



IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

15 February 2024

CASE No: AIFC-C/SCC/2023/0045

Ms. Assemgul Alaguzova

Claimant

v

Mr. Bagazat Amantay

Defendant

JUDGMENT

Justice of the Court:

Justice Charles Banner KC

ORDER

1. **The Claim is allowed.**
2. **The Defendant shall pay the Claimant 7,348,445 Tenge (comprised of contractual damages of 6,700,000 Tenge, together with a penalty of 240,945 Tenge and costs of 437,500 Tenge) within 14 days of this Order.**

JUDGMENT

1. The Claimant brings this claim pursuant to an agreement (“**the Agreement**”) dated 22nd June 2023 which she agreed with the Defendant following a mediation.
2. Clause 1 of the Agreement required the Claimant to transfer a Lexus LS460 car, registration 686AIG01 (“**the Car**”), to the Defendant on the day that the Agreement was signed (i.e. 22nd June 2023), “*with the terms of the subsequent redemption in the following order:*”. There followed subclause (a), which required the Defendant to transfer 3,000,000 Tenge to the Claimant on 30th June 2023, and subclause (b), which required the Defendant to transfer a further 3,500,000 Tenge to the Claimant by 25th January 2024, failing which the transfer of 3,000,000 Tenge under subclause(a) was to be considered irrecoverable.
3. Clause 2 of the Agreement required the Defendant to transfer 20,000 per day to the Claimant in the interim period between the date of the Agreement (22nd June 2023) and the date on which the obligation under Clause 1(a) arose (30th June 2023).
4. Clause 3 provided that that Car should, by 10th February 2024, be re-registered into the Defendant’s name following the Defendant’s payment of the 6,600,000 Tenge to the Claimant pursuant to Clause 1.
5. Clause 4 provided that if the Car was not re-registered to the Defendant’s name as provided for by Clause 3 by 10th February 2024, then the Claimant should pay back the 6,600,000 Tenge to the Defendant.
6. Clause 7 provided that any dispute arising out of or in connection with the Agreement shall be subject to the exclusive jurisdiction of the AIFC Court.
7. The Claimant says that she transferred the Car to the Defendant on 22nd June 2023 in accordance with the Agreement, but the Defendant has not paid any of the monies due under Clause 1(a), Clause 1(b) or Clause 2.
8. She seeks an order from the Court:
 - a. Requiring the Defendant to transfer the Car back to the Claimant;
 - b. Paying a penalty in the amount of 240,945 Tenge under Article 353 of the Civil Code of the Republic of Kazakhstan (“**the Civil Code**”); and

- c. the costs of these proceedings, comprised of 32,500 Tenge court fee,¹ 350,000 Tenge for legal representation and 55,000 Tenge for the costs of translating the documents put before the Court.
9. The Defendant did not file a defence within the time prescribed by the AIFC Court Rules or at all.
10. The value of the claim makes it a small claim within the jurisdiction of the AIFC Small Claims Court (“**SCC**”) under Part 28 of the AIFC Court Rules.
11. The Court initially made directions giving the opportunity to the Claimant to elaborate the legal basis on which she contended the Court had power to order the Defendant to transfer the car to her, and giving the Defendant the opportunity to comment on that elaboration. The Claimant took up the opportunity to provide further submissions in elaboration. The Defendant did not take up the opportunity to respond.
12. The Court then listed a hearing to take place on 30th January 2024, to explore further the legal basis of the remedy sought by the Claimant. The Claimant was ably represented by Ms Assiya Ibragimova. The Defendant did not attend.
13. The Court was told that the Defendant has been served at all stages with the papers in and directions in this claim, using the address given for him on the Agreement. He has not notified the Claimant or the Court of any change from that address.
14. The Court is satisfied that that the Defendant has had more than ample opportunity to respond to this claim.
15. The Court accepts the Claimant’s account of the facts as set out at para. 7 above.
16. When asked by the Court at the hearing why the Claimant was seeking an order requiring the return of the car, rather than the payment of the sums due under the Agreement, Ms Ibragimova explained that the Defendant was thought to be in financial difficulties with multiple debtors, and therefore might not currently be good for the money.
17. The Court has considerable sympathy with the Claimant’s situation, and deprecates the Defendant’s conduct both in flagrantly breaching his contractual obligations and thereafter completely failing to engage in these proceedings.
18. After careful reflection, however, the Court does not consider that an order requiring the return of the car is a remedy available to the Claimant in these proceedings. The Defendant’s obligations under the Agreement are financial.
19. The Court is prepared to treat the Claimant’s claim as incorporating in the alternative the remedy of an order that the Defendant pay the 6,500,000 Tenge due under Clause 1(a)-(b), as well as the 200,000 Tenge due under Clause 2. These sums should have been paid but have not been. If the Court were simply to dismiss the Claimant’s request for an order requiring the return of the car, on the basis that only a remedy in damages is available, without going on to make an order for

¹ The breakdown of the costs in the Claim Form gives the Court fee as 32,500 Tenge. The Court is informed by the Registry that the fee was in fact 45,000 Tenge. Be that as it may, it is not appropriate – particularly given the Defendant’s non-participation in the proceedings – to award the Claimant a greater amount of costs than is claimed.

such damages, the Defendant would benefit from its breach of contract and non-engagement in these proceedings. That would be contrary to the Overriding Objective in Part 1 of the AIFC Court Rules.

20. Turning next to the penalty claimed under Article 353 of the Civil Code, the relevant part of provision states:

“For improper use of other people's money as a result of failure to fulfil a monetary obligation or delay in their payment, or their unreasonable receipt or savings at the expense of another person, a penalty shall be payable. The amount of the penalty shall be calculated based on the base rate of the National Bank of the Republic of Kazakhstan on the day of execution of the monetary obligation or its corresponding part. When collecting the debt in court, the court may satisfy the creditor's demand based on the base rate of the National Bank of the Republic of Kazakhstan on the day of the claim or on the day of the decision, or on the day of the actual payment at the choice of the creditor. These rules shall apply if a different amount of penalty is not established by legislative acts or agreement.”

21. The Defendant's breach of contract on its face amounts to a “delay in [the Claimant's] payment.” There is therefore a prima facie basis to award the Claimant the penalty sum that she claims under Article 353. The Defendant has not contested this either in principle or in relation to the amount of the penalty claimed (240,945 Tenge). This aspect of the claim is therefore allowed.
22. Finally, there is the issue of costs. Under Rule 26.9(2) of the AIFC Court Rules, costs in SCC proceedings may only be awarded against a party who has acted unreasonably. It is well established that where a Defendant's complete lack of engagement leaves a Claimant with no choice but to bring proceedings before this Court, and where the Defendant then continues to fail to engage once proceedings have been commenced, that is likely to be treated as unreasonable conduct. See most recently Case 41 of 2023, ***Aurora Minerals Group LLP v. APL Teksan Maden*** (17th January 2024), at paras. 13-14, and the earlier case-law cited therein. Applying the principles set out there, the Court has no hesitation in concluding that the Defendant in this case has acted unreasonably, and therefore the Claimant's application for costs is allowed in the sum claimed of 437,500 Tenge.
23. The Defendant shall pay these sums to the Claimant within 14 days of this judgment and the accompanying Order.

By Order of the Court,

Charles Banner KC,
Justice, AIFC Court

Representation:

The Claimant was represented by Ms. Ibragimova Assiya, “VETO” Legal Center” LLP, Astana, Kazakhstan.

The Defendant was not represented.