



IN THE COURT OF FIRST INSTANCE

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

10 October 2022

CASE No: AIFC-C/CFI/2022/0020

FREEDOM FINANCE JSC

Claimant

and

EGOR ROMANYUK

Defendant

JUDGMENT AND ORDER

Justice of the Court:

Justice Sir Rupert Jackson

JUDGMENT AND ORDER

1. On 1 February 2020 the claimant and the defendant entered into a separation and release of claims agreement (the agreement'), under which the defendant ceased to be employed by the claimant after 1 February 2020.
2. By clause 3 of the agreement the claimant agreed to pay the defendant USD \$100,000 as a separation benefit. That sum was duly paid on 3 March 2020.
3. The defendant provided a number of covenants in the agreement, including not to disclose confidential information or to disparage the claimant.
4. Clause 9 of the agreement provided:

“In the event of a material breach by the Employee of any of the provisions of this Agreement, the Employee hereby acknowledges and agrees that the Employer shall be entitled to seek, in addition to other available remedies, an award for liquidated damages in an amount equal to \$5,000,000 for each material breach (the “Liquidated Damages”). The parties acknowledge and agree that the employee’s harm caused by a material breach would be impossible or very difficult to accurately estimate at the time of the breach and that the Liquidated Damages set forth herein is a reasonable estimate of the anticipated or actual harm that might arise from a material breach.”
5. The claimant alleges that the defendant has committed numerous breaches of the agreement.
6. By a claim form issued in the AIFC Court on 11 August 2022 the claimant claimed liquidated damages against the defendant.
7. On 6 September 2022 the claimant’s attorney effected service of the claim form (in accordance with paragraph 130.2 of the Civil Procedure Code) upon the defendant’s address designated for service in clause 18 of the agreement. The defendant was not present at that address, but I am satisfied on the evidence that he has been made well aware of these proceedings on more than one occasion.
8. The defendant failed to acknowledge service within fourteen days or at all. The claimant now seeks judgment in default under Part 9 of the AIFC Court Rules for the sum of USD \$5 million.
9. The claimant is entitled to judgment in default, but I have a concern as to whether the claimant is entitled to recover the full \$5 million specified in clause 9 of the agreement. If this case were proceeding under English law, it would be necessary to decide whether that provision was an unenforceable penalty. The present contract, however, is subject to Kazakhstan law.
10. In a case where the penalty is excessively large compared to the losses of the creditor, Article 297 of the Kazakhstan Civil Code enables the court to reduce the amount of a penalty “considering ... the interests of the debtor and the creditor that deserve attention”. It is impossible to tell on the basis of the documents before the court whether it is appropriate to exercise that power in the present case.
11. In the circumstances, I order that there be judgment for damages to be assessed.

12. There must be a hearing to determine the amount of damages due. This may turn out to be \$5 million or some lesser sum. As a preliminary step, there must be a directions hearing by video-link. One problem which we must consider at the directions hearing is the fact that there will probably be only one party before the court at the hearing of the assessment of damages. The issue is quite a difficult one, which requires argument on both sides. I request assistance from the claimant's counsel and from the Registrar as to whether the court can engage an *amicus curiae* to assist at the hearing of the assessment of damages.

By the Court,

Sir Rupert Jackson
Justice, AIFC Court

Representation:

The Claimant was represented by Mr. Bakhyt Tukulov, Tukulov & Kassilgov Litigation LLP, Almaty, Republic of Kazakhstan.

The Defendant was not represented.