



IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

14 December 2021

CASE No: AIFC-C/CFI/2021/0006

SNAB INVEST GROUP LLP

Claimant

v

PEASANT FARM BERKENOV ILDAR ZHAMBULOVICH

Respondent

JUDGMENT

Justice of the Court:

Justice Charles Banner QC

ORDER

1. **The Claim is allowed.**
2. **The Defendant shall pay the Claimant 9,553,666 Tenge within 28 days of this Order (in addition to the principal debt of 9,713,000 Tenge which has already been paid).**
3. **The parties shall bear their own costs of these proceedings.**

JUDGMENT

Introduction

1. This claim arises out of a contract, entitled Goods Purchase and Sale Agreement No 29/06-30 and dated 30 June 2020 (“**the Agreement**”), between the Claimant (referred to as the “Seller” in the Agreement) and the Defendant (referred to as the “Buyer” in the Agreement) for the sale and purchase of plant protection chemicals, the types and amounts of which were specified in the Agreement, for 9,713,000 Tenge.
2. A Goods Transfer-Acceptance Certificate appended to the Agreement and also dated 30 June 2020 confirms that the chemicals were transferred from the Claimant to the Defendant on that date “in the quantity and quality previously agreed by the parties”.
3. Clause 4.6 of the Agreement obliged the Defendant to pay the full sum of 9,713,000 Tenge by 1 November 2020. It is common ground between the parties that the Defendant did not do so. As a consequence, the Claimant has brought this claim against the Defendant.

Procedural background

4. Clause 7.2 of the Agreement states that disputes under the agreement “are resolved in the Interdistrict Specialized Economic Court of the Kostanay region in accordance with the current legislation of the Republic of Kazakhstan”.
5. Pursuant to this clause, on 4 August 2021 the Claimant filed a claim against the Defendant at the Specialised Interdistrict Economic Court of the Kostanai Region (case reference no: 3971-21-00-2/2521).
6. On 24 August 2021, the Claimant and Defendant signed and dated a Transfer of Cases Consent Form in which they agreed to terminate the case proceeding in the Specialised Interdistrict Economic Court and to transfer the case to the AIFC Court, if the AIFC Court would accept the case.
7. By Order dated 24 September 2021, the Chief Justice of the AIFC Court, Lord Mance, declared that the AIFC Court has and shall exercise jurisdiction over the dispute. That Order is included below as Appendix 1 to this Judgment.

8. On 15 October 2021 the Claimant filed a Claim Form with the AIFC Court.
9. The stated value of the claim in the Claim Form (see paragraph 11 below) is below the financial threshold specified by Rule 28.2(1) of the AIFC Court Rules. The claim therefore falls within the jurisdiction of the AIFC Small Claims Court (“**SCC**”).
10. Under Rule 28.39, the SCC has the power to deal with a claim without a hearing. In considering whether to exercise that power the Court will have regard to the expressed views of the parties as well as the overriding objective in Part 1 of the AIFC Court Rules. In Section 5 of the Claim Form, the Claimant requested that the proceedings be determined on the papers without an oral hearing. The Defendant has not challenged that request. In these circumstances, and having regard to the overriding objective, the Court is satisfied that a hearing is not necessary for the just determination of the claim. It has therefore proceeded to determine the claim on the papers.

The issues before the Court

11. Section 2 (Details of Claim) of the Claim Form sought an Order requiring the Defendant to pay the Claimant:
 - 1) The principal debt of 9,713,000 Tenge;
 - 2) A fine in the amount of 9,553,666 Tenge, said by the Claimant to be in accordance with Clause 5.2 of the Agreement and Articles 293-296 of the Civil Code of Kazakhstan (“**CCK**”); and
 - 3) Costs of legal representation in the proceedings, in the amount of 1,700,000 Tenge.
12. On 22 October 2021, the Defendant filed a brief Defence stating that:
 - 1) It accepted liability to pay the principal debt of 9,713,000 Tenge and that the “delay in payment...occurred due to the difficult financial situation prevailing in the entire economy of the world due to the pandemic”;
 - 2) The fine should be reduced to 50,000 Tenge pursuant to Article 297 CCK, on the basis that it was excessively large compared to the Claimant’s losses; and
 - 3) The claim for costs was excessive given that the case was not particularly complicated.
13. In a Reply filed on 11 November 2021 at the invitation of the Court, the Claimant submitted that the Defendant had not provided any evidential justification for a reduction in the fine, and that the legal costs claimed were proportionate to the value and complexity of the claim.
14. The Court provided the Defendant with an opportunity to respond to the Claimant’s Reply, which it did through brief further representations filed on 22 November 2021, which restated the points made in the Defence.

15. This was followed by a letter from the Defendant to the Court dated 8 December 2021 stating that the principal debt had been paid on 25 November 2021 and attaching, as evidence of this, a payment certificate showing the transfer of 9,713,000 Tenge to the Claimant.
16. The Court provided the Claimant with an opportunity to respond to this letter by 6pm Nur-Sultan time on 13 December 2021. No response was received.

Consideration of the issues

(i) The principal debt

17. The Defendant has admitted liability for the principal debt of 9,713,000 Tenge. It has provided evidence that it paid this sum to the Claimant on 25 November 2021. That evidence has not been contested by the Claimant and is accepted by the Court.
18. Accordingly, this element of the claim no longer requires determination by the Court.

(ii) The fine

19. Clause 5 of the Agreement is entitled “LIABILITY OF THE PARTIES”. At 5.2, it states:

“For non-timely payment for the goods, the Buyer pays to the Seller a fine of 0.5% of the value of the unpaid Goods for each calendar day of delay in payment, but not more than 100%”.

20. As noted above, the governing law of the Agreement is the law of the Republic of Kazakhstan. As appears to be common ground between the parties, Articles 293-298 CCK are of particular relevance. These provide as follows:

“Article 293. The Definition of Forfeit

Damages (fine, penalty) shall be recognized as a monetary amount defined by legislation or agreement, which must be paid by a debtor to the creditor in the case of failure to execute, or improper execution of an obligation, in particular, in the case of a delay in execution. Upon the claim to pay the damages, the creditor shall not be obliged to prove losses caused to him.

Article 294. The Form of an Agreement on Forfeit

The agreement on damages must be committed in writing, irrespective of the form of the principal obligation.

Non-compliance with the written form shall entail the nullity of the penalty agreement.

Article 295. Legal Forfeit

1. A creditor shall have the right to claim the payment of damages as determined by legislation (legal damages), irrespective of whether the obligation for its payment is stipulated in the agreement of the parties.

2. The amount of the legal damages may be increased by agreement of the parties, provided legislation does not prohibit it.

Article 296. Amount of Forfeit

The amount of forfeit shall be determined in a fixed monetary amount or in a percentage of the amount in default or the amount of the improperly executed obligation.

Article 297. Reduction in the amount of penalty

If the penalty (fine, fee) to be paid is excessively large as compared to the losses of the creditor, the court, at the request of the debtor, shall have the right to reduce the penalty (fine, fee), considering the degree of fulfilment of the obligation by the debtor and the interests of the debtor and creditor that deserve attention.

Article 298. The Grounds for Levying Forfeit

Damages shall be levied for failure to execute or for improper execution of an obligation, when the conditions exist for holding the debtor responsible for violation of the obligation (Article 359 of this Code).”

21. The Defendant does not dispute that, in principle, it is liable to pay a fine under Clause 5.2 of the Agreement and Articles 293-298 CCK, in addition to the principal debt which has now been paid. The dispute relates to the amount of the fine.
22. The Claimant has calculated the claimed sum of 9,553,666 Tenge pursuant to Clause 5.2 of the Agreement. The Defendant does not dispute that this is the correct sum applying the formula in Clause 5.2. The Defendant submits, however, that the figure should be reduced to 50,000 Tenge pursuant to Article 297. The Claimant opposes any reduction.
23. Having had regard to the considerations to which Article 297 refers, the Court declines to reduce the fine. This is for the following reasons:
 - 1) The starting point is that the parties have agreed the formula by which the fine is to be calculated, under Clause 5.2 of the Agreement, and that the claimed sum of 9,533,666 Tenge has been calculated pursuant to that agreed formula.
 - 2) As the Claimant notes in its Reply, the Defendant has offered no substantive evidence to justify a reduction from that sum. The points made in its Defence and subsequent correspondence amount to little more than bare assertion.
 - 3) The Court rejects the Defendant’s contention that the fine should be reduced under Article 297 on the ground that the “delay in payment...occurred due to the difficult financial situation prevailing in the entire economy of the world due to the pandemic” (see paragraph 12(1) above). The Defendant has not provided any evidence to demonstrate that it was genuinely unable to pay the principal debt until 25 November 2021 due to the effects of the pandemic. The Court is not prepared to take this assertion at face value without supporting evidence. The Claimant too may have been adversely affected by the pandemic, including and/or exacerbated by non-payment of the sum due to it by the Defendant. Accordingly, in the absence of evidence, the effect of the pandemic is a neutral factor in considering the respective interests of the parties. Further, the parties have agreed Force Majeure provisions in Clause 6 of the Agreement, and the Defendant does not suggest they are engaged by the effect of the pandemic in the circumstances of this case. The Defendant’s reliance on the pandemic to reduce the amount due under Clause 5.2 of the Agreement would, if successful, have the effect of undermining the parties’ calibration of the Force Majeure clause.
 - 4) Although the Defendant has now paid the principal debt, it did not do so until over a year after the sum became due and over three months after the Claimant was forced

to commence Court proceedings. The Court proceedings were well advanced by the time the Defendant finally paid.

(iii) Costs

24. The third and final element of the claim is for the Claimant’s legal costs of 1,700,000 Tenge.
25. The recoverability of costs in proceedings before the SCC is governed by Rule 26.9 of the AIFC Court Rules, which provides:

“The SCC may not order a party to a small claim to pay a sum to another party in respect of that other party’s costs, fees and expenses, including those relating to an appeal, except:
(1) such part of any Court fees paid by that other party as the SCC may consider appropriate;
(2) and such further costs as the SCC may assess by the summary procedure and order to be paid by a party who has behaved unreasonably.”
26. The Claimant was not required to pay a Court fee in this case.
27. There is no basis for the Court to conclude that the Defendant has behaved unreasonably in these proceedings. The Claimant does not allege such behaviour.
28. Accordingly, applying Rule 26.9, there are no grounds for an award of costs.

Conclusion

29. The Claim is allowed. The Court will order the Defendant to pay the Claimant a fine of 9,553,666 Tenge, payable within 28 days. This is in addition to the principal debt of 9,713,000 Tenge which has already been paid. There will be no order as to costs.

By the Court,

A handwritten signature in black ink, appearing to read 'Charles Banner'.

Charles Banner QC,
Justice, AIFC Court



Representation:

The Claimant was represented by Amirov Nurzhan Amantayevich.

The Defendant was represented by Shokobalinov Zhumash Abdrakhimovich

**IN THE COURT OF FIRST INSTANCE
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE
BEFORE THE CHIEF JUSTICE, THE RIGHT HONOURABLE LORD MANCE
24 September 2021
AIFC Court Case No: AIFC-C/CFI/2021/0006**

SNAB INVEST GROUP LLP

Claimant

and

PEASANT FARM BERKENOV ILDAR ZHAMBULOVICH

Defendant

ORDER

1. Under Article 13 of the Constitutional Statute on The Astana International Financial Court (“the AIFC Court”) No 438-V of 7 December 2015, as amended on 22 December 2017 with effect from 9 January 2018 and under Regulation 26(1)(c) and (3) of the AIFC Court Regulations dated 5 December 2017, the AIFC Court has exclusive jurisdiction over any disputes transferred to the Court by agreement of the parties.
2. Regulations 26(9) and (10) of the AIFC Court Regulations further provide:

26(9): “Any issue as to whether a dispute falls within the jurisdiction of the Court shall be determined by the Court whose decision shall be final.”

26(10): “The AIFC Court shall consider the express accord of the parties to a case that the Court shall have jurisdiction and if the Court considers it desirable or appropriate, it may decline jurisdiction or may refer any proceedings to another Court within the Republic of Kazakhstan.”

3. On 4 August 2021, the Claimant filed at the Specialised Interdistrict Economic Court of the Kostanai Region, Case Reference No: 3971-21-00-2/2521, a claim against the Defendant. That Court has not considered the merits of the dispute or given any decision on them.
4. The Claimant and Defendant have by Transfer of Cases Consent Form signed and dated 24 August 2021 agreed to terminate the case proceeding in the said Specialised Interdistrict Economic Court and to transfer the case to the AIFC Court, if the AIFC Court accepts the case.
5. As appear by the said Transfer of Cases Consent Form, the Claimant's claim is for sums alleged to be due under a contract of sale of plant protection chemicals and for failure to pay such sums in due course, as well as for a process agent's service, while the Defendant does not admit all or some of such claim.
6. Having considered the matters recited above, including the express accord of the parties to the AIFC Court's jurisdiction and the nature of the dispute, I am satisfied that this is an appropriate case for transfer to and determination by the AIFC Court.
7. Pursuant to the provisions recited in paragraphs 1 and 2 above, I declare accordingly that the AIFC Court has and shall exercise jurisdiction over this dispute.

By the AIFC Court of First Instance,

A handwritten signature in blue ink, appearing to read "Jonathan Mance".

The Right Honourable Lord Mance
Chief Justice, AIFC Court

