

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

10 April 2024

CASE No: AIFC-C/CFI/2024/0005

BONDHOLDERS (107) OF THE BONDS

Claimant

v.

(1) LIMITED LIABILITY PARTNERSHIP NEF QAZAQSTAN
(2) TIMUR GAYRIMENKUL GELİŞTİRME YAPI
VE YATIRIM A.S

Defendants

JUDGMENT AND ORDER

Justice of the Court
Justice Tom Montagu-Smith KC

ORDER

UPON the Claimants' claim for sums due in respect of bonds ("**the Bonds**") issued by the First Defendant and guaranteed by the Second Defendant.

AND UPON the Claimants' application for judgment in default.

IT IS ORDERED THAT:

1. Judgment is entered in default against the First Defendant in favour of the Claimants for:
 - a. KZT 2,485,760,000 in respect of the sums due on redemption of the Bonds;
 - b. KZT 248,576,000 in respect of the coupon due for the period 24 to 30 November 2023;
 - c. KZT 80,274,084 in respect of interest up to the date of issue of the claim being 17 January 2024.
2. The First Defendant shall pay the Claimants' costs of their claim against the First Defendant, to be the subject of detailed assessment if not agreed.
3. The Claimants shall, by 18:00 Astana time on 24 April 2024:
 - a. File and serve on the First Defendant any submissions or calculation for any further interest claimed for the period from 17 January 2024 up to the date of this judgment;
 - b. File and serve on the First Defendant any request for a payment on account of the costs referred to at paragraph 2 of this Order.
 - c. File and serve submissions and any evidence relied on in support of their application preventing the publication of their names on the AIFC Court website.
4. The identities of the Claimants shall not be published on the AIFC Court website until determination of the Claimants' application for non-publication of their names.
5. Save as set out in paragraph 2 above, the Claimants' costs are reserved.
6. Permission to apply.

Reasons

1. The Claimants are 107 holders of bonds issued by the First Defendant and guaranteed by the Second Defendant. They claim that the bonds have matured but no payments have been received. They bring this claim against the First Defendant as the bond issuer and against the Second Defendant as the guarantor of the bonds.
2. The Claimants filed the claim on 22 January 2024. On 26 February, they filed a certificate of service, confirming that they had served the proceedings on the First Defendant. The claim form and supporting documents were sent to two email addresses on 22 January 2024 and by courier on 23 February 2024.
3. I am entirely satisfied that the steps taken have been sufficient to bring the documents to the

attention of the First Defendant by, at the latest, 26 February 2024 and so amount to service within AIFC Court Rule 5.3.

4. One of the email addresses had apparently been used recently by the First Defendant and was identified in public announcements as a contact email for use in casting absentee ballots. It appears that a read receipt was also received from at least one of the addresses. A DHL receipt has been provided for courier delivery. In addition, on 15 March 2024, the AIFC Court received a communication from a lawyer acting on behalf of the First Defendant, stating that the Claim Form had been received in hard copy by the First Defendant on 26 February 2024. Given the response to the courier delivery and the lack of response to the email delivery, it may be that the email delivery was not effective by itself, but I do not need to decide that. By 26 February 2024 at the latest, the documents were with the First Defendant.
5. By default, the First Defendant was required to file an acknowledgment of service within 14 days of service, with a defence due 14 days later. Assuming service on 22 January, the acknowledgment would have fallen due on 5 February 2024 and the defence on 19 February. The Court confirmed the latter deadline to the parties on 22 January 2024. Even if service was not achieved until 26 February 2024, the acknowledgment of service would have been due on 11 March and the Defence due on 25 March.
6. The First Defendant has filed neither an acknowledgment of service nor a defence and the time for doing so has now, on any view, expired.
7. On 26 February 2024, the Claimants filed an application seeking judgment in default against the First Defendant. Under Rule 9.4, a Claimant may obtain judgment in default if no acknowledgment of service or defence has been filed and the time for doing so has expired. The application may be made without notice. In the circumstances, I am satisfied that those conditions are met. As the Claimants point out, Rule 9.15(1) permits judgment against one defendant where the claim can be dealt with separately from the claim against other defendants. I agree with the Claimants that that is possible. I grant judgment in default accordingly.
8. The First Defendant is at liberty to apply under Rule 9.19 for an order setting aside this default judgment. However, any such application must be made promptly, in accordance with Rule 9.20.
9. The Claimants' claim form contained a calculation of interest (referred to as a "penalty") up to the date of issue of the claim form. Some time has now passed since that date. The Claimants are therefore invited to provide any further submissions or calculation of interest for the period between issue and the date of this judgment. Such submissions should be provided within the next 14 days.
10. The Claimants included in their claim a sum in respect of their legal costs. Those are not part of the substantive claim. However, the Claimants are entitled to recover their costs in principle and I make an order accordingly. Those costs will need to be the subject of assessment if they cannot be agreed. However, in the interim, the Claimants may apply for a payment on account of those costs under Rule 26.7. Any such request should be made, supported by evidence and a detailed explanation of the costs claimed, within 14 days.
11. In their application of 26 February 2024, the Claimants also seek an extension of the default period for service of the claim form on the Second Defendant outside Kazakhstan. An extension is required, they say, because the Second Defendant must be served through official channels pursuant to a treaty between Kazakhstan and Turkey. It is not obvious to me that the Treaty's terms about service of civil process are mandatory. No doubt, however, absent good reason, it is the appropriate mechanism for service, given the two states have agreed to it. However, at present, I see no need for an extension of time. The time to serve the claim form outside Kazakhstan is 6 months by default: Rule 4.9(2). The extension sought is to 22 July 2024. That is exactly 6 months after issue of the claim

form. In the circumstances, no extension is required. If the Claimants need time beyond 22 July 2024, they are invited to request it. It may be however that that application can be made, if it is needed, closer to the date of expiry of the claim form.

12. In their claim form, the Claimants have sought an order that their names should not be published on the AIFC Court website. At present, I am not persuaded that I should make such an order. However, in my view, the Claimants should have the opportunity to pursue that application. I therefore direct that they file further submissions to support that application. If necessary, I shall direct a short hearing to consider the application further. In the meantime, I will make an order preventing publication to ensure that the application is not made redundant.
13. The Claimants also seek a group litigation order. It seems to me that there may be no need for such an order. This may turn on whether the Second Defendant engages with proceedings and the issues which are raised. I will not therefore consider that application further at this stage. However, the Claimants are at liberty to pursue that application later, should they so wish.

By Order of the Court,

A handwritten signature in blue ink, appearing to read 'Tom Montagu-Smith', written over a horizontal line.

Justice Tom Montagu-Smith KC
Justice, AIFC Court



Representation:

The Claimant was represented by Ms. Guldana Mirasheva, Legal representative, Astana, Kazakhstan.

The First Defendant was represented by Mr. Nurlybek Sultan Nusipzhanov, Lawyer, ILF A&A, Almaty, Kazakhstan

The Second Defendant was not represented.