



IN THE SMALL CLAIMS COURT
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

1 February 2024
CASE No: AIFC-C/SCC/2023/0042

MR SARINOV AYAN TOLEUOVICH

Claimant

v

(1) KHAN TENGRI CAPITAL LLP
(2) APEX MANAGEMENT GP LTD

Defendants

JUDGMENT AND ORDER

Justice of the Court:

Justice Saima Hanif KC

ORDER

1. **The Claim is allowed against the First Defendant to the extent that the First Defendant shall pay to the Claimant the sum of KZT 6,702,415.77 by no later than Friday 9 February 2024.**
2. **In all other respects the Claim against the First Defendant is dismissed.**
3. **The Claim against the Second Defendant is dismissed.**
4. **As long as the First Defendant complies with paragraph 1 of this Order, no order as to costs.**

JUDGMENT

Introduction

1. By a claim registered on 10 November 2023, the Claimant seeks various remedies from the AIFC Small Claims Court arising out of (1) a written contract of employment with the First Defendant and (2) what is said to be an implied contract of employment with the Second Defendant.
2. The parties accept that the claim is within the jurisdiction of the AIFC Court pursuant to Regulation 4(3) of the AIFC Employment Regulations No. 4 of 2017 (as amended) (henceforth the “**AIFC Employment Regulations**”), and that is appropriate for determination by the Small Claims Court (“**SCC**”) having regard to Rule 28.2 of the AIFC Court Rules (“**the Court Rules**”).
3. The parties have not requested a hearing. Both parties provided written submissions setting out their respective positions in detail, as contained in the Claimant’s application form, a defence filed on behalf both Defendants, the Claimant’s response to defence and a final submission from both Defendants in reply. The submissions were supported as appropriate by documentary evidence. In light of this, and bearing in mind the need for proportionality, I am able to decide this matter on the papers.

The Parties

4. The Claimant is Mr Sarinov Ayan Toleuovich.
5. The First Defendant is a limited liability partnership incorporated on 14 July 2022 in the Astana International Financial Centre.
6. The Second Defendant is a private company limited by shares, incorporated on 8 September 2023 in the Astana International Financial Centre. It obtained a licence from the Astana Financial Services Authority (“**AFSA**”) on 10 October 2023.
7. The First Defendant is a shareholder of the Second Defendant.

The Salient Facts

8. The following facts are derived from the material provided to me by the parties. By an email dated 31 May 2023, Mr Askar Karimullin, the CEO of the First Defendant wrote to the Claimant stating:

“Please prepare a contract of employment and an order for yourself “Associate at Khan Tengri Capital”

- I. Khan Tengri Capital (documents of title are all in English and Russian languages)
 1. I request to make an order granting Ayan Iskakov the right to sign in the event of my absence (order below) today
 2. I also ask you to prepare an order/power of attorney entrusting Dias Iskakov with the right to open company accounts and related actions (including filing documents) and registration and representation of interests and related actions, today.
 3. Prepare the memorandum of association and articles of association of Khan Tengri Capital in 2 languages by tomorrow
 4. Decision to change the composition of participants according to the presentation (attached) deadline: 31 May
 - II. Apex Management GP (manage all legal and personnel activities of the company and support with internal documents, structuring transactions, obtaining licences and opening funds in the AIFC) Update the set of documents for submission to AFSA before 3 June, coordinate all issues with Aray Tursunov CEO...”
9. I have been provided with a written contract dated 30 May 2023, between the First Defendant and the Claimant. I assume that this is the contract of employment which Mr Karimullin directed the Claimant to prepare, in his email of 31 May 2023. According to the written contract, the Claimant was employed by the First Defendant as an ‘Associate’. The relevant terms of the contract are set out below.
10. The Claimant has also provided me with various ‘screenshots’ from his mobile phone, of ‘Telegram’ and ‘WhatsApp’ written communications that he had with Mr Karimullin, the CEO of the First Defendant, and Mr Aray Tursunov, the CEO of the Second Defendant, over the period 5 June 2023 – 10 October 2023. It appears that some of the communications were voice messages. I have been provided with translations of both the written WhatsApp messages and the voice messages. The Defendants have not disputed any of the translations, hence I am content to adopt them as accurate translations. I say more about these communications below.
11. I have also been provided with emails covering the period 12 - 17 September 2023, between the Claimant and Mr Tursunov, in which Mr Tursunov wrote to the Claimant about various matters including the Articles of Association for the First Defendant and the documents that were required to open a bank account.
12. On 3 October 2023, the Claimant sent an email to Mr Tursunov, entitled “[Apex] Contract of Employment – Legal Counsel & Secretary” stating:
- “I am sending my signed contract of employment with Apex GP. As previously suggested, I have so far left a refund of salary arrears in KTC in the form of a subscription bonus from Apex. If the KTC pays the salary, it will be possible to remove this item later.”
13. The contract enclosed with the email was stated to be effective from 8 September 2023. The Claimant states that Mr Tursunov responded indicating that he would need to consult with the

CEO of the First Defendant, as it was a shareholder of the Second Defendant, to seek approval for this.

14. According to the claim form, Mr Tursunov subsequently informed the Claimant that Mr Karimullin “had declined the Claimant’s candidacy for the position of Legal Counsel & Secretary.”
15. On 10 October 2023 the Second Defendant received a licence from the ASFA to carry out certain regulated activities.
16. On 25 October 2023, the Claimant wrote to the CEO of the First and Second Defendant, and the Legal Counsel and Secretary for both Defendants, setting out his claim for “unpaid salaries, damages and moral compensation...”

The Employment Contract With The First Defendant

17. Clause 2, entitled ‘Commencement Date and Term’ states as material:

“ ...

- 2.1 This Contract of Employment shall be effective from the date of signing...
- 2.2 Employment commencement starts right after Apex Management Limited obtain Licence for Regulated Activities (Collective Investment Scheme) from Astana Financial Services Authority (ASFA)...”

18. The copy of the contract provided to me has been signed by the Claimant, but not the First Defendant. Moreover, Apex Management Limited (I assume the contract contains a typographical error and it should refer to Apex Management GP Limited) did not obtain a licence from the ASFA until 10 October 2023. However, as the Claimant and the First Defendant are in agreement that the written contract governs the employment relationship between the parties, and as the First Defendant accepts in the defence that the Claimant is owed wages for a period beginning in June 2023, I will proceed on the basis that the parties (rightly in my view) accept that the Claimant’s employment with the First Defendant commenced on 1 June 2023.

19. Clause 3.1 of the contract stipulates the Claimant’s monthly salary as follows:

“ ...

- 750 000 Kazakh tenge net for the first month from the date of signing of the Contract of Employment;
- 1 500 000 Kazakh tenge net for all subsequent months.”

20. Clause 6.1 stipulates that the Claimant is entitled to 24 Days of holiday leave a year. Under clause 6.4, an employee is entitled to payment in lieu of vacation leave earned, if the employee’s employment is terminated.

Claim Against The First Defendant

21. The First Defendant accepts that the Claimant is entitled to the balance of his wages for June 2023, and the months of July 2023 and August 2023. As a result of this, the First Defendant

accepts that it must pay the Claimant a penalty for the delay in paying these sums, and it also accepts that the Claimant is entitled to payment in lieu of 6 days of vacation leave for this three-month period.

22. The Claimant however also claims his wages for the months of September and October 2023. Hence, it is these two months that in dispute.
23. The First Defendant denies that such wages are owed to the Claimant stating in the Defence, that after August 2023, the Claimant moved to “another city in September – October 2023, the Claimant was not actively involved in work.” The First Defendant also states that the Claimant “has been out of contact since September 2023.” On that basis, the First Defendant asserts that the Contract of Employment terminated from September 1, 2023 and therefore no wages are due to the Claimant for the months of September/October 2023.
24. The Claimant points out that he gave prior notification to Mr Karimullen (the CEO of the First Defendant) and Mr Tursunov (the CEO of the Second Defendant) of his decision to move back to Almaty. This is supported by a ‘WhatsApp’ conversation between the parties. Moreover, the Claimant points out that the applicable AIFC Employment Regulations do not encompass the concept of “employee inactivity.”
25. I do not accept the First Defendant’s assertion that the contract terminated from 1 September 2023. I have not seen any concern or objection raised by the First Defendant (or the Second Defendant for that matter) when informed by the Claimant that he had moved City; nor have I seen any other communications from the First Defendant complaining about the lack of activity on the part of the Claimant over the period September to October 2023.
26. Moreover, the mobile phone communications and email exchanges that I have been provided with do demonstrate that over September/October 2023 the Claimant was being asked by Mr Karimullin, and also Mr Tursunov, to carry out various activities, and the Claimant in fact did carry out those activities. If the contract had been terminated as the First Defendant suggests, then these exchanges would not have occurred.
27. I also accept the position as set out in the Claimant's Reply that the Claimant was actively participating in work for the First Defendant, and rendered his services and labour “...during June 2023 up until 31 October 2023...”
28. In my opinion, the contract of employment with the First Defendant continued over the months of September and October 2023.

Claim Against The Second Defendant

29. The Claimant claims that there was an implied contract of employment with the Second Defendant. In his letter before claim dated 25 October 2023 the Claimant states that he is owed “payment of the expected salary of KXT 2,000,000 since the date of incorporation of the Ltd - 8 September 2023, which equals to KZT 4,000,000, for my services in setting up the collective investment scheme.” It appears therefore that the Claimant seeks payment for the period from 8 September 2023 to the 25 October 2023.

30. The first question I have to determine is whether or not there is an implied contract of employment. The Claimant states that he has carried out numerous activities in setting up a collective investment scheme in order to manage the Second Defendant. He refers to the fact that in official documents which were prepared as part of the submission to the AFSA, he was described as the Legal Counsel.
31. The position in the Defence, which is filed jointly on behalf of both Defendants, is that the activities which the Claimant carried out were consistent with the activities he was required to do under the written contract of employment with the First Defendant. The Defendants state that there was no official order of the Second Defendant officially appointing the Claimant to the role of Legal Counsel.
32. On balance and having regard to the documentary evidence and the written submissions of the parties, I accept the Defendants submissions. In my view, the activities carried on by the Claimant over the period 8 September 2023 to October 2023, which are evidenced in the mobile communications and the emails, are consistent with the list of activities contained in the email of 31 May 2023 as they fall within the description contained in the email of 31 May 2023, namely “...manage all legal and personnel activities of the company and support with internal documents, structuring transactions, obtaining licences and opening funds in the AIFC...” I also note that one of the activities which Mr Tursunov requested the Claimant to perform, which was set out in a message dated 25 September 2023, was to “...prepare an order for my dismissal from KTC (i.e. Khan Tengri Capital LLP) from September 7 at my own request...” i.e. this activity related to the First Defendant. I therefore do not find that there was an implied contract of employment between the Claimant and the Second Defendant over the period 8 September – 25 October 2023.
33. Finally, it should be noted that the other difficulty with the Claimant’s position is that on the logic of his case, over the period September 2023 to 25 October 2023, he was effectively employed full time by two separate employers, entitled to two full time salaries and entitled to two sets of annual leave. I have seen no evidence that either the First or Second Defendant consented to this arrangement.
34. As I set out above, I find that over this period, the Claimant was in fact employed by the First Defendant.
35. Accordingly, the Claimant’s case against the Second Defendant is dismissed.

Remedy

36. As against the First Defendant, the Claimant claims the following:
 - (1) A request that the contract of employment be terminated with effect from 1 November 2023.
 - (2) Accrued unpaid salary for the months June – 31 October 2023. The parties are in agreement that the Claimant is owed KZT 3,050,000 for the period June – August 2023.

- (3) A penalty of KZT 211,239.30 in accordance with Article 113.3 of the Labour Code of the Republic of Kazakhstan. The First Defendant accepts that a penalty is owed, but that it only falls to be paid in respect of the wages for June – August 2023.
 - (4) Accrued unused vacation leave for the five-month period from 1 June 2023 to 31 October 2023. The Claimant states he has not taken any leave of this period. The First Defendant accepts that the Claimant is entitled to 6 calendar days of vacation for the three-month period of June to August 2023.
37. In light of the above, I grant the Claimant’s request that the contract of employment be terminated with effect from 1 November 2023.
38. I also make the following monetary awards. The First Defendant must pay the Claimant the sum of KZT 6,702,415.77 which comprises the following:
- (1) The sum of KZT 6,050,000 which represents the wages due to him for the months of June, July, August, September and October 2023.
 - (2) The sum of KZT 211,239.30 to represent the penalty due under Article 113.3 of the Labour Code.
 - (3) The sum of KZT 441,176.47 to represent 10 days of unused holiday leave for the period June – October 2023.
39. I do not grant the Claimant’s request for damages related to his bank loan: the First Defendant was not a party to the loan agreement and was not involved in assisting the Claimant to secure the loan agreement. Nor do I award the Claimant any post-judgment interest or damages for moral harm. As the Defendants state in their Defence, the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated 27 November 2015, No 7, entitled “On the application by courts of legislation on compensation” provides a specific definition of ‘moral harm.’ I accept the Defendants’ submission that the Claimant’s claim does not satisfy this definition; hence no sums are awarded for this claim.

Timeline For Payment Of The Sums Due

40. The First Defendant is therefore required to pay the sum of KZT 6,702,415.77 to the Claimant by no later than Friday 9 February 2024. I have specified this short time frame for three reasons:
- (1) The First Defendant has itself accepted that the Claimant is owed wages for the months of June, July and August.
 - (2) The wages due to the Claimant should never have been withheld from him.
 - (3) Unsurprisingly, the sums in question are significant for the Claimant and it is therefore in the interests of justice for the First Defendant to compensate the Claimant promptly and without further delay.
41. Finally, in respect of costs, both sides have asked for their costs. If the First Defendant does make payment within the period specified above, and in light of the fact that the Claimant has

succeeded in part as against the First Defendant, has not succeeded against the Second Defendant, and that these are small claims proceedings, I do not propose to make any costs order. There is no exceptional basis for doing so, hence each side must bear its own costs.

By Order of Court,

A handwritten signature in blue ink, appearing to read 'Saima Hanif'.

Saima Hanif KC
Justice, AIFC Court



Representation:

The Claimant was represented by Mr. Islambek Nurzhanov, independent external lawyer, Astana, Kazakhstan.

The Defendants were jointly represented by Ms. Aidana Tokina, independent Legal Consultant, Kazakhstan.