

**IN THE COURT OF APPEAL
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE**

8 May 2025

CASE No: AIFC-C/CA/2025/0006

Enegix LLP

Appellant

v

**(1) Freschette Limited
(2) Prime Capital RE Alakol LLP
(3) Prime Capital Real Estate LLP
(4) Qaz-Ak-Kus LLP**

Respondents

JUDGMENT AND ORDER

Justice of the Court:

Justice Sir Stephen Richards

ORDER

The application for permission to appeal is refused.

JUDGMENT

1. This is an application for permission to appeal from the judgment dated 7 February 2025 of Justice Sir Rupert Jackson sitting in the AIFC Court of First Instance (“the CFI”) in Case No: AIFC-C/CFI/2024/0035. The judgment followed the trial of a preliminary issue to determine whether the CFI had, and should exercise, jurisdiction in proceedings concerning foreclosure of pledged immovable property. The claimant was Freschette Limited; the first defendant was Enegix LLP; the second to fourth defendants were all Kazakh limited liability partnerships which had pledged relevant properties. The judge granted relief (i) declaring that the AIFC Court had jurisdiction to deal with Freschette’s claims in the action, and (ii) ordering Enegix to withdraw its parallel claim in the Almaty court and any related claims in any other court, and restraining it from further pursuing those proceedings. Formal effect was given to the judgment by an order of the CFI dated 12 February 2025.
2. The application for permission to appeal is made by Enegix. Its grounds of appeal are set out in the appellant’s notice. Freschette, named as first respondent, has filed a written objection to the application. The other respondents have played no part at this stage in the proceedings.
3. The application has been determined on the papers, as requested in the appellant’s notice and in accordance with Rule 29.16 of the AIFC Court Rules.
4. Permission to appeal may be given where the appeal Court considers that (1) the appeal would have a real prospect of success or (2) there is some other compelling reason why the appeal should be heard: see Rule 29.6. Success on appeal depends on establishing that the decision of the lower Court was (1) wrong or (2) unjust because of a serious procedural or other irregularity in the proceedings in the lower Court: see Rule 29.7.
5. Reference should be made to the CFI’s judgment for the detailed facts and legal framework and analysis. The case centred on a clause (“the submission clause”) in the agreements between the parties whereby the AIFC Court “shall have jurisdiction to resolve any disputes arising from or in connection with this Agreement”.
6. In the first section of the grounds of appeal, headed “The AIFC Court exceeded its discretion and interfered with decision making in the Kazakh state court”, it is argued that the submission clause did not include disputes relating to the *validity* of the relevant agreements (including the validity of the submission clause itself); that Enegix did not challenge validity before the CFI, as this matter falls outside the jurisdiction of the AIFC Court; that Enegix did bring a claim challenging validity in the Kazakh state court; and that the CFI’s issue of an anti-suit injunction wrongly pressurised the state court into dismissing the claim. In my view that line of argument has no real prospect of success:

- (1) The wording of the submission clause is plainly apt to include disputes relating to validity. They are “disputes arising from or in connection with” the agreement. The use of general wording rather than the more specific wording used in the model clause recommended by the AIFC Court (“any disputes ... including any question regarding its existence, validity, or termination ...”) cannot be taken as evidence of an intention to *exclude* disputes relating to validity from the scope of the clause. The commercial background, if and in so far as it is admissible as an aid to interpretation, also supports the view that no such exclusion was intended: as stated in the CFI’s judgment, “Freschette was not prepared to enter into any of the deeds and pledge agreements ... unless they contained clauses giving exclusive jurisdiction to the AIFC Court” (paragraph 5.10), and “Freschette was only willing to enter this web of contracts if they provided for all disputes to go to the AIFC Court” (paragraph 5.12).
 - (2) All disputes, including disputes about validity, therefore fall within the exclusive jurisdiction of the AIFC Court. Further, by Article 26(9) of the AIFC Court Regulations, “Any issue as to whether a dispute falls within the jurisdiction of the [AIFC] Court shall be determined by the Court whose decision shall be final”.
 - (3) In bringing a claim to challenge validity in the state court rather than in the AIFC Court, Enegix acted in breach of the submission clause. The claim should have been brought before the AIFC Court (and the claim was indeed closely related to the jurisdictional challenge that Enegix did advance before the AIFC Court).
 - (4) The matters relied on in this section of the grounds of appeal therefore contain nothing to cast doubt on the lawfulness or appropriateness of the CFI’s order requiring Enegix to withdraw its claim in the state court.
7. The next section of the grounds of appeal is headed “Invalidity of the submission clause must have been assessed by the Kazakh state court”. The additional argument advanced is, in short, that under Kazakh law Enegix lacked the capacity to enter into transactions contradicting mandatory provisions of Kazakh law; that Article 31 of the Kazakh Civil Procedure Code reserves real estate disputes to state courts, and Enegix’s capacity to agree otherwise is void under Article 158(1) of the Civil Code. As to that:
 - (1) The short answer to the point is that Article 31 of the Kazakh Civil Procedure Code does *not* reserve real estate disputes to state courts. The judge accepted the submission of counsel for Freschette that Article 31 “deals with venue for handling cases which are already within the regular Kazakhstanian court system” (see paragraph 5.5(1) of the judgment); i.e. it does not address jurisdictional allocation between Kazakh courts and the AIFC Court but regulates internal venue selection within the Kazakh court system once jurisdiction has already been established within that system. The judge’s acceptance of that submission was in my view well founded and correct, and the contrary argument has no real prospect of success.
 - (2) Even if there were an arguable issue about the meaning of Article 31, there would be nothing to prevent the AIFC Court from determining the effect of the provision on Enegix’s capacity,

as a matter of Kazakh law, to enter into the submission clause. There is no reason why the AIFC Court, in determining a dispute that falls within its jurisdiction, should not consider issues of contractual capacity. That an issue involves questions of Kazakh law does not mean that it has to be determined by a court within the ordinary state system rather than by the AIFC Court.

8. The next section of the grounds of appeal is headed “The AIFC Court should have stayed proceedings in part relating to the foreclosure upon pledges pending the state court’s determination”. It is submitted that the CFI should have stayed proceedings in order to avoid the risk of conflicting rulings; that in the absence of a tribunal to resolve jurisdictional conflicts, it is necessary for the AIFC Court to defer to the state court to avoid a constitutional crisis; and that the CFI should have taken a more balanced and cautious approach so as not to overextend its jurisdiction. Again it is a line of argument without any real prospect of success:
 - (1) It again ignores the point that the claim in the state court was made in breach of the submission clause.
 - (2) An application for a stay “until such time as the Almaty Court had determined the validity of the parties’ agreements concerning dispute resolution” was made at the beginning of the hearing of the preliminary issue. It was rejected by the judge “because it is for this court to determine its own jurisdiction: see Article 26(9) of the AIFC Court Regulations” (paragraph 3.14 of the CFI’s judgment). Having regard to the terms of Article 26(9), set out above, the judge was plainly entitled to take that approach. It was for the AIFC Court, not the state court, to resolve any jurisdictional conflict.
 - (3) Nothing that has happened subsequently alters the position. The CFI’s order requiring Enegix to withdraw its claim in the state court avoids the risk of conflicting rulings and ensures that the disputes are determined in the forum which has exclusive jurisdiction over them, namely the AIFC Court. There could be no justification for a stay of the proceedings in the CFI at this stage.
9. The fourth section of the grounds of appeal is headed “The AIFC Court wrongfully assumed jurisdiction over the dispute”. It is argued first that the Court focused on the statutory exclusion of “criminal and administrative proceedings” from its jurisdiction but did not take into account the rationale behind that exclusion, namely to exclude from its competence disputes with public policy elements; and that the foreclosure on the plots of land in this case gives rise to major public policy concerns. The second and related argument is that in deciding whether to accept jurisdiction over a dispute the Court should not take too expansive a view of its jurisdiction and should not accept jurisdiction when public policy concerns overlap with commercial disputes. As to those points:
 - (1) There is nothing to exclude disputes with public policy elements from the jurisdiction of the AIFC Court. On the contrary, the terms of Article 29 of the AIFC Court Regulations and Article 27 of the AIFC Arbitration Regulations show that the Court has a role in protecting the public policy of the Republic of Kazakhstan and has the competence to adjudicate upon issues of

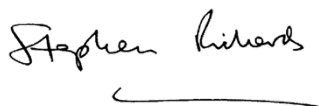
public policy. And issues of public policy arise in practice from time to time in the normal course of the work of the Court.

- (2) At paragraphs 5.6-5.12 of his judgment the judge examined with care the arguments for and against the exercise of the Court's discretion under Article 26(10) of the AIFC Court Regulations to decline jurisdiction. The decision he reached in the exercise of that discretion is not open to successful challenge. The point about public policy appears to be additional to those advanced at the time on behalf of Enegix, but it lacks sufficient substance to be capable of undermining the judge's decision.

10. For those reasons I have reached the conclusion that none of the grounds of appeal has any real prospect of success. I have given careful consideration to whether there is some other compelling reason for an appeal to be heard, bearing in mind in particular the judge's own description of the case as raising questions of "considerable importance" as to the proper remit of the AIFC Court and the boundary between the work of the AIFC Court and the long-established courts of the Republic of Kazakhstan. In all the circumstances, however, I see no useful purpose to be served by letting this case proceed to a full appeal. The judge's judgment is clear, well reasoned, suitably respectful of the proper relationship between the AIFC Court and the ordinary courts of the Republic of Kazakhstan and, on the view I have formed, not open to successful challenge. The hearing of an appeal would involve an unnecessary use of the Court's resources and of the parties' time and money.

11. Accordingly, the application for permission to appeal is refused.

By the Court,



The Rt Hon. Sir Stephen Richards

Justice, AIFC Court



Representation:

The Appellant was represented by Mr Bakhyt Tukulov, Partner, TKS Disputes LLP, Almaty, Kazakhstan.

The First Respondent was represented by Mr Farukh Iminov, Lawyer, Kinstellar LLP, Almaty, Kazakhstan.

The Second, Third and Fourth Respondents were not represented.