



IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

25 July 2023

CASE No: AIFC-C/CFI/2023/0021

MR RISKULOV RUSTAM

Claimant

v

MS NURTASSOVA ARAI

Defendant

JUDGMENT

Justice of the Court:

Justice Thomas Montagu-Smith KC

ORDER

1. **The AIFC Court has no jurisdiction over the claim.**
2. **The Claim Form is set aside.**

JUDGMENT

Introduction

1. On 23 December 2022, I gave judgment (“*the Judgment*”) in favour of the Claimant, Mr Riskulov, against Grantly LLP, a company based in Almaty. The Judgment has not been satisfied. Mr Riskulov obtained an execution order and appointed a bailiff, who has taken various steps to enforce the Judgment, without success.
2. Ms Nurtassova is the shareholder and director of Grantly LLP. According to Mr Riskulov, she has abandoned the company and now provides professional services and runs a business as an individual.
3. On 19 June 2023, Mr Riskulov brought this claim against Ms Nurtassova. He claims that she has “*subsidiary liability*” for the debts of the company, under various provisions of the Kazakhstan Civil Code and under its bankruptcy law.
4. The particular provision of the Civil Code on which Mr Riskulov relied was Article 44(3). This imposes “*subsidiary liability*” on a “*founder*” or on an “*official*” of a company if the founder or official causes “*intentional bankruptcy*” or “*false bankruptcy*” of the company.
5. In argument on 25 July 2023, Mr Riskulov explained that, in fact, he does not allege that Ms Nurtassova caused the intentional bankruptcy of Grantly LLP. He said that he considered that Ms Nurtassova should have placed Grantly LLP into bankruptcy proceedings within 6 months of the Judgment being issued. Ultimately, the precise legal basis on which Mr Riskulov claimed that Ms Nurtassova should be responsible for Grantly LLP’s debts was not clear to me by the end of the hearing.

The parties’ submissions

6. I heard from both parties at a hearing on 25 July 2023.
7. Both in advance of the hearing and at the hearing, I asked Mr Riskulov to explain the basis on which he contended that the AIFC Court had jurisdiction. In response, Mr Riskulov relied on Article 13(4)(3) of the AIFC Constitutional Statute, which provides:

*“The AIFC Court has exclusive jurisdiction in relation to the hearing and adjudication of the following disputes...:
(3) disputes transferred to the AIFC Court by agreement of the parties.”*

8. This provision is further explained by Article 26(3) of the AIFC Court Regulations as follows:

“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.”

9. What is required is an agreement pursuant to which the parties have agreed that the dispute in question may be heard in the AIFC Courts. Such agreements are occasionally reached after the dispute has arisen. However, it is far more frequently the case that jurisdiction agreements are agreed in advance and cover any disputes arising under or in relation to the contract in which the jurisdiction agreement is found.
10. In the present case, Mr Riskulov relies on the jurisdiction agreement in the contract he entered into with Grantly LLP. As I set out in the Judgment, that contract contained a jurisdiction agreement in favour of the AIFC Courts. Mr Riskulov’s position was that the present claim was caught by the terms of that agreement. This was because Ms Nurtassova had signed the contract on behalf of Grantly LLP. Mr Riskulov further said that he was not claiming against Ms Nurtassova personally, but as a result of her status and relationship with Grantly LLP.
11. Mr Riskulov considered that it would be unfair to allow Ms Nurtassova effectively to abandon Grantly LLP, leave its debts unsatisfied, but to continue to carry on her business independently as an individual. He made the point – forcefully – that judgments are only valuable if they can be enforced. Mr Riskulov is not currently living in Kazakhstan and, he says, there would be practical problems for him in bringing bankruptcy proceedings against Grantly LLP in the civil courts in Almaty where, he said, there would be significant “*bureaucracy*” which would take time.
12. For her part, Ms Nurtassova said that the AIFC Court had no jurisdiction. She had not signed a contract with Mr Riskulov personally.
13. On the subject of the Judgment, Ms Nurtassova said that both she and Grantly LLP were already the subject of significant enforcement measures. Grantly LLP’s accounts have been blocked and Ms Nurtassova is currently not permitted to travel. She wants to resolve the problem. However, she does not consider that it is fair that she simply be held responsible for Grantly LLP’s debts.
14. At one stage, Ms Nurtassova stated that she had been unable to defend Grantly LLP in the proceedings which led to the Judgment, because case documents had been sent to her personal email address and she had not seen them. She also said that she did not consider that as much as US\$35,000 was owed to Mr Riskulov. Mr Riskulov disputed that Ms Nurtassova had been unaware of the case. However, nothing turns on this. Ms Nurtassova confirmed that she has known about the Judgment since it was made in December 2022 and she has not applied to set it aside. In the circumstances, there is a debt of US\$35,000 owed under the Judgment.

Decision

15. In my view, it is quite clear that the AIFC Court does not have jurisdiction under the provision relied on by Mr Riskulov. Article 13(4)(3) of the Constitutional Statute requires an agreement between the parties to the proceedings that the dispute advanced in the claim should be heard in the AIFC Court.

Contrary to Mr Riskulov's submission, this quite clearly is a claim made against Ms Nurtassova personally. In any event, the parties to the claim are Mr Riskulov and Ms Nurtassova. Mr Riskulov accepts that he has no contract at all with Ms Nurtassova. In the circumstances, the jurisdiction gateway relied on is not satisfied.

16. Neither Mr Riskulov nor I have been able to identify any other basis on which this Court could exercise jurisdiction over this claim. In the circumstances, I find that the Court has no jurisdiction.
17. I have some sympathy with Mr Riskulov's position. He is right that judgments are only of value if they are enforced. However, it is not the general rule that directors or shareholders of companies are liable for the debts of the company. The general rule is the opposite. There are exceptions to that general rule. What they are and whether they are established on the facts will be matters to be resolved in the appropriate forum. In my view, that is most likely to be the Civil Courts in Almaty, where both Grantly LLP and Ms Nurtassova are based.
18. As I have noted, Ms Nurtassova remains the subject of some relatively onerous restrictions as a result of the measures taken to enforce the Judgment. As I said to her at the hearing, it may be in her interests to try to bring things to a conclusion. Whether that be by taking steps to place Grantly LLP into bankruptcy, by meeting some or all of its debts herself, or through some other means will be a matter for her.
19. None of that, however alters the conclusion that this Court has no jurisdiction to entertain this claim.

By Order of the Court,

Justice Thomas Montagu-Smith KC,
Justice, AIFC Court

Representation:

The Claimant was represented by himself.

The Defendant was represented by herself.