IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

5 March 2025

CASE No: AIFC-C/SCC/2024/0029

Mr Nazhmedenov Yerbol Muratovich

Claimant

v

Private Company Inlaw Inc. Ltd

Defendant

JUDGMENT

Justice of the Court:

Justice Saima Hanif KC

ORDER

1. The Claim is allowed against the Defendant to the extent that:
   (a) the Defendant shall pay to the Claimant the sum of KZT 745,739.00 in respect of unpaid wages, vacation compensation, sick leave payment and a penalty for non-payment of wages.
   (b) the Defendant shall pay the mandatory contributions of KZT 130,823 in respect of income tax, pension contributions and social security insurance.
2. In all other respects the Claim against the Defendant is dismissed.
3. The Counter-claim by the Defendant against the Claimant is dismissed.
4. As long as the Defendant complies with paragraph 1 of this Order, by no later than 12 March 2025, no order as to costs.

JUDGMENT

Introduction

1. By a claim registered on 14 August 2024, the Claimant seeks various remedies from the AIFC Small Claims Court arising out of an employment relationship with the Defendant.

2. The parties accept that the claim is within the jurisdiction of the AIFC Court pursuant to Regulation 4(3) of the AIFC Employment Regulations No. 4 of 2017 (as amended) (henceforth the "**AIFC Employment Regulations**"), and that is appropriate for determination by the Small Claims Court ("**SCC**") having regard to Rule 28.2 of the AIFC Court Rules ("**the Court Rules**").

3. Both parties have provided extensive written submissions setting out their respective positions in detail, as contained in the Claimant's application form (dated 14 August 2024), a defence and counter-claim filed on behalf of the Defendant (dated 28 August 2024), the Claimant's reply and defence to the counterclaim (dated 30 September 2024), a submission from the Defendant in reply to the defence to the counterclaim (dated 8 November 2024), and a final response from the parties further to a direction from the Court, received on 10 and 11 December 2024 respectively. The written submissions were supported as appropriate by documentary evidence.

4. Following confirmation by the Claimant that it still wished the matter to be resolved by way of an oral hearing, the Court directed an oral hearing using video-conferencing facilities. The remote hearing took place on Thursday 27 February 2025, over two hours. The Claimant was represented by Ms Anastasiya Galimova, an external lawyer. The Defendant was represented by Mr Kuat Roman, an employee of the Defendant. Both parties submitted skeleton arguments in advance of the oral hearing.

5. I am grateful to the parties for their written submission. Particular thanks go to Ms Galimova and Mr Roman for their clear and helpful oral submissions. I am very grateful to both of them for their assistance.

The Parties

6. The Claimant is Mr Nazhmedenov Yerbol Muratovich.

7. The Defendant is a limited liability partnership incorporated in the Astana International Financial Centre ("**AIFC**"), and licenced by the AIFC since 13 August 2020. It is licenced to carry out the business of providing legal services and consulting services.

8. It is accepted by the parties that the Claimant was employed by the Defendant, as a lawyer, over the period 23 January 2023 to 28 August 2023.

Overview Of The Dispute

9. The core dispute between the parties turns on the cause of the termination of the employment relationship, what sums are owed to the Claimant by the Defendant, and whether the Claimant has breached any obligations owed to the Defendant.

10. In summary:
(1) The Claimant alleges that he was constructively dismissed. The Defendant denies this, stating that the Claimant voluntarily resigned.

(2) The Claimant alleges that he is owed monies for outstanding wages, vacation leave, and sick leave, and other mandatory sums. The Defendant does not dispute that the Claimant is owed these monies as a matter of principle, but states that payment of the sums is conditional on the Claimant complying with certain of his contractual obligations. The Claimant denies that he is subject to these obligations and in the alternative, claims that he is not in breach of the obligations.

(3) The Defendant brings a counterclaim against the Claimant for losses said to be suffered by it, as a result of the Claimant setting up a parallel business which is alleged to be in breach of certain non-compete provisions, to which the Claimant was subject as a result of the employment relationship.

11. There are other peripheral points of dispute, but the key points are those set out at paragraph 10 above.

The Contract Of Employment

12. The Claimant commenced his employment with Defendant on 23 January 2023. Neither party has been able to produce a written signed contract of employment between the parties.

13. I have instead been provided with the following competing documents:

(1) The claimant provided an employment contract with his claim, dated 20 January 2023, which has his signature, but not that of the Defendant. The Defendant disputes that this document is the definitive contract, and invites the Court to, amongst other things, rule that the document is inadmissible. By the time of the hearing, the Claimant's position was that the document was merely a sample, and it had been provided purely to demonstrate that the claim arose out of an employment relationship. As it is now accepted that this is not the definitive contract between the parties, and as the key points in dispute do not turn on this document, while I do not reject the document as being inadmissible, I place no weight on it when reaching my conclusions.

(2) The Defendant provides a written, unsigned contract of employment, dated 20 January 2023 which it says represents the contract that would have been signed by the Claimant ("**the Alleged Employment Contract**"). As the parties are in agreement that the sums claimed by the Claimant are due to him, save for one discrete point where the Defendant seeks to rely on clause 5.2.10 of the

Alleged Employment Contract, the rest of the points in dispute between the parties can be determined without reference to the Alleged Employment Contract.

(3) Accordingly, for the purposes of my decision, I do not need to decide whether or not the Alleged Employment Contract does in fact represent the definitive contract of employment between the parties. When I come to address the Defendant's argument in respect of clause 5.2.10 (see below) I do so without prejudice to this position.

Events Leading to the Termination Of The Employment Relationship

14. I have been provided by the Claimant with a series of "WhatsApp" messages, which detail the communication between the parties over the period 6 August 2023 to 23 August 2023.

15. There is no correspondence between the parties prior to this date. I assume therefore that until the events over the period 6 - 23 August 2023, the employment relationship between the parties had proceeded without any material problems.

16. In the first message, dated 6 August 2023, the Claimant informed the Defendant that he had "an appointment with a physician tomorrow." There was then some further communication around work matters. The next exchange on 8 August 2023, started with the Defendant asking the Claimant "How was the surgery?" The Claimant responded that he had "been on sick leave since yesterday." This demonstrates that the Defendant was aware that the Claimant was having surgery on the 7 August 2023.

17. I have been provided with a document by the Claimant, which appears to have been issued by the Medical Sabden Clinic Healthcare Center on or after 15 November 2023. That document confirms that the Claimant had "…an emergency procedure on 07/08/2023 – a surgical intervention was performed…" As there is no dispute between the parties that the Claimant did have surgery on 7 August 2023, I do not need to say anything further about this document.

18. In the Defence, the Defendant asserts that the Claimant failed to give formal notification of the fact that he was unwell and on sick leave, until 8 August 2023, which is said to amount to a delay. I do not accept this. It is clear from the Defendant's question contained in the message on 8 August 2023, that the Defendant was aware that the Claimant had undergone surgery on 7 August 2023. The Claimant then confirmed he was on sick leave. In the subsequent messages between the parties, the Defendant did not suggest to the Claimant that the notification by WhatsApp was not sufficient, and/or that he had delayed in informing the Defendant about the surgery, and/or that 'formal' notification of his absence was required by a specific mechanism. When I asked Mr Roman during the hearing what exactly the Claimant was required to do by way of formal notification, no specific example was given. I am therefore satisfied that the Defendant was aware that the Claimant was undergoing surgery and was on sick leave, and that the notification by way of a WhatsApp message was adequate. I am also satisfied that whilst the Claimant did not mention "sick leave" until 8 August 2023, this does not amount to any material delay. In any event, the Defendant having been made aware of the Claimant's absence, in my view if the Defendant did require further information about the Claimant's absence, it ought to have requested the same from him.

19. There was further communication between the parties on the 8, 9, 10, 12, 14, 15, 16 20 and 23 August 2023. Within those messages, the Defendant asked the Claimant about work related matters, assigned

tasks to him (e.g. on 15 August 2023, it asked him whether he had "started working on the side letter?") and also enquired when he would be at work (e.g. on 20 August 2023).

20. I have also been provided with a sample of emails which show that a particular client contacted the Claimant whilst he was on sick leave, on 9, 11 and 21 August 2023, and that the Claimant responded to those emails.

Termination Of The Employment Relationship

21. On 28 August 2023, the Claimant submitted a letter to the Defendant, entitled "Letter of Resignation." The letter stated:

"I hereby request to terminate the Employment Contract with me upon my initiative as the employee from August 28, 2023 due to my health condition."

22. The same day, 28 August 2023, the Defendant issued a document entitled "Order No. 5/1" which recorded the following:

"…[the] employment relationship with Nazhmidenov Yerbol Muratovich shall be terminated starting from August 28, 2023 with all monetary penalties due, including compensation payments for unused annual leave.

Ground: the Letter of Resignation from Nazhmidenov Yerbol Muratovich for termination of the employment contract since August 28, 2023."

23. It is the Claimant's case that in fact, he resigned because of the work pressure that the Defendant subjected him to. The Claimant claims that he has been constructively dismissed, and relies on the case of *Western Excavating (ECC) Ltd v Sharp* [1978] QB 761.

24. I asked Ms Galimova why the resignation letter did not mention that, as per the Claimant's case, he resigned because he was unhappy with the Defendant's treatment of him whilst he was on sick leave. Ms Galimova responded that the Claimant was uncomfortable with admitting that he was feeling pressured by the Defendant, and he had difficulty acknowledging the situation. I note that whilst this submission was made on behalf of the Claimant, I have not seen anything from the Claimant himself (whether by a short written statement or otherwise) which makes this point. If it was the case that the Claimant was feeling pressured by the Defendant, I would have expected this to be put in writing, even if only briefly. It is also important to have regard to document 4, attached to the Claimant's claim, which records that the reason for the Claimant's termination was "termination by employee."

25. With regard to the WhatsApp messages: whilst I do consider that it was very unwise of the Defendant to be discussing work matters with the Claimant whilst he was on sick leave, I do take account of the fact that the message exchanges were relatively brief, were not continuous and were in main, by way of enquiry. In respect of the emails to the Claimant from the client, I note that these did not originate from the Defendant.

26. In my view, taking account of the information before me, including the lack of any supporting statement from the Claimant, the contemporaneous documentation, and in particular the Claimant's letter of resignation, I do not accept that the Claimant was constructively dismissed. Hence, I do not conclude

that taken in their totality, the messages were so unreasonable so as to amount to a serious breach of the employment contract which goes to the root of the employment relationship.

27. I therefore find, based on the evidence before me, that the Claimant resigned voluntarily.

Amounts Owed to the Claimant

28. At paragraph 5.2 of the claim, the Claimant claims for wage arrears, compensation for vacation leave and sick leave, and other mandatory payments.

29. In the defence (see paragraph 5.2) the Defendant states that it "does not object to the payment of wages to the Claimant". During the oral hearing, Mr Roman helpfully confirmed that the Defendant did not in principle object to the payment of the wages, unpaid vacation leave, sick leave and other mandatory payments, rather it was the amount.

30. Both parties have submitted documents in respect of the amounts that are owed under this heading (see document 13 submitted by the Claimant with the claim, which the Claimant states has been prepared by the Defendant's accountant, and document 2 submitted by the Defendant with the defence). The collective amount for wages, vacation leave and sick leave are identical in both documents, namely KZT 652,176.00.

31. Moreover, both documents are also consistent in terms of the amounts payable by the Defendant in respect of income tax, pension contributions and compulsory medical insurance, namely KZT 130,823.

32. Accordingly, I find that, subject to the point raised by Defendant, the Defendant is liable to pay these sums.

33. At section 6 of the claim form the Claimant also seeks the sum of KZT 93,563.00 to represent the penalty due under Article 113.3 of the Labour Code. The Defendant disputes this solely on the basis that the Claimant has failed to comply with clause 5.2.10 of the Alleged Employment Contract (see paragraph 6 of the Defence). Other than this objection, paragraph 6 of the Defence does not dispute the amount claimed or the method of calculation. Clause 5.2.10 is considered below.

Has The Claimant Breached Clause 5.2.10 Of The Alleged Employment Contract?

34. The Defendant's position is that payment of the sums set out above is conditional on compliance with Clause 5.2.10 of the Alleged Employment Contract.

35. Clause 5.2.10 states that the "employee is obliged to":

"Provide the Employer with a signed workaround sheet before receiving the settlement, upon termination of the Agreement."

36. It is also relevant to refer to clause 4.1.11 which records that the Employer can "require the Employee to sign a workaround sheet upon termination of the Agreement."

37. I have not been provided with any copy of a "workaround sheet", whether in draft or template form. Nor is there any reference to such a document in the contemporaneous emails and WhatsApp messages

that I have seen. Accordingly, I am unable draw any conclusions as to what such a document would record.

38. If payment to the Claimant of the sums owed to him was conditional on completion of a workaround sheet, I would have expected this to be recorded in a communication between the parties, whether at the point of termination, or thereafter. (It is not referred to in the Order issued by the Defendant on 28 August 2023.)

39. I also note that in a document provided by the Defendant, entitled "Witness Testimony of Amina Valeyeva", Ms Valeyeva does not make any reference to a "workaround sheet" either.

40. As such, on the information provided to me, even if the Alleged Contract was the definitive contract between the parties (and for reasons set out above I do not need to form a view on this), I am not satisfied that the Defendant has proved its case on this point.

41. Related to the dispute over the workaround sheet, the Defendant also argues that the Claimant has failed to "hand over all client-related documents before receiving the final settlement". The Claimant denies that he has any materials in his possession which belong to the Defendant.

42. The Defendant has submitted a list of items which it claims have been wrongly retained by the Claimant. However, no indication is provided as to when these documents were created by the Claimant (or Defendant), nor is there any explanation of why it is said that they are still in the Claimant's possession. The list is unspecific e.g. there is a generic reference to "statuses of all projects" however no details are provided of what projects the Defendant is referring to. The list also appears to be inaccurate because one of the items on the list (namely the Employee Code of Conduct) has in fact been provided by the Defendant in support of its defence (see document 3 of the Defendant's documents).

43. Therefore, on the balance of probabilities, I am unable to conclude that the Claimant is wrongfully in possession of specific documents which belong to the Defendant. In light of this, the Defendant's argument that payment of the sums owed to the Claimant is conditional on compliance with clause 5.2.10, does not succeed.

The Defendant's Counterclaim

44. The Defendant brings a counter-claim against the Claimant for allegedly breaching the non-competition provisions contained in the Employee Code of Conduct (see document 3 of the Defendant's defence). The Claimant denies this claim.

45. I first have to decide on the status of the Employee Code of Conduct. It is not referred to in the Alleged Employment Contract relied by the Defendant. Nor is it referenced anywhere else in the materials provided to me.

46. The Claimant submits this document is not incorporated into the Claimant's contact of employment and directs my attention to section 11(5) of the AIFC Employment Regulation.

47. I am satisfied that the Employee Code of Conduct is not incorporated into the Claimant's contract of employment, hence non-compliance with it cannot amount to a breach of that contract.

48. As for the Alleged Contract of Employment, it does not contain any contractual obligations relating to non-competition provisions. It is no part of the Defendant's case that such terms are to be implied into the contract. Accordingly, the counter-claim is dismissed.

49. Even if I am wrong on that point, and somehow the Employee Code of Conduct was incorporated into the Claimant's contract of employment, on the material provided to me, I am not satisfied that the Defendant has a meritorious claim for breach of the same: the mere fact that the Claimant has registered a company which appears also to engage in legal services does not demonstrate a material breach of the Employee Code of Conduct, nor has the Defendant properly evidenced the losses allegedly caused by the same (for the reasons contained in the Claimant's defence to the counter-claim).

50. For equivalent reasons, the Defendant's claim that the Claimant has violated the Defendant's intellectual property rights is also rejected.

51. Finally, the Defendant seeks to argue that the Claimant is liable to the Defendant for failing to provide 30-days notice of termination, to the Defendant. This argument is also rejected. The Defendant did not raise this when the Claimant submitted his letter of resignation. No mention is made of this in any of the email exchanges between the parties, nor is it referred to in the witness testimony of Ms Valeyeva. The first time that such an argument has appeared is in the Defence. Moreover, the Defendant's assertion that it has suffered a loss as a result of the alleged breach is not properly evidenced. As such, even if there were merit in this argument – and I do not find there is – in my view, by failing to raise this at any time prior to filing a defence, the Defendant has waived its right to rely on this point, and has not in any event demonstrated that it has suffered any loss as a result of the alleged breach.

Remedy

52. I therefore award the following remedy in light of my findings:

    (1) A declaration that the contract of employment was voluntarily terminated by the Claimant as per his resignation letter of 28 August 2023.

    (2) The Defendant must pay the Claimant the sum of KZT 745,739.00 for his wages for August 2023, vacation compensation and annual leave, broken down as follows:

        (a) KZT 652,176.00 in respect of wages, vacation compensation and annual leave;
        (b) KZT 93,563.00 to represent the penalty due under Article 113.3 of the Labour Code. I award this sum because:
            (i) The Defendant has accepted that the Claimant is owed payment for his wages, vacation leave, and sick leave.
            (ii) I have rejected the Defendant's argument as to the conditionality of payment.
            (iii) I also have regard to Part 3, section 19 of AIFC Employment Regulations (referred to in the Defendant's defence) which clearly envisages that on termination of employment, an employer must pay all wages and any other amounts owing to an employee promptly. As such, these sums should never have been withheld from the Claimant.

    (3) The Defendant must also pay the sums of KZT 130,823 in respect of income tax, pension contributions and medical insurance.

53. I do not grant the Claimant's request for interim measures (which were not pursued in any event). As I have concluded that the Claimant was not constructively dismissed, I also dismiss the Claimant's request for compensation for six months wages.

54. The Defendant's counter-claim is dismissed.

Timeline For Payment Of The Sums Due

55. The Defendant is therefore required to pay amounts set out above by no later than 12 March 2025. I have specified this short time frame for two reasons:
    (1) The Defendant has accepted that the Claimant is owed payment for his wages, vacation leave, and sick leave. As such, these sums should never have been withheld from the Claimant.
    (2) Unsurprisingly, the sums in question are significant for the Claimant and it is therefore in the interests of justice for the Defendant to compensate the Claimant promptly and without further delay.

56. Finally, both sides have asked for their costs. If the Defendant does make payment of the requisite sums within the period specified above, and in light of the fact that the Claimant has succeeded in part as against the Defendant, but has not succeeded on the unfair dismissal claim, and as these are small claims proceedings, I do not propose to make any costs order. There is no exceptional basis for doing so, hence each side must bear its own costs.

By Order of Court,

Saima Hanif KC
Justice, AIFC Court

Representation:

The Claimant was represented by Ms Anastasiya Galimova, independent external lawyer, Astana, Kazakhstan.

The Defendant was represented by Mr Kuat Roman, employee of the Defendant, Astana, Kazakhstan.