

IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

23 October 2024

CASE No: AIFC-C/SCC/2024/0021

MR SULTANBEK ABILOVICH OTEGENOV

Claimant

v

(1) NEF QAZAQSTAN LIMITED LIABILITY PARTNERSHIP  
(2) TIMUR GAYRIMENKUL GELIŞTİRME YAPI VE YATIRIM A.Ş.  
JOINT STOCK COMPANY

Defendants

---

JUDGMENT

---

Justice of the Court:

Justice Josephine Higgs KC

## JUDGMENT

This Judgment is structured as follows:

- Part 1. Introduction
- Part 2. Facts giving rise to the Claimant's Claims
- Part 3. Claim against the First Defendant
- Part 4. Claim against the Second Defendant
- Part 5. Costs
- Part 6. Conclusion

### **PART 1. INTRODUCTION**

- 1.1. The Claimant, Mr Sultanabek Abilovich Otegenov, commenced a claim against NEF Qazaqstan LLP (the "**First Defendant**" or the "**Issuer**") and Timur Gayrimenkul Geliştirme Yapi ve Yatirim A.Ş. JSC (the "**Second Defendant**" or the "**Guarantor**") (collectively the "**Defendants**"), by submitting a Claim Form to the AIFC Court which was received by the Court on 4 July 2024, and issued by the Court on 9 July 2024.
- 1.2. In his Claim Form the Claimant claims, in summary, repayment of matured bonds KZX000001805 (the "**Bonds**") issued by the First Defendant and guaranteed by the Second Defendant, together with interest and costs.
- 1.3. On 6 August 2024, the First Defendant filed a Defence. In its Defence, the First Defendant acknowledged the debt owed to the Claimant, specifically it acknowledged a principal debt of USD 69,995.11, USD 900.79 interest, and interest for failure to pay an amount in the sum of USD 2,659.32. The First Defendant informed the Court and the Claimant that it offered to repay the principal amount to the bondholders of US denominated bonds KZX000001805 and KZT denominated bonds KZX000001185, conditional upon the bondholders having no claims and agreeing not to make any future claims against the First Defendant or the Second Defendant. It stated that should these terms be refused, the Issuer would not be able to make any payments and any subsequent appeals and claims should be directed to the Guarantor.
- 1.4. No Defence has been filed by or on behalf of the Second Defendant.
- 1.5. By an email dated 27 August 2024, the Court asked the Claimant to confirm whether he wished to accept the offer made in the Defence, or wished the Court to proceed to determine the claim and issue Judgment. The email noted that if the Claimant wished the Court to determine the Claim it would be determined by the Court on the papers, without a hearing, unless either the Claimant or the Defendants requested a hearing.
- 1.6. By an email to the Registry dated 24 September 2024, the Claimant informed the AIFC Court that he wished the Court to proceed to determine the claim and issue its Judgment.

### **Jurisdiction of the AIFC Small Claims Court and applicable law**

1.7. In the Claim Form, it is stated the AIFC Court has jurisdiction over the Claimant's claims against the Defendants based on the prospectus for the Bonds prepared by the Issuer (the "**Prospectus**"), which is exhibited at Exhibit 3 to the Claim Form.

1.8. The Prospectus in Clause 2.1 on pages 27-28 provides as follows:

*"The Bonds and any non-contractual obligations, arising out of, or in connection with, the Bonds shall be governed by, and construed in accordance with the laws of the AIFC.*

*The Issuer has agreed herein the conditions in favor of the Bondholders that any claim, dispute or discrepancy of any nature arising out of, or in connection with the Bonds (including claims, disputes or discrepancies regarding the existence, termination thereof, or any non-contractual obligations arising out of, or in connection with the Bonds) shall be brought to, and finally resolved by the Court of the AIFC in accordance with the rules thereof".*

1.9. The Prospectus on pages 41-60 contains the "Schedule 3 Guarantee Agreement" dated 28 October 2022 between the Guarantor and the Issuer in favour of the bondholders (the "**Guarantee**").

1.10. The Guarantee on page 59-60 in Art. 19 "Jurisdiction", as amended by an "Additional Agreement no 1" dated 7 November 2023, includes the following jurisdictional clause:

*"The Parties consent to the exclusive jurisdiction of the AIFC Court for the purpose of any action or proceeding hereunder. For the purpose of this paragraph, 'Acting Law of the AIFC' has the meaning as defined in Article 4 of the Constitutional Statute of the Republic of Kazakhstan on the Astana International No. No 438-V ZRK of 7 December 2015".*

1.11. The Claimant alleges that, as a result of these provisions, the AIFC Court has jurisdiction over his claims against the First Defendant and the Second Defendant arising in relation to the Bonds. The AIFC Court's jurisdiction is not disputed in the Defence, and neither of the Defendants has made an application contesting the jurisdiction.

1.12. The Court is satisfied that the AIFC Small Claims Court has jurisdiction over the Claimant's claims, for the reasons set out above.

1.13. The Claimant alleges that the dispute is governed by AIFC law, since both the Prospectus and Guarantee provide that AIFC law is the applicable law. This is not disputed in the Defence, and the Court is satisfied that AIFC law is applicable.

1.14. None of the parties has requested a hearing. Accordingly, pursuant to Rule 28.39 of the AIFC Court Rules, the Court has considered this Claim on the papers and determines it as follows.

## PART 2. FACTS GIVING RISE TO THE CLAIMANT'S CLAIMS

- 2.1 The Claimant alleges the following facts and matters in his Claim Form. None of these facts is disputed by the First Defendant in its Defence.
- 2.2 The First Claimant invested USD 69,955.11 in Bonds KZ000001805 (NEF. 1125) and acquired 698 Bonds. This investment is evidenced by the Customer Order exhibited at Exhibit 4 of the Claim Form.
- 2.3 The maturity date for the Bonds is 20 November 2025 with an interest rate of 10 % per annum payable on a semi-annual basis.
- 2.4 The First Defendant also issued other bonds No. KZX000001185 (NEF.1123). However, on 30 November 2023, the First Defendant admitted its default on bonds No. KZX000001185 (NEF.1123) [Exhibit 5]. The First Defendant announced that it defaulted in paying the principal amount and the last coupon payment to the bondholders of bonds No. KZX000001185 (NEF.1123).
- 2.5 By section 4.4(1) of the Prospectus in relation to the Bonds, the Issuer undertook to:  
*“prevent the facts of non-fulfillment of obligations not related to the Issue of bonds of the Issuer by more than ten percent of the total value of the assets of the Issuer as of the date of state registration of the issues of bonds.”* [Exhibit 3].
- 2.6 The default on bonds No. KZX000001185 (NEF.1123) amounted to the breach of other obligations in relations to the Bonds under the Prospectus (i.e. Bonds No. KZX000001805 (NEF.1125)) and entitled the Claimant to demand early redemption of his Bonds.
- 2.7 Shortly after on 30 December 2023, the First Defendant admitted default in the form of “Breach of other obligations (Covenants)” on the Bonds as well and confirmed bondholders' entitlement for the early redemption of Bonds [Exhibit 2]:  
  
*“Consequently [of default under bonds No. KZX000001185], the Company announces that ‘Breach of other obligations (Covenants)’ under section 4.5(a) of the Prospectus occurred and from 31 December 2023, the KZX000001805 (NEF.1125) Bondholders shall be entitled to send the notice requesting the Company to early redeem the KZX000001805 (NEF.1125) bonds or take other action as set out in the Prospectus. The sample of such notice is attached hereto as Annex A.”*
- 2.8. Section 4.5(a) of the Prospectus provides as follows:  
  
*“4.5 Events of Default  
If any one or more of the below events (each an “Event of Default”) shall occur, the Bondholder may give written notice to the Issuer at its registered office that such Bonds are immediately repurchased, at its principal amount together with accrued interest (if any) to the date of payment.  
(a) Breach of other obligations (Covenants)”*
- 2.9. In the event of default, the Prospectus on p. 34 entitles the bondholders with the right of early redemption of the Bonds under the condition that bondholders send written claims to the Issuer for the redemption of Bonds within 7 days following the first publication of information on default.

- 2.10. The Claimant sent the required written notice on 4 January 2024 (“**Notice**”) to the Defendants’ email addresses [**Exhibit 6**]. Moreover, the Claimant handed over the Notice to the Issuer’s office and received a receipt confirmation signature from the Issuer’s employee [**Exhibit 7**].
- 2.11. As at the date of the Claim Form, the Issuer had not performed its obligations to the Claimant.
- 2.12. The Claimant alleges that he is entitled to the payment of the principal debt with interest, and that the Guarantor and the Issuer are jointly liable for this payment. As explained below, there is no dispute regarding the Issuer’s liability for repayment of the principal debt and interest.

### **PART 3. CLAIM AGAINST THE FIRST DEFENDANT**

- 3.1. There is no dispute that the First Defendant became liable to repay the principal debt to the Claimant. As recorded in paragraph 1.3 above, in its Defence, the First Defendant acknowledges its debt to the Claimant, in the total amount of USD 73,515.22.
- 3.2. Based on the allegations made in, and the documents exhibited to, the Claim Form, the First Defendant’s admission in its Defence, I find that the First Defendant owed the First Claimant the sum of USD 73,515.22 as at 3 July 2024.
- 3.3. Since that date, further interest has accrued. Based on the interest rate of 7.7% set out in paragraph 33 of the Claim Form, the further interest which has accrued by the date of this judgment (23 October 2024) is USD 1,674.14.
- 3.4. Accordingly, I find that the First Defendant owes the Claimant the sum of USD 75,189.36.

### **PART 4. CLAIM AGAINST THE SECOND DEFENDANT**

- 4.1. The Claimant contends that, having established the Issuer’s liability, the Claimant may jointly demand performance from the Guarantor. He refers to Article 5.1 “Execution and Delivery of Guarantee” and contends that Guarantee Trigger Events have occurred. He further alleges that the Guarantor has admitted its obligations to the Claimant in a statement dated 12 December 2023, which is exhibited at Exhibit 9 to the Claim Form.
- 4.2. The Defence filed by the First Defendant does not dispute the Claimant’s assertions and asserts that the Second Defendant is jointly and severally liable for the obligations arising from the Bonds.
- 4.3. The Second Defendant has not filed a Defence.
- 4.4. Based on the allegations made in the Claim Form, and the documents exhibited to the Claim Form, I am satisfied and I find that the Guarantor is jointly and severally liable for the non-fulfilment of the Issuer’s obligations.
- 4.5. I therefore find that the total amount owed to the Claimant by the Second Defendant as at the date of this Judgment is USD 75,189.36.

**PART 5. COSTS**

- 5.1. In his Claim Form, the Claimant also seeks attorney's fees. Rule 26.9 of the AIFC Court Rules provides that the Small Claims Court may not order a party to pay a sum to another party in respect of costs, fees and expenses except for such part of any Court fees as the Small Claims Court considers appropriate, or such further costs as the Small Claims Court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably.
- 5.2. I consider that it is appropriate that the Defendants should pay the Claimant's Court fee in the sum of USD 350.91.
- 5.3. I do not have any information about any other costs incurred by the Claimant, and I do not consider it appropriate to order the Defendants to pay any other costs. However, the Claimant is permitted, if so advised, to file a written statement of costs setting out the amounts claimed and brief grounds on which costs are sought within 28 days of the date of this Judgment. The Defendants are permitted, if so advised, to file any response within 28 days thereafter. I will then determine the Claimant's claim for costs on the papers.

**PART 6. CONCLUSION**

- 6.1. For the reasons set out above, THE COURT ORDERS THE FIRST DEFENDANT AND SECOND DEFENDANT TO PAY THE SUM OF USD 75,540.27 WITHIN 28 DAYS FROM TODAY'S DATE.

By Order of the Court,

Josephine Higgs KC,  
Justice, AIFC Small Claims Court

**Representation:**

The Claimant was represented by Mr. Bakhyt Tukulov, Partner, Tukulov Kassilgov Shaikenov Disputes LLP, Almaty, Republic of Kazakhstan.

The First Defendant was represented by Mr. Rauan Batykov, ILF A&A Limited Liability Partnership, Almaty, Republic of Kazakhstan.

The Second Defendant was not represented.