



IN THE SMALL CLAIMS COURT
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

25 April 2019

CASE No: AIFC-C/SCC/2019/0001

AURORA AG LIMITED

Claimant

v

STAR ASIAN MINING COMPANY LLP

Respondent

JUDGMENT

Justice of the Court:

Justice Tom Montagu-Smith QC



ORDER

1. **The Defendant shall, by 4pm on 10 May 2019, pay the Claimant KZT 44,885,081.15 or the US Dollar equivalent at the time of payment.**

JUDGMENT

1. The Claimant claims sums due under a contract ("**the Contract**") entered into between the parties on 17 July 2018. By the terms of the Contract, the Claimant was engaged to carry out ground-based geophysical works for the Defendant in East Kazakhstan. The Claimant's position is that it carried out the works but has not been paid by the Defendant.

2. Clause 11.5 of the Contract was in the following terms:

"All disputes and disagreements that may arise between the Parties shall be settled through negotiations. Unresolved disputes are resolved in Astana International Financial Centre Court."

3. The Constitutional Statute of the Republic of Kazakhstan on the Astana International Financial Centre, Constitutional Statute No. 438-V ZRK of 7 December 2015 (as amended), Article 13(4)(3), confers jurisdiction onto the AIFC Court over:

"... disputes referred to the AIFC Court by agreement of the parties."

4. This Court therefore has jurisdiction over this claim.
5. The sum claimed by the Claimant is KZT 38,167,552 plus VAT = KZT 42,747,658.24, together with contractual interest of KZT 2,137,382.91. The sum claimed is equivalent to approximately USD 110,000 plus interest. This claim is therefore appropriate for determination in the Small Claims Court pursuant to the AIFC Court Rules ("**ACR**"), Rule 28.2(1).
6. The Claimant commenced these proceedings by issuing a Claim Form on 19 March 2019. In accordance with ACR Rule 28.11, the Registry took steps to serve the proceedings on the Defendant. On 19 March 2019, the Claim Form and supporting documents were delivered to the Registered Office of the Defendant. However, the offices were found to be occupied by a third party. On the same date, the documents were sent to two email addresses provided to the Court by the Claimant: gokhanefe.dogu@starasiamining.com and gokhanefedogu@gmail.com. A read receipt was received from the former email address on 20 March 2019. I am therefore satisfied that the claim form and supporting documents have been brought to the attention of the Defendant and have in any event been served in accordance with ACR Rules 5.3 and 5.6(1).
7. The Defendant has not responded to these proceedings. Rules relating to default judgment do not apply to claims in the Small Claims Court: ACR Rule 28.7. I must therefore decide the claim on its merits.

8. The Claim Form is supported by a statement of truth signed by Ms Assiya Azimkali, the Claimant's in-house legal counsel. The Claim Form is accompanied by a copy of the Contract, an invoice, a document entitled "Act of Performed Works" and a number of items of correspondence. The documents are provided in both Russian and English.
9. On 3 April 2019, the Court directed the parties to file and serve by 10 April 2019 any further evidence on which they intended to rely and to state whether they requested an oral hearing of the claim. The Claimant was directed to provide an explanation of various matters relating to the quantification of the claim.
10. On 10 April 2019, the Claimant submitted a letter responding to the Court's directions. In that letter, the Claimant confirmed that it was content for the claim to be decided without a hearing in accordance with ACR Rule 28.39. On 22 April 2019, the Claimant provided a further copy of the letter, this time supported by a statement of truth signed by Ms Azimkali. The Defendant has not responded to the Court's directions.
11. As the Defendant has not engaged with these proceedings to date, no conflict of evidence arises. The Claimant has submitted everything on which it intends to rely and has requested a determination without a hearing. A hearing is therefore likely only to delay the claim. In the circumstances, I will decide this claim without a hearing in accordance with ACR 28.39.
12. The parties entered into the Contract on 17 July 2018. I summarise the key terms below:
 - a. By clause 1, the Claimant was obliged to carry out geophysical survey works as described in Appendix 1 to the Contract. The work was to be completed by 30 October 2018;
 - b. By clause 2, the total price payable by the Defendant was to be KZT 49,236,992.00, inclusive of VAT.
 - c. By clause 2.4, the Defendant was entitled to reduce the work required under the Contract and pay only for the work carried out.
 - d. Clause 3 required the Defendant to pay the contract price in three instalments:
 - i. 40% payable no later than 15 days after the conclusion of the Contract;
 - ii. 40% payable on completion of the works; and
 - iii. 20% payable within 5 business days after the signature of the Act of Performed Works document and the Claimant's submission of a work execution report.
 - e. Clause 5 provided a mechanism by which the Claimant would submit the Act of Performed Works document to the Defendant. The Defendant was then obliged either to sign the document or to give notice of defects.

- f. Clause 6.6 imposed on the Defendant a “fine” for late payment of the sums due under the Contract, in the amount of 0.05% of the overdue sum per day, up to a maximum total of 5% of the overdue sum.
 - g. By clause 11.6, the law governing the Contract is AIFC law.
- 13. Ms Azimkali’s evidence is that the Claimant carried out Geophysical works in accordance with the terms of the Contract. According to the Claimant’s correspondence, the work was completed on or before 15 August 2018.
- 14. On 29 November 2018, the Claimant submitted an invoice to the Defendant, together with the Act of Performed Works document. The document recorded the value of the works carried out as KZT 42,747,658.24.
- 15. The sum claimed is somewhat less than the full contract sum of KZT 49,236,992. Ms Azimkali’s evidence is that the sum claimed represents the value of the work done. I infer from this that the scope of the work described in Appendix 1 of the Contract was reduced, in accordance with clause 2.4, with a corresponding reduction in the Contract price.
- 16. By clause 3.1 of the Contract, payment of the first 40% was due no later than 15 days after the conclusion of the Contract, with the second 40% due on completion of the works. The final instalment of 20% was payable within 5 business days after the signature of the Act of Performed Works document and the provision by the Claimant to the Defendant of a work execution report: clause 3.1.1.
- 17. I have been provided with a copy of the Act of Performed Works document. I have not been provided with any document entitled “work execution report”. It may well be that this formed part of the works required under the contract. The scope of works in Appendix 1 to the Contract required the Claimant to produce various reports. Ms Azimkali’s evidence is that the Act of Performed works was signed on behalf of the Defendant. The document records the price of work provided as KZT 42,747,658.24. If the report referred to in clause 3.1.1 was part of the works, the Defendant has therefore admitted that it was provided.
- 18. Even if something more was required to trigger the final instalment, Ms Azimkali says and I accept that the Defendant has admitted in discussion between the parties that the sum claimed is due, but it simply refuses voluntarily to pay. In any event, the Defendant has not defended this claim and has not suggested that any particular contractual milestone remains outstanding.
- 19. In the circumstances, I accept that the sum due from the Defendant to the Claimant under the Contract is KZT 42,747,658.24.
- 20. The Claimant claims a further sum of KZT 2,137,382.91 pursuant to clause 6.6 of the Contract. This provides for payment of a sum, described as a “fine”, on the sum due at the rate of 0.05% per day,



capped at a maximum of 5% of the overdue sum. The maximum sum due under this provision is therefore incurred once the debt is 100 days overdue.

21. The Contract was signed in July 2018 and the work was completed in August. The first two instalments, amounting to 80% of the price, were therefore due much more than 100 days ago. The final invoice and Act of Performed Works document were provided to the Defendant on or about 29 November 2018. It has not been suggested that anything further was required at that time to trigger the obligation to pay the final instalment under the Contract and, as I have said, the Defendant has admitted its liability. It appears to me likely that the full debt was incurred on or before 29 November 2018, whether or not the “work execution report” was provided as part of the work required by the Contract or at some earlier time.
22. As a result, the maximum further sum due under clause 6.6 of 5% has been incurred on the whole of the overdue debt in the sum of KZT 2,137,382.91. No further interest is claimed under any enactment.
23. I find that the Claimant is therefore entitled under the Contract to the total sum of KZT 44,885,081.15, inclusive of the “fine” due pursuant to clause 6.6.

By the Court,



Representation:

The Claimant was represented by Ms. Assiya Azimkali, Legal Counsel, Aurora AG Limited.

The Respondent was not represented.