

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

7 June 2023

CASE No: AIFC-C/CFI/2023/0004

Grantly LLP

Appellant

v.

Mr Riskulov Rustam Daniyar Ugli

Respondent

JUDGMENT

Justice of the Court:

Justice Sir Stephen Richards

ORDER

The application for permission to appeal is refused.

JUDGMENT

1. This is an application by Grantly LLP (“Grantly”) for permission to appeal a decision of the AIFC Small Claims Court (“the SCC”) dated 23 December 2022 in Case No. AIFC-C/SCC/2022/0022 by which the SCC gave judgment for the Claimant, Mr Riskulov Rustam Daniyar Ugli, against the Defendant, Grantly, and ordered Grantly to pay the Claimant USD 35,000.
2. Rule 29.6 of the AIFC Court Rules provides that permission to appeal may be given where the appeal Court considers that (1) the appeal would have a real prospect of success or (2) there is some other compelling reason why the appeal should be heard. By Rule 29.7 success on an appeal depends on establishing that the decision of the lower Court was (1) wrong or (2) unjust because of a serious procedural or other irregularity in the proceedings in the lower Court.
3. The SCC noted at paragraph 2 of its judgment that Grantly had failed to file a defence even within the extended time allowed to it and had not responded to the substance of the claim at all. In the absence of provision for default judgment in claims in the SCC, the Court proceeded to determine the claim on the evidence submitted by the Claimant and without a hearing, pursuant to rule 28.39 of the AIFC Court Rules. The claim related to a contract for the provision of services by the Claimant as an education expert. The Court found on the evidence that the conditions for payment of the sum claimed under the contract had been met.
4. The application for permission to appeal advances merely a generalised contention that the arguments on which the SCC’s decision was based were unfounded “and evidence presented by [the Claimant] is unfounded since [the Claimant] did not actually fulfil the obligations assumed under the contract, which caused damage to LLP Grantly since the defendant did not receive what was expected during the execution of the contract and met the losses, related to non-receipt of accreditations/permits stipulated by the present contract”. The remedy sought from this Court is “to provide an opportunity to file an application against the decision of [the SCC] and to prove that the stated claims of [the Claimant] are refused within the framework of their consideration in [the SCC], on grounds of his failure to fulfil his obligations, which led to the defendant counting on the execution of the contract and not receive it but meeting the losses incurred in this case”.
5. There is no merit in such an application. Grantly had a proper opportunity to advance a defence case, with supporting evidence, in the SCC but did not do so. It has not even attempted to justify or explain its failure to participate substantively in the SCC proceedings. It cannot turn round now and expect to advance a defence case for the first time on appeal. In any event, the generalised assertions in the application for permission to appeal do not begin to undermine the evidence-based findings of the SCC in its decision or to show that the decision was wrong.
6. Accordingly, an appeal would have no real prospect of success, and there is no other compelling reason why an appeal should be heard. Permission to appeal is therefore refused.



By the Court,

The Rt Hon. Sir Stephen Richards

Justice, AIFC Court

Representation:

The Appellant was represented by Mr. Valentin Lobach, external counsel, Almaty, Kazakhstan.

The Respondent was represented by himself.