

IN THE COURT OF FIRST INSTANCE  
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

5 November 2025

CASE No: AIFC-C/CFI/2025/0019

ASKHAT SHARIPOV ILDAROVICH

Claimant

v

(1) BAEV (FORMERLY BARMENBAYEV) ARMAN GIZATOVICH

(2) PROPORTUNITY MANAGEMENT COMPANY LIMITED

(3) SHORTINVEST SPC LIMITED

(4) PROJECT SI SPC LIMITED

Defendants

---

JUDGMENT AND ORDER

---

Justice of the Court:  
Justice Tom Montagu-Smith KC

**ORDER**

**UPON** the Claimant's claim set out in the claim form dated 24 May 2025 ("the Claim Form").

**AND UPON** the Court entering judgment in default in favour of the Claimant against the Second Defendant on 30 July 2025 ("the Judgment").

**AND UPON** the Second Defendant applying to set aside the Judgment ("the Application").

**AND UPON** hearing the Claimant in person and the Second Defendant not attending.

**IT IS ORDERED THAT:**

1. The Application is dismissed.

## JUDGMENT

### **Introduction**

1. By this claim, the Claimant claimed sums said to be due pursuant to a series of three agreements for investment in property developments. The claim was issued on 29 May 2025. This judgment concerns the Second Defendant's application to set aside default judgment entered against it on 30 July 2025.

### **The default judgment**

2. The Claimant filed a certificate of service on 4 July 2025, in which he stated that he had served the claim on all four defendants in a number of different ways:
  - 1) By sending a communication by Telegram to Mr Baev (formerly, Mr Barmenbaev) on 10 June 2025;
  - 2) By sending a WhatsApp message to Mr Baev on 10 June 2025;
  - 3) By sending emails on 10 June 2025 to three email addresses, one of which was identified as belonging to Mr Baev ("The Baev Address").
3. The Claimant also attempted courier delivery to some of the Defendants on 28 April 2025, however delivery appears to have failed.
4. The Defendants did not respond to the claim and the Claimant applied for judgment in default. The Court sought and received clarification from the Claimant as to the identity of the party against whom the claim was advanced and the sum sought. In his response, the Claimant calculated his claim against the Second Defendant as follows:
  - 1) KZT 20,000,000 – return of principal investment;
  - 2) KZT 6,000,000 – dividends due;
  - 3) KZT 1,000,000 – lump sum penalty;
  - 4) KZT 31,000,000 – penalty sums accruing at 0.5% per day from 26 June 2024 to 2 May 2025.
5. I entered judgment in default on 30 July 2025. The Second Defendant was ordered to pay the Claimant a total of KZT 58,000,000.

### **The Application**

6. The Judgment was sent by email to the Baev Account on the morning of 30 July 2025. Later on the same day, the Second Defendant applied under Rule 9.4 of the AIFC Court Rules to set aside the default judgment. The application was sent by email by Mr Baev from the Baev Account.

7. Under the AIFC Court Rules, r.9.18, a judgment in default must be set aside if the conditions for its entry are not met.
8. Under r.9.19, the Court may set aside or vary such a judgment if the defendant has a real prospect of successfully defending the claim or if it appears to the Court that there is some other good reason to do so. In considering an application under this rule, the Court must have regard to the question of whether the application was made promptly.
9. In its application, the Second Defendant raised both points:
  - 1) First, it argued that there was no valid service of the claim;
  - 2) Second, it was said that the Second Defendant had arguable defences to the claim and had applied promptly to set aside the judgment.
10. In addition, the Second Defendant asserted that it had “submitted a written Objection to the Claimant seven (7) day ago”. The application was accompanied by a document entitled “Defence Submission” which was addressed to the AIFC Court and was dated 23 July 2025. It therefore appeared that the Second Defendant was suggesting that it had in fact filed a defence before judgment was entered in default.
11. No communication was produced evidencing that the Defence Submission document was in fact filed. I have checked with the Registry who have confirmed that nothing was received from the Second Defendant on 23 July 2025 or at any time prior to the issue of the default judgment. The Second Defendant’s later submission of 19 September 2025 makes no mention of the Defence Submission document. Unfortunately, neither Mr Baev nor anyone else attended the hearing on behalf of the Second Defendant to shed light on this or any other matters raised by the Second Defendant. In the circumstances, on the basis of the material before me, it appears that the Second Defendant did not in fact file a defence before the default judgment was issued.

**Application under r.9.18 – conditions not met for default judgment**

12. As to service, the Second Defendant argues that no valid service has occurred. Its position is that:
  - 1) The attempts at courier service failed;
  - 2) Delivery by Telegram and Whatsapp cannot amount to valid service without a Court order; and
  - 3) Email delivery cannot establish effective service without proof of receipt or authorization.
13. The permissible methods of service are governed by AIFC Court Rules, r.5.3 and 5.4 as follows:

“5.3 A document may be served by any method which brings the document and its contents to the attention of the party being served.

5.4 Where the party being served is not an individual, the method of service shall bring the document and its contents to the attention of a person holding a senior position within the party. Each of the following persons is a person holding a senior position:

(1) in respect of a registered company or corporation, a director, the treasurer, secretary, chief executive, manager or other officer of the company or corporation...”

14. Rule 5.5 provides that, before service by electronic means, a party should first clarify whether there are any limitations on the recipient’s ability to receive service by such means. However, failing to comply with this provision does not invalidate service. It may simply be one factor in the court’s assessment of whether the documents have in fact been brought to the attention of the party in accordance with r.5.3.
15. In my view, there is no doubt that the email sent to Mr Baev on 20 June 2025 amounted to service on the Second Defendant.
16. First, there appears no dispute that Mr Baev was the proper person to whom to send documents for the benefit of the Second Defendant. I understand he is a director of the Second Defendant. He has also been communicating with the Court on behalf of the Second Defendant and so is clearly authorized to conduct proceedings on its behalf.
17. Second, there is no doubt at all that the documents were brought to Mr Baev’s attention by sending them to the Baev Account. I have seen a number of communications that show that the Baev Account was in active use to conduct business on behalf of the Second Defendant. Further, Mr Baev has used the Baev Account to communicate with the Court about the case. The application to set aside was sent in response to the Court sending the default judgment to the Baev Account. It was made within hours of the judgment being sent. That demonstrates, in my view, that the Baev Account was being monitored by Mr Baev.
18. Contrary to the Second Defendant’s submissions, there is no requirement that email service be “authorized”. I take that to suggest that a defendant must agree to email service in advance. That is a requirement in some legal systems, but not in the AIFC. The Second Defendant is right that “proof of receipt” must be established in the sense that the Court must be satisfied that the email actually brought the documents to the attention of the relevant person. For the reasons I have given, I am so satisfied. In any event, that is not obviously disputed by Mr Baev and the Second Defendant.
19. The Second Defendant is also wrong to say that service by WhatsApp and Telegram require a prior Court Order. There is no such requirement in AIFC law. The Court will be astute to ensure that those methods of service, if used, actually do bring the documents to the attention of the relevant person. However, if that test is satisfied, service is achieved.
20. I therefore reject the Second Defendant’s argument under r.9.18. The conditions for judgment in default were satisfied when judgment was entered.

**Application under r.9.19 – arguable defences**

21. I therefore turn to the application under r.9.19.

22. Rules 9.19 and 9.20 read as follows:

“9.19 In any other case, the Court may, on such conditions as it sees fit, set aside or vary a judgment entered under Section I of this Part if:

- (1) the Defendant has a real prospect of successfully defending the claim;  
Or
- (2) it appears to the Court that there is some other good reason why:
  - (a) the judgment should be set aside or varied; or
  - (b) the Defendant should be allowed to defend the claim.

9.20 In considering whether to set aside or vary a judgment entered under Section I of this Part, the matters to which the Court shall have regard include whether the person seeking to set aside the judgment made an application to do so promptly.”

23. There is no suggestion in this case that there is some good reason for setting aside judgment pursuant to r.9.20(2). In the circumstances, the central question is whether the Defendant has a real prospect of successfully defending the claim. If there is, I must go on to consider whether, in my discretion, the judgment should be set aside or varied. In considering that issue, I must consider whether the application was made promptly. However, that is not the only consideration which may be relevant. In addition, if I do consider that I should set aside or vary the judgment, I may impose conditions. Conditions which may include, for example, a requirement that a defendant pay a sum into court as a condition of defending the claim.

24. The Second Defendant raises five matters which, it says, give rise to a defence to the Claim:

- 1) The contract between the Claimant and the Second Defendant was only a draft agreement as it was never signed.
- 2) The Claimant has failed to prove the sums paid to the Defendant or calculate the interest due, on the balance of probabilities;
- 3) The penalty rate of 0.5% per day is excessive and unenforceable under Regulation 94(7) of the AIFC Contract Regulations and / or under common law;
- 4) The Claimant is not contractually entitled to dividends, which are not guaranteed under the Contract.
- 5) The Second Defendant is entitled to claim force majeure.

25. I consider each of these proposed defences in turn. The burden is on the Second Defendant to establish that it has an arguable case in relation to these matters. It is not assisted by the fact that it has filed no evidence in support of its position.

Argument 1 – contract

26. The Second Defendant's first argument is that there was no contract in place between the Claimant and the Second Defendant.
27. The document relied on by the Claimant as a contract is dated 10 April 2023. It was never signed. It describes itself as a "contract... on implementation of the "Club House" investment project". Clause 2.1 of the document provides for the investment of KZT 20,000,000. The document is drafted as an agreement between the Fourth Defendant and the Claimant. However, the Claimant's case is that the investment was made by payment to the Second Defendant and, in effect, the arrangement was that it would be treated as governed by the terms of the draft agreement.
28. The Second Defendant admits that the sum of KZT 20,000,000 was received by "the Defendants". In practice, that was the result in part of allocating proceeds from a prior investment and in part from fresh investment. The Second Defendant further admits that the sums were allocated to the Club House project. It does not identify which Defendant received the sums. However, as I noted in my reasons for granting default judgment, Mr Baev had previously emailed investors on behalf of the Second Defendant referring to the Club House project as a project of the Second Defendant. In the circumstances, it is clear that the sum was received by the Second Defendant.
29. It is inconceivable that the investment was not intended to be governed by any terms. The Second Defendant does not identify any competing terms which it says governed the investment. It produces no communications which even suggest that terms continued to be negotiated. The Second Defendant's position appears to be that a contract must be signed in order to be concluded. That is not correct. A contract may be concluded by conduct. In my judgment, it is clear that the Claimant provided finance which was accepted by the Second Defendant for the Club House project and the intention was that it would be subject to contractual terms, set out in the draft contract. That is sufficient to establish a contract between the Claimant and the Second Defendant on those terms. In my view, the Second Defendant has no real prospect of establishing otherwise.
30. If I were wrong about that, the Claimant would not simply lose the money. The only alternative would be that the Second Defendant received the money from the Claimant for no consideration. In those circumstances, the Claimant would have an unanswerable claim in restitution for return of the principal, together with interest. There may also be a claim under the pre-existing arrangements in respect of prior projects.

Argument 2 – proof of claim

31. The Second Defendant's second argument is that the Claimant has failed to prove the sums claimed. In reality, this is not a matter of proof as the provision of KZT 20,000,000 is admitted. The true

complaint is about the contractual entitlement to penalties and dividends, which are the subject of the third and fourth arguments.

Argument 3 – penalty rate

32. The Second Defendant's third argument is that the contractual daily penalty of 0.5% is unenforceable. The Second Defendant refers to Article 94(7) of the AIFC Contract Regulations and to the common law.
33. The AIFC Contract Regulations do not contain an Article 94(7). The Second Defendant may be referring to Article 122(2). Article 122 states in full:

“122. Agreed payment for non-performance

- (1) If the contract provides that a party who does not perform is to pay a specified sum to the aggrieved party for the non-performance, the aggrieved party is entitled to that sum irrespective of the actual harm suffered by it.
- (2) However, notwithstanding any agreement to the contrary, the specified sum may be reduced to a reasonable amount if it is grossly excessive in relation to the harm resulting from the non-performance and to the other circumstances.”

34. It is reasonably arguable that this provision could apply to agreements for interest in contracts. The Second Defendant's argument may be that charging a rate of 0.5% per day is grossly excessive in relation to the harm resulting from the non-performance and to other circumstances.
35. If that is the Second Defendant's position, it would be for the Second Defendant to provide evidence of the facts on which it relies to support that conclusion. At present, the position is simply asserted.
36. The question of whether a particular interest rate is reasonable or grossly excessive will be fact sensitive. The Claimant's position is that this was a risky venture, which was unregulated, and which relied entirely on trusting Mr Baev. No due diligence was carried out or anticipated.
37. The Second Defendant has provided no evidence to support its position that the rate agreed is manifestly excessive. These were terms which were freely agreed between the parties in respect of a high risk investment which offered high returns. In the circumstances, I do not consider that the Second Defendant has satisfied the burden of establishing that it has real prospects of establishing that these provisions are unenforceable.
38. I do not consider that the common law adds anything to this analysis. The AIFC Contract Regulations are not based on the common law. Instead, they have their origins in the UNIDROIT principles. In any event, on this subject, the AIFC Contract Law contains a complete code for dealing with excessive penalties in AIFC law contracts.
39. I note also that Clause 5 of the contract does not simply apply a flat 0.5% rate over the full period of delinquency. Instead, it provides as follows:



- 1) Return of the investment is due 12 months after creation of the contract;
  - 2) By clause 5.3, where payment is overdue for up to 30 days, a penalty of 0.5% is due for each day of delay;
  - 3) By clause 5.4, if payment is overdue for 30 – 90 days, a penalty of 0.5% is due for each day of delay, together with a one-time penalty of 5% of the investment amount;
  - 4) By clause 5.5, 0.5% is due for each day of delay, without limitation of its period.
40. The rate is the same for each period. However, each clause falls to be evaluated individually. Thus, if I were wrong and the Second Defendant had a reasonably arguable case that the rate of 0.5% per day which applies in perpetuity is “grossly excessive”, that would not mean that the same rate applied for a shorter period was grossly excessive.
41. This decision should not be taken to mean that a rate of 0.5% per day would be enforceable in every contract. There will undoubtedly be contracts in respect of which such a rate could be seen to be grossly excessive. My conclusion in this case is simply that the Second Defendant has not met the burden of establishing that that is reasonably arguable in respect of this contract. I am however fortified in my decision by the decision of Justice Patricia Edwards in the case of *Izmagambetov Tokhtar Izimovich v (1) Private Company “Proportunity Management Company Ltd.” (2) Special Purpose Company “Project SI SPC Ltd”* (AIFC-C/SCC/2024/0032). That case concerned a claim by another investor in relation to the Club House project. The Judge awarded the claimant interest at the rate of 0.5% under a contract on similar terms to the contract in this case.

#### Argument 4 – dividend

42. The Second Defendant’s fourth argument is that the claimed dividends were not due under the contract.
43. Clause 2.4 of the contract stated:
- “Dividends are paid to the Investor after the completion of the project within 3 (three) banking days in the amount of 30 (Thirty) % per annum after deduction of taxes and other mandatory payments to the budget.”
44. Clause 4.2 of the contract provides, in relevant part:
- “When executing the Contract, the SPC has the right to:
- ...
- 4.2.2 The dividends are paid to the Investor after each sale transaction in an amount proportional to his percentage of Investments specified in clause 2.1, in the case of such transactions. The SPC does not guarantee the payment of dividends to the Investor under this Contract.”

45. Clause 2.4 appears to suggest that dividends will be paid, albeit their amount is to be calculated by reference, at least in part, to the level of costs incurred.
46. Clause 4.1 says in terms that the payment of dividends is not guaranteed. It refers to a “percentage of Investments specified in clause 2.1”. However, clause 2.1 provides only                      for the Claimant’s investment of KZT 20,000,000. It does not specify any percentage, nor provide any obvious means of calculating one.
47. The contract was obviously intended to provide for the payment of dividends. The Claimant’s position is that clause 2.4 is clear. Dividends are payable on “completion of the project”. Mr Baev’s email of 13 February 2024 declared the project complete. As a result, dividends are due at the agreed rate.
48. The Second Defendant merely asserts that dividends were not guaranteed. However, that is consistent with the Claimant’s case – completion was not guaranteed, but appears to have occurred. Assertion is not sufficient to establish a reasonably arguable defence. The Second Defendant does not say what circumstances would justify a claim for dividends, nor whether those circumstances have occurred. As a result, the Second Defendant’s case is merely a bare denial.

#### Argument 5 – force majeure

49. The Second Defendant’s fifth argument is that the investment project was “halted due to external, uncontrollable factors, including administrative restrictions and developer delays”. These amounted, the Second Defendant says, to force majeure. The Second Defendant also refers to these factors as “real estate market disruptions” and “unforeseeable macroeconomic challenges.”
50. The Contract included force majeure provisions. Clause 6.1 requires that those factors be such that the party affected “could neither foresee nor prevent by reasonable measures.” Examples given in clause 6.2 include floods, fires, wars, revolutions, nationalization, state seizure and issuance of regulatory or other legislation. By clause 6.3, in the event of force majeure, the affected party is required to send a notice. By clause 6.5, proof of force majeure is generally required to be by a certificate issued by a competent authority or organization.
51. In my view, developer delays and real estate market disruptions are not unforeseeable. They are normal commercial risks. The other factors alleged are too vaguely asserted to be capable of any sensible analysis. Nor is it even alleged that a notice was sent. Nor is any certificate produced. In any event, the Second Defendant provides no evidence to support its position, which appears inconsistent with Mr Baev’s email of 13 February 2024, when he declared the project to be complete.
52. In the circumstances, none of the defences offered has any real prospect of success.

#### Discretion

53. If I were wrong in my assessment, I would go on to consider whether, in my discretion, I should set aside the judgment or, in the alternative, impose conditions on the Second Defendant advancing any defence.

54. On any view, even if some of the defences advanced were arguable, they would not give rise to a defence to the claim for the principal sum of KZT 20,000,000. If therefore I had decided that some of the defences were reasonably arguable, I would have required the Second Defendant to pay into Court the sum of KZT 20,000,000 as a condition of advancing those defences. In my view, it would not be fair to require the Claimant to spend time and, potentially cost, litigating the defences without any assurance that a recovery could be made at the end of the case.
55. I note that the Claimant has concerns that the Second Defendant has no assets. I also note that the Claimant is considering whether to bring a claim against Mr Baev personally in light of new information he has received since the entry of default judgment in this claim. I should make clear that nothing in this judgment prevents the Claimant from doing so.

Conclusion

56. For the reasons I have given, I dismiss the Second Defendant's application.

By Order of the Court,

Justice Tom Montagu-Smith KC,  
Justice, AIFC Court

**Representation:**

The Claimant represented himself.

The Defendant was not represented.