



IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

14 November 2024

CASE No: AIFC-C/SCC/2024/0024

AITENOV AZAMAT AMANGELDINOVICH

Claimant

v

PROJECT SI SPC LTD

Defendant

JUDGMENT

Justice of the Court:

Justice Patricia Edwards



ORDER

UPON the commencement of a Claim on 11 July 2024;

AND UPON the making of an Order on 26 August 2024;

AND UPON the provision of further information by both parties;

IT IS ORDERED that:

1. The Defendant shall, by 16:00 Astana time on 22 November 2024, pay to the Claimant 3,717,000 KZT.
2. No order as to costs.

JUDGMENT

1. The Claimant and Defendant entered into a contract, dated 25 July 2022, entitled "Contract # SI-002/001 on Implementation of the Investment project 'Project SI'" ("the Agreement").
2. Relevant provisions of the Agreement included the following:

"1.2 SPC shall invest the money invested by the Investor in real property.

1.3 The Investor shall make Investments in the amount in accordance with Clause 2.1 of this Contract in the Investment Project within two (2) business days from the date of signing this Contract.

1.4 The duration of the Investment Project: 8 months from the date of signing this Contract.

...

2.1 The Investor shall provide financing of the Investment Project in terms of the Investor's Facilities at the expense of its own and/or attracted funds in the amount, at the time of conclusion of this Contract, amounting to eleven million (11,000,000) KZT, which is 25% of the total amount of Investments in the Investment Project.

...

2.2 In case of untimely provision or failure to provide the amount of the Investments, as well as provision of the amount of the Investments in the amount less than specified in Clause 2.1 of this Contract, SPC in accordance with Article 724 of the Civil Code of the Republic of Kazakhstan shall have the right to contest the Investment Contract in accordance with the established procedure, proving that the amount of the Investments was not actually received by it, or was received by it in the amount less than specified in this Contract.

2.3 SPC shall guarantee the return-on-Investment amount in the amount specified in Clause 2.1, in the period from the sixth to the eighth month of the Investment Project implementation period.

...

4.2 When executing this Contract, SPC shall:

4.2.1 Upon expiration of the period specified in Clause 2.3 of this Contract, return the amount of Investment in the manner and within the time limits provided for in this Contract

...

4.3 The return of the received Investment amount shall be performed by SPC in the following order:

4.3.1 no later than three (3) banking days after the expiration of the Investment period specified in Clause 1.4 of this Contract, SPC shall transfer the number of Investments to the Investor's account established in this Contract."

3. As regards jurisdiction, the parties agreed to resolution of disputes by the AIFC Court:

"5.2 For non-fulfilment or improper fulfilment of the terms of this Contract, the Parties shall be liable in accordance with the AIFC Rules "On Contracts" #3 dated December 20, 2017.

...

8.1 This Contract and all legal relations arising therefrom shall be governed by the current Rules of the AIFC.

...

8.3 If it is impossible to resolve disputes through negotiations between the Parties, the Parties shall apply to the AIFC Court for dispute resolution, in accordance with Part 2, Clause 7 of the AIFC Rules "On Contracts"."

4. The Claimant claims 11,000,000 KZT. This is equivalent to approximately US\$ 22,315. As this is less than US\$150,000, it is appropriate that the claim be determined in the Small Claims Court pursuant to Rule 28.1(1) of the AIFC Court Rules.

5. Pursuant to Clause 1.3 of the agreement, the Claimant agreed to invest 11,000,000 KZT within two business days of the signing of the contract. According to paragraph 13 of the claim, the Claimant made full payment of this sum. It refers to:

"payment orders No. CMT000000697830 dated July 29, 2022 for the amount of 3,540,000 ... tenge, an account statement of JSC Halyk Bank of Kazakhstan dated February 10, 2024 for the total amount of 7,441,000 ... tenge".

6. The Claimant claims that it has paid the sums due pursuant to the contract but the Defendant has, in breach of contract, failed to return them in the agreed timescale. On 27 October 2023, the Claimant wrote to the Defendant asking for the return of its investment, which it said was due by April 2023. Pursuant to clauses 4.3 and 1.4, the investment was to be returned after a period of eight months.

7. The relevant financial documents attached to the claim are:

(1) Payment order CMT000000562628 dated 15 February 2022, for payment in the amount of 1,664,000 KZT to the Defendant, described as "Payment under the Contract # SI-001/017 dated February 11, 2022".

(2) Payment order CMT000000697830 dated 29 July 2022 for the amount of 3,540,000 KZT, described as "payment under the Contract # SI-002/001 on Implementation of the Investment Project "Project SI" dated July 25, 2022" – i.e. the Agreement.

- (3) A bank statement showing a transfer of funds to the Defendant on 2 November 2021 of 5,776,000 KZT. The transaction details describe the purpose as "payment under the Contract SI-001/001 dated October 28, 2021".
 - (4) The payment of 15 February 2022 (sub-paragraph 1 above) also appears on the same bank statement, with the same contract reference, SI-001/017.
8. The only payment under the Agreement which is evidenced by these documents is the second one listed above, dated 29 July 2022, in the amount of 3,540,000 KZT.
 9. No Defence was filed in response to the Claim.
 10. By an order dated 26 August 2024, I gave the parties until 6 September 2024 to provide further information about their case, and to file and serve on the other party any further documents, or statements of any witness, on which they intend to rely. I also noted that it was unclear from the documents filed exactly how much money was transferred pursuant to the Agreement, as some of the evidence relied on appeared to show transfers made under other contracts.
 11. As the parties had not been given an opportunity to make representations in relation to the Order, it provided that they could apply to have it set aside, varied or stayed within 7 days of service of the Order, in accordance with Rule 3.8.
 12. In response, the Claimant filed additional submissions and various further documents. These included several additional contracts but no case has been pleaded in relation to those. Several payment orders were also attached, but these do not evidence any new payments in addition to those listed above.
 13. The Defendant filed a short document dated 5 September 2024, stating:

"Due to the inconsistency of the arguments presented by the plaintiff in the application, I ask you to cancel Order No. 1 in the AIFC Court case No.24 of 2024. Specified by Mr Aitenov AA the amount of 11,000,000 million tenge was not transferred under agreement SI-002/001."
 14. Insofar as the Defendant appears to have requested to cancel the First Order, this request was made after the deadline in the order, and was in any event unsupported by reasons. In fact, the reasons given by the Defendant appear to amount to its defence to the claim: that the amount specified in the Agreement was not in fact paid by the Claimant.
 15. Based on the documents that have been filed in this case, listed above, the Claimant has only proved that 3,540,000 KZT was transferred to the Defendant. As the eight month contractual period has expired, I find that the Defendant is liable to return that sum to the Claimant.
 16. The claim raises the possibility of lifting the corporate veil on the basis that the company was used as a sham by its owner, Arman Bayev. The suggestion is that Arman Bayev has used the Defendant to collect funds for his own purposes, and then used the company as a shield to avoid liability to creditors.
 17. The short answer to this is that the claim is made against the Defendant only and Arman Bayev is not a party to this litigation. In any event, the corporate veil can only be pierced in very limited circumstances, namely when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control (see the judgment of the UK Supreme Court in *Prest v Petrodel Resources Limited & others* [2013] UKSC 34).

18. The Claimant has relied on the case of *Gilford Motor Co Ltd v Horne* [1933] Ch 935. Mr Horne had been the managing director of the Gilford Motor Co. His contract of employment precluded him being engaged in any competing business in a specified geographical area for five years after the end of his employment. He subsequently formed a company to enable the business to be carried on under his own control but without incurring liability for breach of the covenant. It was found that the company was a "mere cloak or sham" for Mr Horne's dealings. Mr Horne was using the company to evade his personal contractual restriction. In contrast, in the present case, no such pre-existing obligation of Mr Bayev is being evaded. The Agreement was entered into from the outset with the Defendant.
19. The Agreement also contains a penalty provision as follows:
- "5.4. If the payment is overdue for up to 30 days, SPC shall pay the Investor a penalty in the amount of zero-point five percent (0.5%) of the amount of the overdue payment for each day of delay;
- 5.5. In case of late payment from 30 to 90 days, SPC shall pay the Investor a penalty in the amount of zero-point five percent (0.5%) of the overdue payment amount for each day of delay, with a one-time fine of five percent (5%) of the Investment amount ...
- 5.6. For late repayment of the principal amount of Investments, SPC shall pay the Investor a penalty in the amount of zero-point five percent (0.5%) of the Investment amount for each day of delay."
20. The Claimant claims a 5% penalty amounting to 550,000 KZT. However, I have found that only an investment of 3,540,000 KZT has been evidenced in this case. 5% of that sum amounts to 177,000 KZT and is payable by the Defendant.
21. The claim form mentions suspending the movement of money of the Defendant and Mr Bayev, but no application for a freezing order was made. If the Defendant fails to pay the amounts ordered in this judgment, then the Claimant will be able to seek enforcement in the ordinary way.
22. Accordingly the Defendant is liable to return to the Claimant the sum of 3,540,000 KZT and to pay a penalty of 177,000 KZT.
23. No order as to costs.

By Order of the Court,

Patricia Edwards,
Justice, AIFC Small Claims Court

Representation:

The Claimant was represented by Mr. Rauan Dairbekov, Redbrick Law Firm LLP, Almaty, Republic of Kazakhstan, and Mr. Dairbekov Nurzhan, Redbrick Law Firm LLP, Almaty, Republic of Kazakhstan.

The Defendant was not represented.