

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

29 August 2024

CASE No: AIFC-C/CFI/2024/0016

**MR KANAT SAGYNAEV**

Claimant

v

**(1) NEF QAZAQSTAN LIMITED LIABILITY PARTNERSHIP**

**(2) TIMUR GAYRIMENKUL GELİŞTİRME YAPI VE YATIRIM A.Ş.**

Defendants

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**JUDGMENT**

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Justice of the Court

**Justice Tom Montagu-Smith KC**

**ORDER**

1. Judgment is entered against the First Defendant on the admissions made in paragraph 1 of the First Defendant's Defence in the terms set out below.
2. Judgment in default is entered against the Second Defendant in the terms set out below.
3. The Defendants shall pay the Claimant the sum of US\$ 259,530.80 (KZT 124,891,412).
4. The Defendants shall pay the Claimant's costs of the proceedings, summarily assessed in the amount of US\$ 7,000 (KZT 3,368,540).

**REASONS**

1. By this claim, the Claimant seek payment of US\$ 259,530.80 (KZT 124,891,412) due in respect of certain bonds issued by the First Defendant and guaranteed by the Second Defendant.
2. The Claimant issued the claim on 30 May 2024. On 20 June 2024, he filed a certificate of service indicating that he had served the proceedings on both Defendants.
3. The First Defendant acknowledged service on 25 June 2024. The Second Defendant has not done so.
4. The First Defendant did not immediately file a Defence. On 9 July 2024, the Claimant applied for default judgment against both Defendants. On the following day, 10 July 2024, the First Defendant filed a Defence.
5. The Defence appeared to admit the substance of the claim. As a result, I made directions requiring the Claimant and the First Defendant to exchange submissions on whether and in what terms the Court should enter judgment on the admissions and on costs. The Claimant's submissions were due on 8 August 2024, the First Defendant's on 15 August 2024.
6. On 8 August 2024, the Claimant filed submissions, seeking judgment on the admissions in the Defence. On 15 August 2024, the First Defendant emailed the Court, attaching a document labelled "Defence". It offered no submissions on whether there should be judgment on the admissions, nor on costs.

The position of the First Defendant

7. The relevant Court Rules are as follows:
  - 10.3 *Where a party makes an admission under Rule 10.1 (admission by notice in writing), any other party may apply for judgment on the admission.*
  - 10.4 *Judgment entered under Rule 10.3 shall be such as it appears to the Court that the applicant is entitled to on the admission.*
8. Paragraph 1 of the First Defendant's Defence reads as follows:

*"In this Defence, Defendant 1 acknowledges the debt owed to the Claimant, specifically USD 249,985.14 as the principal debt. Defendant 1 also acknowledges the debt of USD 3,218.97*

*as interest. Interest for failure to pay an amount is also acknowledged in the amount of USD 6,353.69. Therefore, the total amount of the debt of Defendant 1 is USD 259,530.8.”*

9. As the Claimant points out, the First Defendant admits that it is liable to pay the Claimant the full amount claimed. The First Defendant goes on in the Defence to suggest that it is currently unable to make the payment and is prioritizing repayment of other bond debts. However, even if that is correct, it would not amount to a defence to the claim.
10. The Defendant’s submissions of 15 August 2024 offered no reasons why judgment should not be entered.
11. In the circumstances, it appears to me that the Claimant is entitled to judgment against the First Defendant for the full amount of the claim.

#### The position of the Second Defendant

12. Under AIFC Court Rule 9.4:

*9.4 The Claimant may obtain judgment in default of an acknowledgment of service if —*

*(1) the Defendant has not filed an acknowledgment of service or a Defence to the claim (or any part of the claim); and*

*(2) the relevant time for doing so has expired.*

13. In his Certificate of Service, the Claimant states that he served the proceedings on the Second Defendant on 3 June 2024. If so, the time for the Second Defendant to file an acknowledgment of service was 28 days later (Rule 7.4(2)), by 1 July 2024, and so has now expired. The only question is therefore whether the Second Defendant has been validly served.
14. Rule 5.3 of the AIFC Court Rules permits service “by any method which brings the document and its contents to the attention of the party being served.”
15. The Claimant says that he served the proceedings by email to [info@nef.com.tr](mailto:info@nef.com.tr). This was the email address provided in the prospectus for the bonds to be used for contacting the Second Defendant. In the circumstances, I am satisfied that the proceedings were brought to the Second Defendant’s attention.
16. My view is fortified by the terms of the First Defendant’s submission of 15 August 2024. In paragraph 3 of that document, the First Defendant offered to repay the principal sum due on the bonds, on condition that the Claimant did not pursue any further claims for penalties, fines or legal fees against either Defendant. The First Defendant’s lawyers appear to consider themselves authorized to make an offer on behalf of the Second Defendant. In the circumstances, it appears highly likely that they have discussed these proceedings with the Second Defendant.
17. In the circumstances, I am satisfied for present purposes that the time for the Second Defendant to file an acknowledgment of service has expired and it has not done so. The Claimant is therefore entitled to default judgment against the Second Defendant.
18. The Defendants’ liability to the Claimant is joint and several and not cumulative.
19. It remains open to the Second Defendant to apply to set aside this judgment, insofar as it affect the Second Defendant, in accordance with Part 9, Section II of the AIFC Court Rules.

Costs

20. The Claimant seeks costs in the sum of US\$ 7,050 (KZT 3,392,601).
21. There can be no doubt that the Claimant should be entitled to his costs in principle.
22. As to quantum, the Claimant has provided a breakdown of the time spent by the three lawyers acting on his behalf, together with their hourly rates. The total comes to US\$ 7,050 (KZT 3,392,601), representing 43.5 hours of lawyer time. I note that, by annex 1 to the Engagement Letter, the Claimant agreed to pay a fixed fee of US\$ 7,000 (KZT 3,368,540) for representation in these proceedings. On the present material, it therefore appears that the Claimant's maximum liability to his lawyers is US\$ 7,000 (KZT 3,368,540) and his claim should not therefore exceed that sum.
23. The sum claimed is, in my view, entirely reasonable. This is reinforced by the fact that the sum due was fixed and the work required could have been significantly greater had the Defendants defended the claim. The First Defendant has not provided any comments on the quantum.
24. In the circumstances, I assess the Claimant's costs at US\$ 7,000 (KZT 3,368,540).

By Order of the Court,

Tom Montagu-Smith KC,  
Justice, AIFC 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, Associate Partner at the International Law Firm ILF A&A, Almaty, Republic of Kazakhstan.

The Second Defendant was not represented.