



IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

14 December 2022 &
17 January 2023

CASE No: AIFC-C/CFI/2022/0017

TENAZ MANAGEMENT LLP

Claimant

v

CHI ELECTRIC LLP

Defendant

JUDGMENT AND ORDER

Justice of the Court:

Justice Sir Rupert Jackson

JUDGMENT AND ORDER

1. In this action the Claimant, Tenaz Management LLP, seeks to recover a debt against CHI Electric LLP, the Defendant, in respect of services rendered. The Defendant does not dispute the amount of the principal debt. The Defendant has been progressively making payments in recent months, and the debt has now been reduced to 240, 174, 056 tenge. There is no dispute about the amount of the principal debt or the sums which have been paid. There is no dispute that that is the outstanding balance. I must therefore give judgment for that sum. I will deal later with the question of time to pay.
2. The Claimant also seeks a late payment debt of 100 million Kazakhstan tenge. The entitlement to recover such a debt arises under Article 7.2 of the Contract between the Parties. There is a dispute between the Parties as to whether or not it was agreed between the representative of the Claimant and the representative of the Defendant that the amount of the late payment debt should be reduced to 47 million tenge. Ms. Kubenova, who appears for the Defendant, says that the agreement was reached between the Chief Executive Officer of the Defendant and the representative of the Claimant, whose first name was Alex. Mr. Berzhanov, who represents the Claimant, says that there was no such agreement.
3. Article 297 of the Kazakh Civil Code enables a penalty under a provision such as Article 7.2 to be reduced having regard to

“... the degree of fulfillment of the obligation by the debtor and the interest of the debtor and creditor that deserve attention.”

Ms. Kubenova has told me a certain amount about the circumstances of her client, the employees whose jobs are at risk if CHI enters bankruptcy and so forth. Mr. Berzhanov in response to my question said that because of the late payment of the debt, the Claimant has lost the business opportunities, and matters such as that and has therefore been prejudiced. Mr. Berzhanov has asked me to give judgment today without waiting to hear any further evidence about that matter. I have come to the conclusion that having regard to the alleged agreement, about which I cannot make any final determination, and having regard to the circumstances of this case, I should reduce the amount of the late payment penalty to 47 million tenge. So, I give judgment for 47 million tenge under that limb of claim.

4. The next matter in the dispute is the cost of notarial services. The Claimant seeks payment of 309, 331 tenge for notarial services. The Defendant does not dispute that figure. When I asked Ms Kubenova, she did not. There are various receipts in the documents before me. The Defendant makes the point that since the transfer to this Court was done by agreement, her client should not have to pay the cost of notarial services. I do not accept that submission, since that expense is the part of the necessary cost of transferring the case to this Court. There are other benefits, which I shall come to shortly, as a result of transferring the case to this Court. But the Defendant is liable for costs. Therefore, I award 309, 331 tenge in respect of notarial services.
5. The next issue is the claim for state duty, which the Claimant paid when lodging this case in the Astana district court. Mr. Berzhanov, for the Claimant, says that this amounted to 10% of the claim and was 10 million tenge or to be precise, 10 205 221 tenge. However, Ms. Kubenova says that that sum should not be paid by her client at all, it is not a sum for which the Defendant can be liable, and the Claimant should recover that from the state. I think that Ms. Kubenova is right on this particular issue. The

Claimant can recover the state duty, which it has paid. It is entitled to make such recovery under Article 280 of Kazakhstan Civil Procedure Code.

6. The final issue is the legal costs. The Claimant seeks 24 million tenge as costs. Ms. Kubenova for the Defendant says that it is far too much. I am not in a position to decide that today. I therefore direct that the Claimant should provide details of the costs it incurred, which the Claimant says, amount to 24 million tenge, within 7 days. The Defendant should respond with any comments on the Claimant's costs within 7 days thereafter. So, the Claimant's costs should be lodged by 20 December 2022. The Defendant's comments should be provided by 27 December 2022. I will either assess costs in writing, alternatively, I will do so orally at the hearing in January.
7. I now come to time to pay. Ms. Kubenova has made powerful submissions to the effect that her client is doing its best to pay the debt. She says the Defendant has paid substantial sums. It expects to be able to continue doing so at a significant rate. I order that the Defendant must pay 100 million tenge by 31 December 2022. The Defendant must pay a further 100 million tenge by 17 January 2023. I will have a hearing in Kazakhstan on 17 January 2023 to deal with the remaining issues. I will retain the hearing on 17 January 2023, which had originally been fixed for the trial of the action. I will set out a timetable for paying the balance of the debt on that date. If I have not done so before 17 January 2023, I will give a decision on the Claimant's claim for costs on that date.

By the Court,

Sir Rupert Jackson Justice, AIFC Court

Representation:

The Claimant was represented by Mr. Tabyldy Berzhanov, Managing Partner of Legal Services Provider Co. Ltd, Astana, Republic of Kazakhstan.

The Defendant was represented by Ms. Zarina Kubenova, CHI Electric LLP, Aktobe, Republic of Kazakhstan.

The matter came back to the AIFC Court on Tuesday 17 January 2023 and the AIFC Court made the following Orders:

Order on the payment of the balance

1. I thank both counsel for their submissions. I do appreciate that the Claimant has been out of pocket for a long time and it needs the money. I also appreciate that in the present difficult economic circumstances the Defendant is struggling to pay and I accept that there have been delays in other contractors paying debts to the Defendant.
2. Weighing up the considerations on both sides, I will allow four weeks from today for the payment of the balance. Four weeks from today will be Tuesday 14th February 2023. I Order that the Defendant do pay the balance by 14th February 2023. The balance will be 87,483,377 tenge by my calculations.

Order on legal costs

3. This is an application for costs which is strongly disputed. The Claimant says that the costs incurred are 24 million Kazakh tenge and has produced an invoice to show that is what the lawyers have charged their client and that is what the client has paid. So the claim is for 24 million tenge. The Defendant says that although Article 113 of the Civil Procedure Code, upon which Mr. Berzhanov relies, applies, nevertheless, this is a very simple case. The amount of the debt has been admitted. There is no great complexity and the Defendant proposes that the costs should be USD 1,620 converted to Kazakh tenge at today's rate.
4. Mr. Berzhanov, as I say, places reliance upon Article 113 of the Civil Procedure Code which provides as follows:

“At the request of the party, in favour of which the decision was made, the Court shall adjudge expenses, incurred by it on payment for the assistance of a representative or several representatives, participated in the process and which is not party of labour relations, in the amount of actually incurred expenses by the party. Total amount of these expenses on recovery shall not exceed ten percent of the satisfied part of the claim. Amount of expenses by non-property claims shall be recovered within due limits, but shall not exceed three hundred monthly calculation indexes”.
5. Mr. Berzhanov says that it is appropriate in this case in accordance with Article 113 to assess costs in the sum of 10% of the claim which amounts to 24 million Kazakh tenge. Mr. Berzhanov cites the decision of Judge Saudabaev in case No.2301-22-00-2/1612 dated 31st October 2022. That was a case in which costs were indeed assessed in the sum of 10% of the primary award.
6. Ms. Kubenova draws the Court's attention to paragraph 14 of the Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated 25th December 2006. That paragraph in so far as material provides as follows:

“In the event of an excessively high documented amount of expenses by payment order or receipt for the assistance of a representative who participated in the proceedings on non-property claims, the Court should be guided by the criteria of good faith, fairness and reasonableness, provided for in Article 8 paragraph 4 of the Civil Code and Article 6 paragraph 5 of the Civil Procedure Code”.

7. Ms. Kubenova submits that the sum of costs claimed in this case are “excessively high” and that provision in paragraph 14 should apply. I accept that submission. It does seem to me that the claim for 24 million tenge is out of all proportion to a case of this simplicity where the Claimant’s solicitors were only instructed at a very late stage and where there was no dispute about the amount of the debt. Mr. Berzhanov has told me the amount of hours spent which seem to me to be excessive.
8. I have carefully considered the arguments on both sides, and I award the sum of 5 million tenge in respect of costs. That will therefore be added to the debt which I mentioned before, making a total sum of 92,483,377 tenge. That sum must be paid by the Defendant to the Claimant by 14th February 2023. I thank both counsel for the assistance in this case.

By the Court,

Sir Rupert Jackson Justice, AIFC Court

Representation:

The Claimant was represented by Mr. Tabyldy Berzhanov, Managing Partner of Legal Services Provider Co. Ltd, Astana, Republic of Kazakhstan.

The Defendant was represented by Ms. Zarina Kubenova, CHI Electric LLP, Aktobe, Republic of Kazakhstan.