



IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

21 November 2023

CASE No: AIFC-C/SCC/2023/0034

CROWE AUDIT ASTANA LLP

Claimant

v

GRAIN CONSORTIUM OF KAZAKHSTAN LLP

Defendant

JUDGMENT

Justice of the Court:

Justice Patricia Edwards

ORDER

UPON the commencement of a Claim on 16 October 2023;

AND UPON the filing of a Defence on 30 October 2023;

AND UPON the filing of a Reply on 9 November 2023;

IT IS ORDERED that:

1. The Defendant shall, by 16:00 Astana time on 8 December 2023, pay the Claimant 2,744,000 KZT.

JUDGMENT

1. Under an Agreement dated 6 May 2022, the Claimant agreed to provide audit services for the year 2021, in return for payment by the Defendant of 3,920,000 KZT including VAT.
2. Pursuant to article 4.2, the Defendant paid 50% of the contract sum within five days of signing the contract. The remainder of the contract sum was agreed to be payable within five business days of the Claimant completing its services and the parties signing a certificate of acceptance.
3. Article 4 included the following provisions:

“4.5. The Customer will obtain a certificate of acceptance of the services rendered by the Auditor together with an invoice for payment of the second instalment of remuneration as specified in clause 4.2 of this article of the Agreement. The Customer shall sign, date and return such a rendered service certificate to the Auditor or send a reasonable refusal to the Auditor of signing the same, within 10 (ten) business days after receipt of a rendered service certificate. In case, at expiration of stated 10 (ten) business days, the Auditor does not obtain from the Customer a signed service acceptance certificate or a reasonable refusal of signing the same, the Parties shall acknowledge that a service acceptance certificate shall be deemed signed and the Services shall be deemed rendered by the Auditor and accepted by the Customer in a scope and subject to conditions as specified in such rendered service acceptance certificate.

...

4.8. The audit of the Customer’s financial statements for 2021 is scheduled to begin on May 11, 2022, subject to the Customer’s compliance with the terms of this Agreement, and the Customer undertakes to submit the draft financial statements for 2021 prepared in accordance with IFRS within the following time frame.

- *by May 11, 2022 – draft financial statements for 2021;*

- by June 20, 2022 – the final financial statements for 2021.

4.9. *The Auditor shall proceed to fulfilment of its obligations under the present Agreement after signing it and receiving an advance payment stated in clause 4.2 of this article of the Agreement is credited to the Auditor’s current account, as well as after the Auditor is presented draft financial statements prepared in accordance with the IFRS, under clause 4.8 of this article of the Agreement.*

4.10. *According to the results of the provision of services, the Auditor plans to submit the following documents to the Customer:*

a) an audit report on the financial statements of the Customer for the year completed on December 31, 2021, prepared in accordance with IFRS, is scheduled to be submitted to the Customer within 10 (ten) working days from the date of receipt of the final (adjusted) financial statements for the 2021 prepared by the Customer in accordance with IFRS, subject to the timely provision by the Customer of the updated financial statements;

...

4.11. *In case the Customer fails to prepare or untimely prepares information provided for in clause 2.1 of article 2 of the present Agreement or preparation or presentation of necessary documentation, financial statements or other information requested by the Auditor ... is delayed through the Customer’s fault that results in probable inability of the Auditor to fulfil its obligations within the terms provided for by the present Agreement, the cost and terms of services rendering by the Auditor may significantly change.*

In that case the Customer undertakes to additionally pay for work actually performed by the Auditor. An amount paid to the Auditor in such a case will be calculated based on hourly rates of the Auditor’s personnel and time actually spent by them to render the services under the present Agreement.”

4. On 13 February 2023, the parties concluded Supplementary Agreement No 1. The total contractual sum was increased to 4,704,000 KZT. In addition, the date for provision of the “*final financial statements*” by the Defendant in article 4.8 was changed from 20 June 2022 to “*March 6, 2023*”.
5. I have not seen any documents evidencing when the final financial statements were sent to the Claimant, although it appears to be common ground that they were eventually sent.
6. On 28 April 2023, the Claimant says that it sent to the Defendant by email electronic versions of the audit report on the financial statements for 2021, together with an invoice and certificate of services rendered, but had no response. I have not seen copies of any of these documents.
7. On 17 August 2023, the Claimant sent to the Defendant by post an audit report and an invoice for payment of the second half of the contract sum. It asked the Defendant to sign and return the

copy of the act of services rendered within ten business days. There was no response from the Defendant.

8. On 5 September 2023, the Claimant sent a letter of claim, asking to the Defendant to pay the remaining half of the contract sum by 11 September 2023.

Jurisdiction

9. The parties agreed in article 7 of their contract that any dispute would be decided by the courts, and subject to the laws, of the AIFC.
10. Pursuant to Article 13.4 of the Constitutional Statute of the Republic of Kazakhstan on the Astana International Financial Centre, Constitutional Statute No. 438-V ZRK of 7 December 2015 (as amended), the AIFC has exclusive jurisdiction in relation to disputes transferred to the AIFC Court by agreement of the parties. This court therefore has jurisdiction over this claim.
11. The Claimant claims 2,744,000 KZT. This is equivalent to approximately US\$5,944. As this is less than US\$150,000, it is appropriate that the claim be determined in the Small Claims Court pursuant to Rule 28.1(1) of the AIFC Court Rules.

Decision

12. In its Defence, the Defendant alleges that, in breach of contract, the Claimant did not provide an audit of the financial statements within the agreed period.
13. Insofar as paragraph 5 of the Defence seeks to allege that the Claimant ought to have provided its audit report prior to the parties entering into Supplementary Agreement No 1, no basis for this allegation has been identified, and on the terms of the contract the Claimant could not have done so when the Defendant had not yet provided its final financial statements. Supplementary Agreement No 1 extended the time for the Defendant to do so.
14. In paragraph 7 of the Defence, referring to Supplementary Agreement No 1, the Defendant says that the Claimant breached "*its obligation to provide an audit of the financial statements by March 06, 2023*".
15. However, this misunderstands the agreement. As the Claimant has observed, Supplementary Agreement No 1 extended the deadline for the Defendant to provide the "*final financial statements*" under article 4.8 to 6 March 2023. The Claimant could not produce its audit report

until after it had received and worked on those documents. The importance of timely and accurate provision of documents by the Defendant is apparent from the agreement, in particular articles 2 and 4.

16. I also note that there is no suggestion or evidence that the Defendant ever contacted the Claimant or complained about any delay in providing the Claimant's services.
17. Furthermore, in article 4.5, the parties agreed that the Defendant had ten business days to sign a rendered service certificate or to send a reasonable refusal to sign. If it did neither, the audit services were to be deemed rendered and accepted. The Defendant did not respond to the documents sent by the Claimant on 17 August 2023. Accordingly, it is deemed to have accepted the services.
18. In short, the Claimant has supplied its services, and the Defendant has failed to pay the balance of the sums due under the contract without identifying any lawful excuse.
19. At the end of the Defence, the Defendant asked for time to provide supporting documents. However, not only has the Defendant been aware of this claim for several months, it does not in any event appear to me that any further documents are needed on any of the matters in issue. The Defendant has relied on an incorrect understanding of the contractual terms.
20. As the Defendant has already paid half of the original contract price, the remaining sum due is 2,744,000 KZT.

By the AIFC Small Claims Court,

A handwritten signature in black ink, appearing to read 'Patricia Edwards'.

Patricia Edwards,
Justice, AIFC Small Claims Court



Representation:

The Claimant was represented by Mr. Arman Baimyshev, lawyer, Crowe Outsourcing KZ, Almaty, Kazakhstan.

The Defendant was represented by Mr. Ryskulbekov, Deputy General Director of "Grain Consortium of Kazakhstan, Astana, Kazakhstan.