

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

4 September 2023

CASE No: AIFC-C/CFI/2023/0023

FREEDOM FINANCE JSC

Claimant

v

MR. EGOR ROMANYUK

Defendant

JUDGMENT
ON AN APPLICATION FOR SECURITY FOR COSTS
AND
ON AN APPLICATION FOR THE TRIAL TO BE HELD IN PRIVATE

Justice of the Court:
Justice Sir Rupert Jackson

JUDGMENT
ON AN APPLICATION FOR SECURITY FOR COSTS

1. This is the Claimant's application for security for costs in respect of the counterclaim, in the long running litigation between Freedom Finance JSC and Mr. Egor Romanyuk.
2. I gave judgment in the first action earlier this year in AIFC Court Case No. 20 of 2022 Freedom Finance JSC v. Mr. Egor Romanyuk. The second action is now under way. In this second action, as in the first action, the Claimant is seeking payment of a substantial sum said to be due under the terms of a Separation and Release of Claims Agreement, which was entered into by the Parties following the termination of the Defendant's employment by the Claimant. The Defendant denies that he is in breach of contract. The Defendant denies that the sum claimed is due. In the present case, unlike the previous case, he seeks to advance a counterclaim, effectively to invalidate the Separation and Release of Claims Agreement.
3. As I see it, the arguments in the counterclaim (and whether they are sound or unsound is not for decision today) are essentially bound up with the Defence. This is not a case in which the Defendant is advancing a free-standing counterclaim, seeking some remedy unrelated to the claim. On the contrary, the Defendant is advancing a counterclaim, which is in essence another form of Defence to the claim. If the counterclaim succeeds, then the Claimant cannot recover the sum claimed as due under this contract.
4. Applications for security for costs arise in many circumstances. They often happen in litigation before domestic courts. They arise in arbitral proceedings and they arise in proceedings before international commercial courts such as this one.
5. There are certain general principles, which are emerging as part of the *lex mercatoria*, which tribunals and courts have regard to across the world in both common law and civil law jurisdictions. One principle is that when a defendant faces a claim, the defendant must have a proper opportunity to defend himself or itself against that claim, and orders for security for costs should not inhibit the defendant from advancing its defence.
6. There can be orders for security for costs in respect of counterclaims. I have made such orders both when sitting as a judge in court and when sitting as an arbitrator in international arbitrations. Such orders may be made in appropriate circumstances, if there are grounds to doubt that the costs of resisting the counterclaim will be satisfied (in the event that the counterclaiming party fails) and where that counterclaim is a free-standing claim.
7. In this case the Claimant has advanced respectable arguments for security for costs. The Defendant is outside the jurisdiction of Kazakhstan. There is a dispute as to whether or not the Defendant has paid the money due under the previous Judgment of this Court. But the Claimant faces the difficulty in this case that the counterclaim advanced by Mr. Romanyuk is in essence another variant of his defence to the claim. If this Court were to make an order for security for costs on the counterclaim that would have the effect, if the order is not obeyed, of preventing Mr. Romanyuk from advancing his full defence to the claim.
8. In these circumstances, I give no indication about the merits of the parties' cases. These will be examined at trial in the usual way with the assistance of two very able advocates, both of whom I have heard from before. But I must not make an order today, which would inhibit the presentation of the whole of Mr. Romanyuk's defence.

9. In these circumstances this application for security for costs is refused.

JUDGMENT

ON AN APPLICATION FOR THE TRIAL TO BE HELD IN PRIVATE

1. The Claimant applies for the trial to be held in private. The Defendant opposes this application.
2. Mr. Tukulov, for the Claimant, argues that as a result of the activities of the Defendant, journalists have been publishing articles which caused damage to the Claimant's reputation and led to a drop in the Claimant's share price. Mr. Kholod, for the Defendant, says that the Defendant has no responsibility for anything that may have been published and a lot of the matters in this case are already in the public domain. It will achieve nothing to hold the hearing in private for that reason. Also, he says, his client wants a hearing in open court so that anybody can listen to the proceedings. It is true that open justice is an important principle upon which this Court proceeds, although there is power under the Court's Rules to make an order for a hearing in private in appropriate circumstances.
3. I do not think that this is a case in which the Court ought to order a hearing in private. First, the previous hearing was not ordered to take place in private. I was very careful at the hearing not to read out the allegedly malicious and untruthful comments made by Mr. Romanyuk against the Claimant. I merely referred to the relevant passages in the documents. The same procedure can be adopted at the trial this time. Counsel need not read out the relevant passages. They may simply direct the Court to a relevant passage in the documents and say that it is a disparaging statement about the Claimant which ought not to be made in public.
4. In my judgment last time, I was careful not to set out the disparaging statements but merely identified them by reference to the documents. To some extent, the issues between the Parties are already in the public domain. Mr. Tukulov has told me about a report called the "Hindenburg report" which makes public many allegations against the Claimant. Whether it is quoting the Defendant or someone of the same mind as the Defendant, I do not know. But the dispute between the parties is already generally known. The judgment which this Court gave on the last occasion is on the Court's website.
5. If we were to hold the next hearing in private, it would actually arouse suspicion. People would say: "What is happening this time which prevents the Court sitting openly as it did before?" In my view, holding the hearing in private would achieve very little. A hearing in open court can be conducted in the same way that it was conducted last time. I also attach great weight to the principle of open justice. Cases should proceed in open court unless there is a really good reason to hold them in private.
6. In all the circumstances, I direct that this trial shall be held in open court, but that the disparaging comments referred to by the Claimant in his Claim Form and possibly by the Defendant in his Defence and Counterclaim should not be read out in Court. They can be merely referred to by page number or paragraph number in the documents. My judgment will adopt the same approach.
7. The application for a hearing in private is refused.

By Order of the Court,

Rupert Jackson

Sir Rupert Jackson,
Justice, AIFC Court



Representation:

The Claimant was represented by Mr. Bakhyt Tukulov, Tukulov & Kassilgov Litigation LLP, Almaty, Republic of Kazakhstan.

The Defendant was represented by Mr. Alexey Kholod, "Assistent Plus" International Law Firm, Moscow, Russian Federation.