

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

23 January 2024

CASE No: AIFC-C/CFI/2023/0008

MS. DILYA KHALIULINA

Claimant

v

**(1) MR. AYAN KUCHUKOV
(2) MR. ADIL ALPYSBAYEV
(3) MR. BAURZHAN SARSENOV
(4) MR. NURTAS SAUTBAYEV**

Defendants

JUDGMENT AND ORDER

Justice of the Court:

Justice Andrew Spink KC

ORDER

Upon hearing both Mr. Yerlan Mukhanbediyev, legal representative for the Claimant (“C”), and C herself, none of the First, Second, Third or Fourth Defendants (“D1”, “D2”, “D3” and “D4” respectively, the “Ds” collectively) attending in person or by legal representative at the Directions Hearing on 21 July 2023, it is ORDERED THAT:

1. Each of the Ds was served by the C (through her lawyers) with the Claim Form in a form or manner sufficient to comply with AIFC Court Rules Part 5 in or about January, February or July 2023 and in addition received notice thereof from the Court in February 2023.
2. The document entitled “REVIEW of the statement of claim” and dated 17 July 2023, filed with the Court by D2, will stand as both an Acknowledgement of Service and a Defence in response to the Claim Form for the purposes of AIFC Court Rules Part 9 and Part 14.
3. Each of the Ds was served by the Court on 18 August 2023 with notice of C’s application dated 18 August 2023 for relief including default judgment under AIFC Court Rules Part 9, alternatively service of such application on each D took place by email from the Court on 9 September 2023.
4. There will be default judgment against D1, D3 and D4 for US\$288 332 including costs pursuant to AIFC Court Rules Part 9, such sum to be paid within 7 days of this Order.
5. There will be immediate judgment against D2 for US\$288 332 including costs pursuant to AIFC Court Rules Part 14 on the grounds that D1 has no realistic prospect of successfully defending the Claim, such sum to be paid within 7 days of this Order.

JUDGMENT

Introduction

1. By a claim (the “**Claim**”) filed in Case Number AIFC-C/CFI/2023/008 by Claim Form dated 22 February 2023 (the “**Claim Form**”), the Claimant (C) seeks damages and costs from each of the Defendants (“D1”, “D2”, “D3” or “D4” respectively, collectively the “Ds”) for breach of an oral contract which C alleges was entered into in 2021 between her and the Ds under which she agreed to provide the Ds with professional support and consulting services in relation to an application they wished to make to the Astana Financial Services Authority (“**AFSA**”) for the registration or authorisation with the AIFC under special AFSA procedures of an entity in which C and each of the Ds from time to time held shareholdings.
2. These are my reasons for making the orders for default judgment (against D1, D3 and D4) and immediate judgment (against D2) set out above.

Service of Claim Form and notice of application and hearing.

3. I am satisfied on the evidence contained in the documents filed with the Claim Form and subsequently, including in C’s Notice of Application dated 18 August 2023, as well as information provided to the Court at the hearing on 17 November 2023, that:
 - (a) Each of the Ds received notice of the Claim, the Claim Form and, at least in general terms, the contents of the Claim Form. Such notice was provided to each of the Ds by the lawyers acting on behalf of C through a combination of:
 1. C’s lawyers emailing copies of the Claim Form to email addresses for each of the Ds provided to her lawyers and the Court by C (and confirmed to be correct by C at the hearing on 17 November 2023 and, in the case of D1, D2 and D3 by comparison with the email address used by each of them in correspondence attached to the Claim Form and/or provided to the Court by C’s lawyers ahead of the 17 November 2023 hearing); further, as to this:
 - (i) further evidence of D1 receiving actual notice of the contents of the Claim Form (prior to the date of issue entered by the Court on its face, 26 February 2023) is provided by Annex 1 to C’s application dated 18 August 2023 for, amongst other things, default judgment (“**C’s 18 August 2023 application**”), which (as explained by C at the hearing on 17 November 2023) is a screenshot of WhatsApp exchanges between D1 and C on 26 January and 2 February 2023 in which D1 was raising with C the fact that he had received

- the Claim Form by email (without the issue date on it) and in which he forwarded to C a copy of the Claim Form duly received by him;
- (ii) further evidence of D2 receiving actual notice of the contents of the Claim Form is provided by the fact that on 19 July 2023, he filed with the Court a document entitled “REVIEW of the statement of claim” and dated 17 July 2023, which purported to be a response to the Claim Form (and noted expressly the sums claimed against him in the Claim Form).
2. On 4 July 2023, C’s lawyers sending copies of the Claim Form and related correspondence to each of the Ds’ addresses (as known to and provided to her lawyers by C). In each case these were returned. However:
- (i) In the case of each of D1 and D2, it is established that they each had notice of the Claim Form and its contents in any event (see sub-paragraphs 3(a)1(i) and (ii) above);
- (ii) In the case of D3, on 5 July 2023 he was spoken to by C’s lawyers on the mobile number known to C and provided by her to her lawyers, informed about the delivery to (and return from) his address of the Claim Form (and what it related to), in response to which D3 stated that he would be at the address to which the Claim Form had first been sent in a month, but then sent a WhatsApp message on 12 July 2023 indicating that he would not accept the correspondence;
- (iii) In the case of D4, on 5 July 2023 he was spoken to by C’s lawyers on the mobile number known to C and provided by her to her lawyers, informed about the delivery to (and return from) his address of the Claim Form (and what it related to), in response to which D4 stated that he would pick up the correspondence from the offices of C’s lawyers, but when called again on 10 July 2023 stated that he would not accept the correspondence.
- (b) In all the circumstances, I am satisfied that the requirements of Rules 5.3 and/or 5.9 of the AIFC Court Rules have been met in this case such that service by C of the Claim Form took place on each of the Ds. Furthermore, each of the Ds was sent notice by email from the Court on 23 February 2023 that the Claim Form had been issued against each of them, sealed and given a case number (see paragraph 1 of C’s Notice of Application dated 18 August 2023).
- (c) Although not filed as a formal Acknowledgement of Service or Defence pursuant to Part 9 of the AIFC Court Rules (“**Part 9**”), I indicated at the directions hearing on 20 July 2023 that the Court would treat D1’s “REVIEW of the statement of claim” document dated 17 July 2023 as both an Acknowledgement of Service and a Defence for the purposes of AIFC Court Rules Part 9 and 14 (and I so order above). Accordingly, no application for default judgment against D2 could succeed

and C would instead have to proceed by way of an application for immediate judgment under AIFC Court Rules Part 14.

- (d) C's 18 August 2023 application against the Ds was served by the Court on the Ds on 18 August 2023, as confirmed in the email from the Court to the Ds dated 9 September 2023, which stands, in the alternative to 18 August 2023, as the alternative date for service on each of the Ds of C's 18 August 2023 application. Further notice of this application was provided to each of the Ds by email from C's lawyers dated 21 September 2023.
- (e) Notice that there would be a hearing of C's 18 August 2023 application was provided to each of the Ds by the Court in the email from the Court to the Ds dated 9 September 2023. The date of the proposed hearing identified in that email was 29 September 2023. Subsequently, after that hearing date had been adjourned, the Ds were provided with notice of the hearing date of 17 November 2023 by email from the Court on 8 November 2023.

C's application for default judgment against D1, D3 and D4

- 4. As regards C's application for default judgment against D1, D3 and D4, this must succeed in the above circumstances combined with (a) there having been no Acknowledgement of Service or Defence filed by each of these Ds, (b) none of these Ds having filed any evidence in opposition to C's application for default judgment in response to paragraph 2 of the order made following the directions hearing on 20 July 2023 and (c) none of these Ds having attended the hearing on 17 November 2023 despite receiving notice thereof (see paragraph 3(e) above).
- 5. Accordingly, there will be default judgment under AIFC Court Rules Part 9 for the sums claimed in paragraph VIII of C's 18 August 2023 application, namely, under sub-paragraph 1, the sum of KZT 7,311,195 (or US\$15,723 as at 23 December 2022), under sub-paragraph 2, damages of US\$272,250 (or KZT 123,596,250 as at 23 December 2022) and, under sub-paragraph 3, costs of US\$318 (or KZT 150,000 as at 7 October 2022), together with the additional costs incurred on or about 13 September 2023 of KZT 19,200 (or US\$41 as at 13 September 2023) referred to (and supported by receipts) in the email to the Court and each of the Ds from C's lawyers dated 13 November 2023.
- 6. The total sum payable by each D under such default judgment is therefore US\$288 332.

C's application for immediate judgment against D2

- 7. At the directions hearing on 20 July 2023, I indicated that, although the document filed with the Court by D2 entitled "REVIEW of the statement of claim" and dated 17 July 2023 did not purport to be a

formal Acknowledgement of Service or a Defence for the purposes of AIFC Court Rules Parts 9 and 14, I would treat it as such. Accordingly, I make the direction set out in paragraph 2 of the Order above. In addition, in paragraph 3 of the order made following the directions hearing on 20 July 2023 I directed that D2 should respond to any application made by C for immediate judgment against him within 28 days of service of any such application on him and that, as part of any such response by him, he should provide all evidence on which he wished to rely. No such response or evidence was filed by D2, nor did D2 attend the hearing on 17 November 2023

8. C's 18 August 2023 application purported, as a matter of form, to seek default judgment under AIFC Court Rules Part 9 against all four of the Ds (see paragraph VII of the Notice of Application), despite the fact that I had indicated that it would be necessary for her to make an application for immediate judgment against D2 under AIFC Court Rules Part 14 because he had filed his "REVIEW of the statement of claim" document which I intended to treat as an Acknowledgement of Service and Defence. However, it is clear that the intention underlying C's 18 August 2023 application was to make whatever application was, as a matter of substance, necessary as against each of the Ds. Further, it would have been clear to D2 from the order made following the directions hearing on 20 July 2023 that, in substance, the application he would be facing would be one for immediate judgment under AIFC Court Rules Part 14 and it was to such an application that he should direct any response or evidence he wished to file. Accordingly, I treat C's 18 August 2023 as such an application as a matter of substance, despite the form in which paragraph VII is couched.
9. I am satisfied that the requirements of Part 14 are met, in that D2 has no real prospect of successfully defending the Claim, for the following reasons:
 - (a) The contract alleged to have been entered into by C with the Ds and breached by them (the "**Contract**") so as to entitle her to payment of a sum of money expended by her in performing the contract, damages for lost income due under the contract and costs, together with details of the breaches, is pleaded in detail in the Claim Form at paragraphs 6 to 22. In addition, C provided further information at the hearing on 17 November as to D2's involvement and liability under the Contract, in particular in relation to the meeting pleaded at paragraph 15 of the Claim Form, which took place in March 2022 (after the Contract had been entered into) at a time when D1, D3 and D4 had or were about to transfer to D2 their shareholdings in the entity whose registration with the AIFC under AFSA procedures C was assisting the Ds to procure through the services provided by her to the Ds under the Contract. These transfers would make D4 the sole or at least a majority shareholder in that entity. C informed me that, at this meeting, which she attended with all of the Ds, the Contract was affirmed and D4 accepted his liability to meet any claim C might have under the Contract, in exchange for C agreeing to transfer to her share in the

entity to D4. This is consistent with how the meeting is dealt with in paragraph 15 of the Claim Form.

(b) D2 has provided no response whatsoever either by way of pleading or evidence to the detailed allegations set out in the Claim Form in relation to the formation, terms and breaches of the Contract, or the losses suffered. All that he has done is to provide a bald denial of having entered into any agreement at all with C in his “REVIEW of the statement of claim”, despite admitting that she played at least some role in the AIFC/AFSA registration project to which she says the Contract related and which he does not deny was a project in which he had an interest. This – together with the fact that he declined to respond to the direction made on 20 July 2023 to file any evidence on which he sought to rely and declined to attend the hearing on 17 November 2023 - is wholly inadequate to satisfy me that he has any realistic prospect of successfully defending the claim in the face of the detail set out in C’s pleaded case, attested to by a statement of truth and corroborative documentation served with the Claim Form.

10. Accordingly, C is entitled to immediate judgment against D2 under AIFC Court Rules Part 14 in the same amounts as are identified in paragraphs 5 and 6 above, namely a total amount of US\$288 332.

By the Court,

Justice Andrew Spink KC