



IN THE SMALL CLAIMS COURT
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

17 January 2024
CASE No: AIFC-C/SCC/2023/0041

"AURORA MINERALS GROUP" LLP

Claimant

v

APL "TEKŞAN MADEN"

Defendant

JUDGMENT

Justice of the Court:
Justice Charles Banner KC

ORDER

1. The Claim is allowed.
2. The Claimant's claim for costs is allowed.
3. The Defendant shall pay the Claimant the sum of 2,111,354 Tenge to be paid in that currency and no other, unless the Claimant agrees otherwise, within 28 days of the date of this Order.

JUDGMENT

1. In these proceedings the Claimant seeks an order that the Defendant pay it 2,111,354 Tenge in connection with an alleged breach of a contract dated 25th April 2023 and described as Service Agreement No. 1174/AMG ("**the Agreement**").
2. The Agreement provided that the Claimant (defined in the Agreement as "the Consultant") would perform certain services for the Defendant (defined in the Agreement as "the Client"), and that the Defendant would pay for those services in amounts specified by Clause 4.
3. The Claimant states that it performed its obligations under the Contract but that the Defendant has not paid it the amount of 2,060,800 Tenge (excluding VAT) that was due under Clause 4.3 for those services. The Claimant asks the Court to order the Defendant to pay that sum.
4. The Claimant seeks an additional 11,224 Tenge pursuant to Clause 5.1 of the Contract, which states:

"In case of untimely payment under the Agreement, the Client shall pay the Consultant a fine in the amount of 0.01% of the total overdue amount for each calendar day of delay, but not more than 5% of the amount of delay payment."
5. The Claimant also seeks the costs of translating and notarising documents for the purposes of these proceedings, in the amount of 39,330 Tenge.
6. Collectively, these three sums amount to the overall amount of 2,111,354 Tenge claimed.
7. Clause 6.3 of the Agreement provides that the AIFC Court shall determine any disputes arising out of or in connection with the Agreement.
8. The value of the claim is below USD 150,000 and therefore the claim falls within the jurisdiction of the AIFC Small Claims Court: see Rule 28.2(1) of the AIFC Court Rules.
9. The Claimant states at paragraph 6 of the Claim Form that it notified the Defendant of its intention to bring legal proceedings for non-payment, but received no response from the Defendant. At paragraph 5 of the Claim Form, the Claimant further notes that prior to this there had been several other attempts to seek payment of the sums due but the Defendant did not engage and ultimately stopped responding.
10. On 11th December 2023, Mr Huseyin Hakan Teksan of the Defendant filed a letter with the Court, in lieu of a Defence, stating:

"Yes we use service from Aurora. We paid the first part of the invoice like Advance. We are sending payment message also with this letter. After service done by Aurora We know to finish payment as we deal with Aurora. But we had a problem with our bank accounts its hold by Turkistan Tax office because of our accounting report. Our accounting office told us our electronic key validation

is over and i have to come Kazakhstan and take a new electronic key for company report. All this problem we offer to Aurora paying USD from UK or Turkey which is our base countries. But they didn't accept They asked Tenge payment. I didn't come yet to take this electronic key to open our bank accounts. Thats why we couldn't pay the invoice. As soon as open the Accounts we will pay the Invoice. I am planning to come in March 2023.”

11. The Claimant filed a reply on 12th December noting that the sums in question were due from the Defendant, not its Parent Companies in the UK or Turkey, and that sums received in currency other than Tenge would incur additional tax burden.
12. Court is satisfied that the Defendant is obliged by the Agreement to pay the Claimant 2,060,800 Tenge as well as a fine of 11,224 Tenge for late payment. The Court does not consider that the Defendant’s letter dated 11th December discloses any tenable basis for defending the Claim. The Agreement specified Tenge as the currency for payment. If that means that Mr Teksan or a colleague has to travel to Kazakhstan earlier than March, then such travel is a consequence of the contractual obligations that the Defendant has taken on.
13. That leaves the question of the costs claimed of 39,330 Tenge. In **Case 31 of 2023 JSC “Qazaq Air” v. Individual Entrepreneur Oruzbayev Talgat Kabdruselevich**, the Court observed as follows:
 - “10. Under Rule 26.9(2) of the AIFC Court Rules, costs may only be awarded against a party in the AIFC Small Claims Court where that party has acted unreasonably.
 11. The Claimant has described its repeated efforts since May 2023 to resolve this matter out of court by correspondence with the Defendant sent both by email and by hand, as well as by telephone and in person. No response or even acknowledgment was forthcoming by the Defendant at any stage. The Claimant was therefore left with no option but to commence these proceedings, which the Defendant then did not defend or even respond to.
 12. In **Kostanai Minerals (Kazakhstan) v Factory Dnepropetrovskaya Volna OJSC (Ukraine)**,¹ this Court observed at para. 18:

“...the kind of persistent failure and delay in complying with legal and procedural obligations demonstrated by the Defendant in this case, in particular the unexplained failure to comply with 4 the terms of the Mediation Agreement coupled with the equally unexplained failure to comply with Rule 28.12, may well in a future case lead to a finding of unreasonable behaviour so as to justify an award of costs under Rule 26.9(2).”
 13. Having regard to the above, the Court finds that in the circumstances of the present case the Defendant has acted unreasonably, in persistently failing to engage with the Claimant’s repeated attempts to resolve this matter out of court, thereby forcing the Claimant to commence these proceedings, and thereafter failing without explanation to comply with Rule 28.12.”
14. The Court finds that the facts of the present case are, in this respect, indistinguishable from **JSC Qazaq Air** and **Kostanai Minerals**. The Defendant’s unreasonable failure to engage gave the Claimant no other option than to bring this claim. The Claimant’s claim for costs is therefore allowed.

¹ Case No. AIFC-C/SCC/2021/014.

15. The Court therefore requires the Defendant to pay the Claimant the full amount sought of 2,111,354 Tenge (to be paid in that currency and no other, unless the Claimant agrees otherwise). This shall be paid within 28 days. This will allow time for Mr Teksan or another representative of the Defendant to make any necessary travel arrangements. There is no justification for a later deadline given the extensive efforts the Claimant has already made to recover the sums due from the Claimant and the Defendant’s refusal to engage with those.

By Order of the Court,



Charles Banner KC
Justice, AIFC Small Claims Court



Representation:

The Claimant was represented by Mr. Eldar Nazhiyev, “Aurora Minerals Group” Limited Liability Partnership.

The Defendant was represented by Mr. Huseyin Hakan Teksan, APL “TEKŞAN MADEN”.