



IN THE SMALL CLAIMS COURT  
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

14 October 2024

CASE No: AIFC-C/SCC/2024/0030

Private Company “Quantum Capital Ltd”

Claimant

v

Ms. Saniya Gabdullina

Defendant

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JUDGMENT AND ORDER

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Justice of the Court:

The Lord Banner KC

## ORDER

1. Save as set out in paragraph 2 below, the claim is dismissed.
2. It is declared that that the Defendant's purported termination of the Agreement in her letter dated 30th January 2024 is ineffective.
3. The parties shall bear their own costs.

## JUDGMENT

### Introduction

1. By this claim, the Claimant, Quantum Capital Limited (a firm authorised by licence granted on 28 February 2023 by the Astana Financial Services Authority to carry out regulated activities in the AIFC), seeks various remedies against the Defendant, Ms Sanyia Gabdullina, arising out of a contract (Agreement No. 7045/DU, dated 13 December 2021, referred to in this judgment as "**the Agreement**") pursuant to which the parties agreed that the Claimant would provide asset management services to the Defendant.
2. Clause 16.1 of the Agreement provides that the Agreement "*shall be regulated and interpreted in accordance with the legislation of the Republic of Kazakhstan and relevant legislation of the Astana International Finance Centre (AIFC)*". Clause 16.3 confers jurisdiction on the AIFC Court in relation to any disputes under the Agreement.
3. The financial value of the claim, as stated in the claim form, is 52,622 US Dollars, and therefore the proceedings fall within the remit of the AIFC Small Claims Court (see rule 28.2 of the AIFC Court Rules).
4. Although the central issue in this case is a dispute of fact, neither party has sought a hearing or sought to adduce witness evidence, despite having had ample opportunity to do so. In these circumstances, the Court is satisfied, albeit on balance (given that the factual disagreements between the parties), that the claim can properly be determined on the papers without a hearing.
5. The proceedings were issued following an exchange of pre-action correspondence, the Claimant having sent a Letter Before Claim dated 19 January 2024 and the Defendant having sent a letter in reply dated 30 January 2024. Although the pre-action exchange did not resolve the dispute between the parties, it has helped clarify the issues and the Court commends the parties for engaging in this constructive process before commencing litigation.

### The basis of the claim

6. As noted above, pursuant to the Agreement the Claimant was contracted by the Defendant to provide asset management services to her in accordance with the terms of the Agreement. This does not appear to be controversial between the parties. The Court has been provided with a signed copy of the Agreement and has no reason to doubt its authenticity (nor has it been invited to do so by either party).

7. The Court is also satisfied from the evidence provided to it that the Claimant was at all material times in the general business of providing asset management services and did so for multiple clients. It describes itself as *“the largest asset management firm investing in public equities in Kazakhstan”*,<sup>1</sup> albeit the accuracy of that description does not require determination by the Court.
8. Against that background, the Claimant’s version of the events that have led to these proceedings is as follows:<sup>2</sup>
  - a. On 28 July 2023, the Claimant filed an order via the Exante platform to increase the proportion of Alibaba shares in all the portfolios managed by the Claimant from 2% to 5%.
  - b. The Claimant submits, and the Court accepts, that this transaction was made in accordance with Clause 8.1 of the Agreement which entitled the Claimant to *“make a decision to purchase or sell the same Instruments to some clients at the same time to achieve the best results”*.
  - c. As a result of the aforementioned transaction, the Defendant’s client account with the Defendant stood at 157,681 US Dollars.
  - d. The Claimant subsequently discovered that due to what it described as an *“erroneous trade execution”*, their clients’ position with Alibaba had exceeded the intended 5% proportion. Immediately upon discovering this, the Claimant (re)sold the excess positions beyond the 5%.
  - e. In the process of that resale, the excess in the Defendant’s account (referenced AZC2203.001) was mistakenly the subject of a duplicate sale, in place of an intended sale on another account (reference AZC2206.001 in the name of Saifulla Kemalov) which, due to this mistake, remained in excess beyond the intended 5%.
  - f. As a result, the Defendant’s account received a profit of 52,622 US Dollars and Mr Kemalov’s account suffered a loss of 52,525 USD.
9. Relying on Article 8 of the Civil Code of the Republic of Kazakhstan (*“CC RK”*), Claimant contends that the Defendant should *“return the unreasonably received excess profit to compensate for the losses of another client, Kemalov S.”* The Claim form seeks the sum of is 52,622 US Dollars for *“unjustly obtained enrichment”* in this respect.
10. Saifulla Kemalov is not, and has not applied to be, a party to these proceedings. Neither the Claimant nor the Defendant has applied to join him as a party.

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<sup>1</sup> Email dated 29 August 2023: see footnote 2 below.

<sup>2</sup> This summary is drawn from the Claim Form, the Claimant’s Letter before Claim and an email from the Claimant to Exante dated 29 August 2023 (a copy of which has been provided to the Court, the authenticity of which is not disputed by the Defendant). The Court has also had regard to the supporting documents submitted with the Claim Form.

11. The Claimant further contends that the Defendant terminated the Agreement unilaterally in her letter dated 30 January 2024, which the Claimant says was contrary to Clause 14.1 of the Agreement taken together with Article 401 CCRK. No financial remedy is sought by the claim form in this respect. The Claimant instead asks the Court to *“recognise [the Defendant] as having significantly violated the terms of the contract set out in clause 14.1”*.

12. Clause 14.1 of the Agreement provides:

*“This Agreement shall come into force from the date of its signing by the Parties and shall remain in force until its termination by either Party with a notification submitted 30 (thirty) dates prior to the expected date of termination.”*

13. Article 401 CC RK is set out in full in the Claim Form. Its provisions include the following:

1. *“Amendments to and termination of an agreement shall be possible by agreement of the parties, unless it is otherwise stipulated by this Code, other legislative acts and the agreement.*
2. *Upon the claim of one of the parties the agreement may be amended or dissolved upon the decision of the court only as follows:*

- 1) *when there is a material violation of the agreement by the other party;*
- 2) *in other cases which are stipulated in this Code, other legislative acts or the agreement.*

*A violation of the agreement by one of the parties shall be deemed material if it entails for the other party such damage that it to a substantial degree loses something on which it had the right to count when concluding the agreement.”*

14. The Claimant also relies upon Articles 953 and 954 CC RK. These provide as follows:

*“Article 953. Obligation To Return Unjust Enrichment*

1. *A person (buyer), who without the legislation or transaction basis purchased or saved property (unjustly enriched) for the account of another person (the victim), shall return to the latter unjustly acquired or saved property, except the cases provided by Article 960 of this Code.*

....

3. *The provisions of this Chapter shall apply, regardless of whether unjust enrichment was the result of the behaviour of the purchaser of the property, the victim or a third party or result of an event.*

*Article 954. Correlation Of Requirements For The Return Of Unjust Enrichment With Other Requirements On The Protection Of Civil Rights*

*Unless otherwise provided by this Code and other legislative acts, and followed from the nature of appropriate relations, the rules of this Chapter shall also apply to the requirements:*

- 1) *on the return of the executed, under an invalid transaction;*

- 2) *on the recovery of the property by the owner from the illegal possession of another person;*
- 3) *one party to another party in the obligation of return of the executed in connection with this obligation;*
- 4) *for compensation of damages, including the harm, caused by the inequitable conduct of the enriched person.”*

### **The Defendant’s case**

15. The Defendant’s position in response to the claim is set out in her response to the letter before claim, set out in a letter dated 30 January 2023, and in a document filed in response to the Claim Form, which is entitled “Counterclaim” but which is in substance, and which the Court has treated as, a Small Claim Defence within the meaning of Rule 28.12(2) of the AIFC Court Rules (with no actual counterclaim for relief against the Claimant).
16. In essence, the Defendant submits that the Claimant has not demonstrated that there was a mistake that benefited her, that there is no proven causal connection between her profit and Mr Kemalov’s loss. In her submission, Mr Kemalov’s loss is a result of the Claimant’s negligence. She submits that the Claimant is trying to compensate for its liability to Mr Kemalov, and notes that Mr Kemalov (with whom she has no contractual or other legal relationship) is not a party to these proceedings and does not himself claim that the Defendant’s profit has resulted in him suffering loss.

### **The Court’s findings**

17. The onus of proof in these proceedings is on the Claimant.
18. The Court finds that the Claimant has not discharged that onus of proof. The evidence about the transactions in question is ambiguous at best. There is no clear contemporaneous evidence, the closest to that being an after-the-event email chain between the Claimant and Exante which is of limited probative value as to what happened. The Court is not persuaded, on the evidence provided, that there has been any unjust enrichment within the meaning of Articles 953 and 954 CCRK. The Defendant’s submissions in this respect are accepted.
19. Further, and in any event, the Claimant has not demonstrated, to the requisite evidential standard, that it has suffered any loss at the hands of the Defendant. Its case at the very highest is that Mr Kemalov indirectly suffered loss, but there are no legal relations between the Defendant and Mr Kemalov. As noted earlier in this judgment, Mr Kemalov is not a party to these proceedings and neither the Claimant nor the Defendant applied to join him as a party.
20. That leaves the issue of termination. It is plain that the Defendant’s letter dated 30 January 2024 did not comply with the terms of Clause 14.1 of the Agreement. Article 401 CC RK reinforces that Clause and does not provide any basis for circumventing it. The purported termination within that letter is therefore ineffective. The Agreement continues to subsist.

21. For these reasons, the claim is dismissed, save to the extent that the Court will make an order that the Defendant's purported termination of the Agreement in her letter dated 30 January 2024 is ineffective.

**Costs**

22. The Court is satisfied that there is no justification for a departure from the default position under Rule 26.9 of the AIFC Court Rules that parties in proceedings before the AIFC Small Claims Court shall bear their own costs. Neither party's conduct in the proceedings has been unreasonable. Indeed, the parties have constructively engaged in pre-action correspondence and are to be commended for doing so (see paragraph 5 above).
23. Accordingly, each party shall pay their own costs.

By the Court,

The Lord Banner KC

Justice, AIFC Court

**Representation:**

The Claimant was represented by Mr. Abay Mynbayev, legal consultant, Chamber of Legal Consultants "Centre for Private Legal Consultant", Almaty, Kazakhstan

The Defendant was represented by Ms. Sandi Rakhmanova, attorney, Almaty Regional Bar Association