However, with the assistance of experienced counsel on both sides, this court will be well able to comply with and enforce those provisions of the Land Code.
 - (vi) This court has previously given a judgment ordering foreclosure on immovable property: *Limited Liability Partnership "Polymettech" v Limited Liability Partnership "BalkhashPolymetal"* AIFC-C/CFI/2024/0007.
- 5.6 The next question which arises is this. In the exercise of its discretion under Article 26(10) of the AIFC Court Regulations, should this court accept or decline jurisdiction to deal with Freschette's present claim?
- 5.7 In relation to this question, Mr Tukulov advanced some formidable arguments both at the case management conference on 9 December 2024 and at the hearing on 4 February 2025. The Almaty Court is familiar with properties in that region and is experienced in dealing with the Land Code and the various land law issues which will arise. The Almaty Court has experience of (a) considering valuation reports for real property in Kazakhstan and (b) supervising auction sales and the other procedures which will be involved in foreclosing on the numerous properties which are the subject of this litigation.
- 5.8 On this issue, Mr Iminov emphasised his best point, namely that all five parties have agreed that the AIFC Court should deal with the foreclosure proceedings. This court should not lightly disregard that which has been agreed by five experienced commercial parties, all no doubt with access to legal advice.
- 5.9 I must confess, I find it puzzling that the defendants all agreed in 2021 that the AIFC Court should deal with any foreclosure proceedings, but now, when such proceedings actually begin, the defendants challenge this court's jurisdiction and insist that the case shall go to the Almaty Court.
- 5.10 Mr Tukulov, an astute advocate, could see my puzzlement. He said the explanation was this. Freschette was not prepared to enter into any of the deeds and pledge agreements referred to in Part 2 above, unless they contained clauses giving exclusive jurisdiction to the AIFC Court. Freschette is an overseas commercial entity which, for a number of reasons, is not prepared to entrust its disputes to the local courts.
- 5.11 I emphasise that this attitude of the Claimant does not in any way reflect adversely on the Almaty Court or the other Kazakhstani courts. It is simply a fact that many foreign companies investing money or doing business in Kazakhstan desire that any disputes should go to a court with which they are familiar. Many overseas companies which invest money or do business here are familiar with English law and English courts. Indeed, one of the reasons why the Kazakhstan Government set up the AIFC Court was to provide a court with which overseas investors and businesses would be familiar and would feel comfortable. As Mr Tukulov rightly observed, the AIFC Court was created as part of a project to promote foreign investment in Kazakhstan.
- 5.12 Against that background, I think that it would be wrong for this court to decline jurisdiction in the exercise of its discretion. The settlement deed and the deed of amendment and restatement both expressly are subject to English law. Freschette was only willing to enter into this web of contracts if they provided for all disputes to go to the AIFC Court. If this court declines jurisdiction, it would be forcing Freschette, a foreign company doing business in Kazakhstan, into a contract which it was not prepared to enter into.
- 5.13 In the result, therefore, this court has jurisdiction in the present case, and it will exercise that jurisdiction.

PART 6. FRESCHETTE’S APPLICATION FOR AN ANTI-SUIT INJUNCTION

- 6.1 It follows from the conclusion reached in Part 5 above, that Freschette’s application for an anti-suit injunction must succeed. There cannot be parallel proceedings in two different courts concerning the same issues.
- 6.2 I am reinforced in this conclusion by the fact that the parties have expressly agreed that these issues should be litigated in the AIFC Court, not the local courts. In the face of that agreement, no-one can be surprised that Enegix is being restrained from pursuing its proceedings in the Almaty Court.

PART 7. CONCLUSION

- 7.1 If the Government of Kazakhstan does not wish this court to deal with issues concerning real property, it can legislate to make that clear. For example, an amendment could be made to the opening words of Article 13.4 of the Constitutional Statute to add “or proceedings concerning real property” after the words “criminal and administrative proceedings”.
- 7.2 As the law now stands, however, I am satisfied that this court has jurisdiction to deal with the current foreclosure proceedings. This court therefore grants the following relief:
- (i) It is declared that the AIFC Court has jurisdiction to deal with the Claimant’s claims in this action.
 - (ii) It is ordered that the first defendant shall withdraw its parallel claim in the Almaty Court and any related claims in any other court and shall be restrained from further pursuing those proceedings.
- 7.3 There will be a video case management conference on Wednesday 19 February 2025 at 09:00 London time, 14:00 Astana time. The purpose of this case management conference will be to give directions for the future conduct of this litigation. All parties must submit their proposed directions for consideration by the Court, by 17:00 Astana time on Thursday 13 February 2025.

By the Court,

Sir Rupert Jackson,
Justice, AIFC Court

Representation:

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

The First Defendant was represented by Mr Bakhyt Tukulov, Partner, TKS Disputes LLP, Almaty, Republic of Kazakhstan.

The Second and Third Defendants were not represented.

The Fourth Defendant was represented by Mr Farkhat Tsay, Lawyer, Almaty, Republic of Kazakhstan.