



**Arbitration court of the Volga district
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**RESOLUTION
arbitration court of cassation
Φ06-31920 / 2018**

**Kazan Case No. A57-233 / 2017
July 25, 2019**

The operative part of the resolution was announced on July 23, 2019. The full text of the resolution was prepared on July 25, 2019.

The Arbitration Court of the Volga District consisting of: the presiding judge Smolenskiy I.N.,

judges Galiullina E.R., Nagimullina I.R., with the participation of representatives: plaintiff - Puzyreva E.R. by proxy dated 12.11.2018, the defendant - Litvinova N.N. by power of attorney dated 05/17/2018,

third person - N.N. Litvinova by power of attorney dated 08.25.2015, having considered in open court the cassation appeal of the joint-stock company "Smur" on the ruling of the Arbitration Court of the Saratov Region dated 21.12.2018 and the ruling of the Twelfth Arbitration Court of Appeal dated 23.04.2019

in case No. A57-233 / 2017

at the claim of a limited liability company

"Company" ALS and TEK "(PSRN 1026402661108, INN 6452045336) to joint-stock company firm "Smur" (PSRN 1023601610878, INN 3662020332) on the reclamation of property, a third party: Joint-stock company "QUANT-TELECOM" (PSRN 1073667031030, INN 3662124236),

found:

limited liability company "Company" ALS and TEK "(hereinafter - the plaintiff, LLC" Company "ALS and TEK") appealed to the Arbitration Court of the Saratov Region, filed a statement of claim, specified in accordance with Article 49 of the Arbitration Procedure Code of the Russian Federation, to a closed joint stock company society "firm

"SMUR" (hereinafter - the defendant, CJSC "firm" SMUR ") on the return (reclaiming from someone else's illegal possession) of four optical fibers (gray, white, red, black in an unpainted module) received for temporary use by CJSC"

firm "SMUR" according to the act of acceptance and transfer of property dated 10.10.2012 in accordance with the terms of the agreement No. 3 / 12-12 for the purchase and sale of optical fibers and a share in the right of common share ownership in a fiber-optic communication line in the Voronezh and Saratov regions, concluded on 04.09.2012 between LLC "Company ALS and TEK" and CJSC "firm SMUR" (The second stage - optical fibers in the section from Ershov to Saratov) in the fiber-optic communication line "Saratov-Ozinki": from the optical crossbar in a container on the territory RTRS "Saratov ORTPTs" at the address: Saratov region, Ershov, Meliorativnaya str., 32A to the main distribution coupling MRM28 near the village of Pushkino, Sovetsky district, Saratov region, from the distribution main coupling MRM28 near the village of Pushkino, Sovetsky district Sara tovsкая obl. to the optical crossbar in a container on the territory of JSC "Urbakhskiy kombinat khleboproduktov" at the address: Saratov region, Sovetskiy region, Pushkino, Zavodskaya st., 1a, from the main distribution coupling MRM28 near Pushkino, Sovetsky district, Saratov region. to optical cross-country "VOSTOK", Saratov, B. Kazachya st., 6, from optical cross-platform "VOSTOK", Saratov, B. Kazachya st., 6 to optical cross-platform on the territory of JSC Integral at the address: Saratov, Chernyshevsky St., 153

By the decision of the Arbitration Court of the Saratov Region dated 08.31.1017, the claims were refused, due to the lack of proof of the fact that the defendant was in possession and unlawful use of the disputed property, as well as due to the lack of proper and reliable evidence of the transfer for temporary use of the defendant by the act of acceptance -transfer from 10.10.2012 directly the property that is claimed, lack of evidence of location

property in use by the defendant, lack of identifying signs of the property.

By the decision of the Twelfth Arbitration Court of Appeal dated 13.12.2017, upheld by the decision of the Arbitration Court of the Volga District of 17.05.2018, the decision of the court of first instance was canceled. The appellate court, recognizing the proven fact of acceptance and use of the disputed property by the defendant, ordered the latter to return the property to the plaintiff. At the same time, the court of appeal recognized the firm's argument about the discrepancy between the identification data of the claimed property and the actually used one, since, taking into account the specific characteristics of this property, the discrepancy of the cable brand does not indicate the absence of the disputed property and the arisen legal relationship under the contract of sale; The materials of the case confirmed the absence of disagreements and uncertainties between the parties regarding the subject of the sale and purchase agreement

during the period of its execution.

On the basis of this resolution, a writ of execution of the series FS 016402251 of December 29, 2017 was issued, enforcement proceedings No. 29540/18/64042-IP were initiated.

The defendant appealed to the court with a statement to clarify the provisions of the executive document, the method and procedure for its execution, as well as with a statement to suspend the enforcement proceedings, resumed on 20.11.2018 on the basis of the decision to cancel the decision to end the enforcement proceedings

No. 29540/18/64042-IP dated 07.19.2018 and the resumption of enforcement actions in enforcement proceedings.

By the ruling of the Arbitration Court of the Saratov Region dated 21.12.2018, upheld by the ruling of the Twelfth Arbitration Court of Appeal dated 23.04.2019, these applications were refused.

In the cassation appeal, the defendant asks to cancel the adopted judicial acts, referring to the violation by the courts of substantive law - Article 32 of the Federal Law dated 02.10.2007 No. 229-FZ "On Enforcement Proceedings" (hereinafter referred to as the Law on Enforcement Proceedings). The applicant indicated that the bailiffs-executors in the execution of the order of the Twelfth

of the Arbitration Court of Appeal on 13.12.2017, violations of the legislation on enforcement proceedings were committed, as a result of which their actions were recognized by the court as illegal, and the enforcement proceedings were resumed. Believes that all violations were committed precisely because of a lack of understanding of the method and procedure for the execution of the court order. It is not possible to take enforcement actions on the resumed enforcement proceedings, since the owner of the property awarded by the resolution of the Twelfth Arbitration Court of Appeal dated 12/13/2017 is a third party - Directorate of Communications Enterprises under Construction LLC.

Having checked the legality of the contested judicial acts in accordance with the rules of Chapter 35 of the Arbitration Procedure Code of the Russian Federation (hereinafter referred to as the Arbitration Procedure Code of the Russian Federation), the judicial collegium finds no legal basis for satisfying the cassation appeal.

In accordance with part 1 of Article 179 of the Arbitration Procedure Code of the Russian Federation, in case of ambiguity of the decision, the arbitration court that made this decision, at the request of the person participating in the case, the bailiff, other bodies executing the decision of the arbitration court, the organization has the right to explain the decision without changing its content.

It follows from the cited legal norm that the explanation of the judicial act consists in a more complete and clear presentation of those parts of it, the clarification of which causes difficulties.

The statement of the decision in a clearer form is made in the event that the decision contains vague, unclear conclusions of interpretation, in connection with which the

text of the judicial act needs to be clarified.

At the same time, the court does not have the right to change its content and cannot touch upon those issues that were not reflected in the decision.

By the definition of the Twelfth Arbitration Court of Appeal dated 12.12.2018, upheld by the ruling of the Arbitration Court of the Volga District dated 20.03.2019, in satisfying the application of the JSC firm

"SMUR" to clarify the resolution of the Twelfth Arbitration Court of Appeal in case No. A57-233 / 2017 dated 13.12.2017 was refused. At the same time, the courts proceeded from the fact that the arguments given in the ruling by the court of appeal exclude a double interpretation of the adopted judicial act, do not contain any shortcomings that must be corrected by clarification.

By virtue of Articles 319, 320 of the Arbitration Procedure Code of the Russian Federation, a writ of execution is a writ of execution issued by an arbitration court on the basis of a judicial act, containing an instruction to collect from the debtor in favor of the claimant of specific property, and (or) an order to the debtor to perform certain actions or refrain from performing them, which is subject to compulsory execution by the bailiff-executor in case of non-execution of the decision made on a voluntary basis.

According to Part 1 of Article 32 of the Law on Enforcement Proceedings, if the provisions of the enforcement document, the method and procedure for its execution are unclear, the recoverer, the debtor, the bailiff has the right to apply to the court, another body or to the official who issued the enforcement document, with an application to clarify its provisions, method and order of its execution.

Refusing to satisfy the application for clarification of the provisions of the enforcement document, the method and procedure for its execution, the court of first instance proceeded from the fact that the content of the above enforcement order complies with the requirements of Article 320 of the APC RF and Article 13 of the Law on Enforcement Proceedings; there is no ambiguity that makes it impossible or difficult to understand the content of the operative part of the decision of the arbitration court of the appellate instance of 13.12.2017; there are no provisions allowing their ambiguous interpretation and hindering the execution of the judicial act.

The Court of Appeal upheld the findings of the first instance court.

The cassation board finds no reason to disagree with the conclusions of the courts, based on the correct interpretation and application of substantive law.

The courts correctly noted that the arguments given by the defendant in support of the statement do not relate to the content of the writ of execution themselves, but are actually aimed at clarifying the issue of the sequence of their execution, that is, the further actions of the bailiffs and the parties (the claimant, the debtor), the order of which is regulated by the norms of the Law on Enforcement production.

Questions, the need for clarification of which the debtor declares, do not in themselves entail the impossibility of executing the court order.

It should also be noted that at the moment the writ of execution in this case has actually been executed, which is recognized by the claimant himself; The disputed property was transferred to a third party - LLC Directorate of Communications Enterprises under Construction, under a sale and purchase agreement of 12.09.2018 No. ALS-DSPPS / OB-12092018, which has no claims against it.

By the resolutions of the Twelfth Arbitration Court of Appeal dated 15.07.2019 on cases No. A57-16161 / 2018, No. A57-12788 / 2018, the actions of bailiffs-executors Ershovsky and Kirovsky ROSP

in the city of Satarov, the UFSSP for the Saratov region, drawn up by acts of enforcement actions, were recognized as legal.

These circumstances exclude the possibility of clarifying the order and method of execution of the court order.

Based on the foregoing and guided by paragraph 1 of part 1 of Article 287, Articles 286, 289, 290 of the Arbitration Procedure Code of the Russian Federation, the Arbitration Court of the Volga District

sentenced:

the ruling of the Arbitration Court of the Saratov Region dated 21.12.2018 and the resolution of the Twelfth Arbitration Court of Appeal dated 23.04.2019 in case No. A57-233 / 2017 shall be left unchanged, the cassation appeal - dismissed.

The decision comes into legal force from the date of its adoption and can be appealed to the Judicial Collegium of the Supreme Court of the Russian Federation in the manner and terms established by Articles 291.1.,

291.2. Arbitration Procedure Code of the Russian Federation.

Presiding judge I.N. Smolensk

Judges E.R. Galiullin

I.R. Nagimullin