



IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

24 July 2023

CASE No: AIFC-C/CFI/2023/0020

PRIVATE COMPANY AURORA GEOPHYSICS LTD

Claimant

v

METEOR MINING COMPANY KZ (CONDUIT 22) LTD

Defendant

JUDGMENT

Justice of the Court:

Justice Thomas Montagu-Smith KC

ORDER

1. **The Defendant shall pay the Claimant the sum of KZT 35,605,706.**

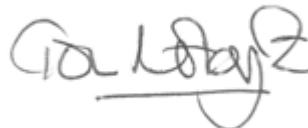
JUDGMENT

1. In this claim, the Claimant seeks to recover sums due under five contracts for the provisions of geophysical services ("*the Contracts*"). The Contracts, numbered 235AG, 236AG, 237AG, 258AG to 259AG, were all on similar terms. The first three were entered into on 17 September 2021. The last two on 17 November 2021. Under the Contracts, the Claimant agreed to carry out geophysical surveys at various sites in the Bayanaul District of the Pavlodar Region.
2. The works were duly carried out. On 14 April 2022 and on 1 June 2022, the signed certificates, certifying completion of the works.
3. Under the terms of the Agreements, the Defendant was obliged to pay a total of KZT 38,154,060 for the services as follows:
 - a. Under Contract 235AG, KZT 3,413,760;
 - b. Under Contract 236AG, KZT 13,655,040;
 - c. Under Contract 237AG, KZT 3,413,760;
 - d. Under Contract 258AG, KZT 7,114,500;
 - e. Under Contract 259AG, KZT 10,557,000.
4. According to the Claimant, by 16 June 2022, nothing had been paid. The Claimant therefore sent a demand to the Defendant on that date.
5. The Defendant eventually paid KZT 6,363,760 in late 2022. In correspondence, the Defendant acknowledged the debt was due, but sought time for payment. The Claimant's position is that the Defendant never had any genuine intention to pay. However, there is no need to decide that allegation in this case.
6. The Agreements contained a jurisdiction clause in favour of the Specialized Interdistrict Economic Court of Nur-Sultan. The Claimant brought a claim in that Court. However, it was ultimately rejected on grounds of jurisdiction. The Court found that the AIFC Court should hear the case as both parties are AIFC Establishments.
7. The Claimant therefore subsequently brought this claim in the AIFC Courts, seeking recovery of the debt, being KZT 31,790,300. The Claimant also seeks KZT 3,179,030 by way of penalty due under clause 6.3 of each contract. That clause entitles the Claimant to recover 0.1% per day of delay in payment, up to a maximum of 10% of the Contract sum. Once the fees are more than 100 days overdue, the maximum 10% has accrued.

8. The Defendant filed a Defence. The Defence appeared to acknowledge the existence of “*the debt*”, but did not respond directly to the claim set out in the Claim Form. Instead, the Defence raised a number of points.
9. First, the Defendant pointed out that there was an error in the name used for the Defendant in the Claim Form. The Defendant had been described as “*Meteor Mining Company Ltd (Conduit 22)*”.
10. The Claimant has subsequently confirmed that it would like to amend the name for the Defendant to its correct name, Meteor Mining Company KZ (Conduit 22) Ltd. I will treat the Claim Form as having been amended accordingly.
11. Second, the Defendant indicated that it was hoping to raise money by selling (or possibly obtaining finance against) its licences.
12. There is some suggestion in the Defence that survey reports were not provided or were not provided on time. However, no evidence was submitted to support that and it is far from clear what effect the Defendant says that would have on the debt.
13. In the circumstances, on 12 July 2023, I directed the Defendant to file and serve any further or amended defence on which it relied, setting out which allegations in the Claim Form it admitted, which it denied and setting out the basis for any denials. The Defendant was required at the same time to file and serve any documents, witness statements or other evidence on which it relied.
14. On 19 July 2023, the Defendant filed a further Defence. In it:
 - a. The Defendant stated, in effect, that all parties expected the Defendant would fund the fees due from finance raised against its licences;
 - b. The Defendant accepted that it has paid only “*6m + KZT*” under the Contracts;
 - c. The Defendant asserted various difficulties it has had in raising the cash needed to make the payments. The Defendant said “*Had [the Defendant] been able to manage to find the necessary funds, these outstanding debts would have already been paid... because [the Defendant] never contested against paying [the Claimant’s] rendered services.*”
 - d. The Defendant stated that it had not received “*proper signed reports*”;
 - e. The Defendant said that it fully intends to pay for the services, but that in exchange it should receive “*any outstanding deliverables*” under the Contracts.
15. The Defendant did not serve or file any supporting evidence with its second Defence.
16. The Claimant has indicated that it would like this case to be decided on the papers. The Defendant has said “*we are in favour of a hearing should the honourable judge of AIFC deem necessary to question any of the above said in further detail and/or wanted to hear even more.*”

17. The Small Claims Court has a general discretion to dispose of cases without a hearing: AIFC Court Rule r.28.39. Ordinarily, I would be reluctant to do so where one party requests a hearing. In this case, however, I consider that it would be appropriate to make a decision on the papers.
18. The Defendant has not clearly requested a hearing. It has said only that it would be “*in favour*” of a hearing if the Judge deems it necessary.
19. I do not deem it necessary to have a hearing. I can see no benefit in having a hearing. The Defendant admits the debt exists and does not deny any of the figures provided by the Claimant. It has certified the completion of the works and accepts that it has only paid “*6m+ LZT*” towards the sum due.
20. None of the matters raised by the Defendant would alter the existence or size of the debt. The fact that a party is unable to pay a debt is no defence. The Defendant’s claim that reports have not been delivered is not properly explained and is unsupported by evidence. In any event, it is far from clear that it could alter what was due. Nor is that even asserted by the Defendant, who accepts the existence of the debt.
21. In the circumstances, I find that the sums claimed are clearly due from the Defendant to the Claimant and make an order accordingly. The sums have been overdue by more than 100 days. As a result, the full 10% penalty has accrued.

By Order of the Court,

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

Justice Thomas Montagu-Smith KC,
Justice, AIFC Court



Representation:

The Claimant was represented by Mr. Nariman Omarov, legal counsel, Aurora Geophysics Ltd., Astana, Kazakhstan.

The Defendant was represented by Mr. Hamza Mete Izmen, CEO/Director, METEOR MINING COMPANY KZ Ltd., Astana, Kazakhstan