



IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

17 November 2023

CASE No: AIFC-C/SCC/2023/0027

PRIVATE COMPANY AURORA GEOPHYSICS LTD

Claimant

v

METEOR MINING COMPANY KZ (CONDUIT 24) LTD

Defendant

JUDGMENT

Justice of the Court:

Justice Tom Montagu-Smith KC

ORDER

1. **The Defendant shall pay the Claimant the sum of KZT 24,948,000 by 16:00 Astana time on 1 December 2023.**

JUDGMENT

1. In this claim, the Claimant seeks to recover sums due under two contracts for the provision of geophysical services (“the Contracts”), numbered 260AG-2021 and 123AG-2021. Under the terms of the Contracts, the Claimant agreed to carry out geophysical surveys at two sites in the Almaty Region of Kazakhstan and in Eastern Kazakhstan. The contracts were dated 17 November 2021 and 25 December 2021 respectively.
2. Under the terms of the Contracts, the Defendant was obliged to pay a total of KZT 22,680,000 for the services as follows:
 - a. Under Contract 260AG-2021, KZT 10,200,000;
 - b. Under Contract 123AG-2021, KZT 12,480,000.
3. By clause 3.1.1 of the Contracts, the Defendant was obliged to pay 40% of the sums due within 5 business days of signing the Contract.
4. Clause 3.1.2 provided:


“Subsequent payments are made monthly upon completion of field and processing works, no later than 5 (five) business days from the date of signing by the parties of the Certificate of Completion.”
5. By clause 6.3 of the Contracts, late payment resulted in a penalty being imposed on the Defendant of 0.1% of the total amount of the Contract for each day of delay, up to a maximum of 10%.
6. The Contracts contained a jurisdiction agreement in favour of the Specialized Interdistrict Economic Court of Astana.
7. The parties signed a certificate of completed works for the Contracts on 14 April 2022 and 1 June 2022. The sum certified in each case was the full Contract sum referred to at paragraph 2 above. Despite this, the Defendant paid nothing for the works.
8. On 15 June 2022, the parties signed a reconciliation act – a mutually agreed statement of account – confirming the sums due.
9. On 16 June 2022, the Claimant sent the Defendant a notice setting out its claim. The notice stated the sums due under the Contracts and that the Defendant had accepted the works. It demanded payment within 5 business days. The notice was signed by both parties. It appears that the Defendant’s signatory added the words *“Acknowledged with pending deliverables (i.e. final geophysical reports)”*.
10. No payment was made in response to the notice. As a result, the Claimant brought a claim in the Specialized Interdistrict Economic Court. The Court however rejected the claim on grounds of jurisdiction, finding that the AIFC Court should hear the case as both parties are AIFC Establishments.

11. The Claimant therefore subsequently brought this claim in the AIFC Courts.
12. The Defendant filed a Defence. In it, the Defendant asserts as follows:
 - a. The only useful part of the Claimant's work for the Defendant was the ultimate production of a survey report.
 - b. The Contracts required payment of 40% shortly after signature. However, the Claimant knew the Defendant had no means to pay until the reports were delivered and an investor could be found. As a result, the Claimant went ahead with the works without payment.
 - c. The Contracts were concluded during the crisis caused by the outbreak of Covid-19. In effect, the Defendant says that it was content for the Claimant to fit in work under the Contracts around other clients who were able to make payments up front.
 - d. The Defendant did pay the Claimant c. KZT200m for other services.
 - e. The balancing payment of 60% was not due until after delivery of the reports.
 - f. The Defendant signed the act certificates of completed works because it wanted to give the Claimant confidence that the Defendant would pay and wanted to work together with the Claimant in the future.
 - g. The Defendant signed the reconciliation act but noted that the key deliverables – the reports – had not been produced.
 - h. The reports are now complete but have not been handed over. The Claimant should not receive any payment or, at least, should be awarded only 40% of its claim.
13. The Defendant produced no new documents or evidence than had already been submitted by the Claimant.
14. On 28 September 2023, I issued directions:
 - a. Permitting the Claimant to file a Reply; and
 - b. Requiring the parties to file and witness statements and other documents on which they rely by 18:00 Astana time on 25 October 2023.
 - c. Seeking the parties' comments on whether they required a hearing or were content for the matter to be decided on paper.
15. The Claimant filed a Reply, in which it says:
 - a. It provided services during Covid-19 without prior payment because that was a necessity as a result of the crisis.
 - b. The Defendant did not in fact pay KZT 200,000,000. Nor did the Claimant prioritise other work over the Contracts.
 - c. Payment was not due on delivery of the reports, but before.

- d. The Claimant was entitled to withhold production of the reports because the Claimant did not pay.
16. The Claimant's duly filed a witness statement from Mr Kemal Amanbayev.
17. Mr Amanbayev says that while the Claimant did agree to proceed with the works before payment was made, it would never have agreed only to be paid if any when the Defendant received investor funding.
18. The Defendant did not file any witness evidence.
19. Both parties subsequently indicated that they wanted the case to be decided on the papers.
20. As the Defendant appears to accept, 40% of the Contract sums was due within 5 days of signature of the Contracts. The fact that the Claimant proceeded with the works without insisting on prior payment does not alter the terms of the Contract. The Defendant stops short of arguing that the Contracts were amended. On any view, then, that sum is long overdue.
21. The balance 60% was due on completion of *"field and processing works, no later than 5 (five) business days from the date of signing by the parties of the Certificate of Completion"*.
22. The difference between the parties comes down to the proper construction of this provision. According to the Defendant, the *"field and processing works"* referred to include the provision of the report. The obligation to pay the balance under the Contract is therefore not triggered until the report is delivered.
23. The Claimant disagrees and points to clause 4.2.3. This permits the Claimant to *"retain the results of the Works"* in the event of non-payment.
24. In my view, the Defendant was obliged to pay the balancing sum within 5 days of signing the certificate of completion. That is what the Contracts require. The Defendant's position is effectively that it signed the certificate prematurely. That would not, in my view, provide a defence as the timing of the payment was set by the date of the certificate.
25. In any event, in my view, the certificate was not premature. The *"field and processing works"* referred to in clause 3.1.2 did not include the provision of reports. The reports were to come later, after payment. If they came before, clause 4.2.3, which permitted the Claimant to withhold the *"results of the Works"* in the event of non-payment, would be deprived of much of its force. In the circumstances, the full contract sums were due in June 2022.
26. Even if that were wrong, the Claimant would be entitled to terminate the Contracts on the basis of the Defendant's failure to pay the first 40% of the sums due and claim damages. By the Defendant's own admission, the Claimant has done everything it needed to do to complete the works. In those circumstances, its loss is the contract sum.
27. No doubt if the sums due are paid, the reports will be produced. If they are not, the Defendant may then have a legal remedy.
28. The sums have been overdue by more than 100 days. As a result, the full 10% penalty has accrued under clause 6.3 of each Contract.
29. In the circumstances, the Defendant is obliged to pay the Claimant the full sum claimed, being KZT 24,948,000, comprised of:

- a. The principal sums due under the Contracts, amounting to KZT 22,680,000; and
- b. The penalty of 10% of the Contract sums, being KZT 2,268,000.

By Order of the Court,



Justice Tom Montagu-Smith KC,
Justice, AIFC Small Claims Court



Representation:

The Claimant was represented by Mr. Nariman Omarov, legal counsel, Aurora Geophysics Ltd., Astana, Kazakhstan.

The Defendant was represented by Mr. Dauren Gabdull, Meteor Mining Company KZ (CONDUIT 24) Ltd., Astana, Kazakhstan.