



ARBITRATION COURT OF THE SARATOV REGION
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In the name of the Russian Federation R E S H E N I E

Saratov city

May 15, 2019

The operative part of the decision was announced on May 6, 2019.

The full text of the decision was made on May 15, 2019.

Case No. A57-23370 / 2016

Judge of the Arbitration Court of the Saratov Region E.L. Bolshedvorskaya,
when keeping the minutes of the court session by the secretary of the court session
Kopylova A.A.,

considered in court at the premises of the arbitration court at the address: Saratov, st.

Babushkin Vzvoz, d. 1 arbitration case on the claim

Limited Liability Company "Company" ALS and TEK "to Joint Stock Company" Quant-
Telecom "

o collection of rent arrears for the period from 12/13/2014. until 03/18/2015 in the amount
of 14,400,000 rubles,

with participation in the meeting:

from the plaintiff: Litvinova N.N., a representative by proxy from 25.08.2015, Tatarovich
AND.A. representative by power of attorney dated 01.01.2018

from the defendant: Demidov I.A., a representative by power of attorney dated
09/05/2016, Vekozin V.N., a representative by power of attorney from 01.12.2017,

from a third party JSC firm "SMUR" - Litvinova N.N. representative by proxy dated 03/15/2018

found:

Joint-stock company "Kvant-Telecom" (hereinafter - JSC "Kvant-Telecom") applied to the Arbitration Court of the Saratov Region with a claim against a limited company responsibility of "Company" ALS and TEK "(hereinafter - LLC" Company "ALS and TEK") for the recovery of 485 857 RUB. unjust enrichment and 16 972 RUB. 08 kopecks interest for using other people's funds for the period from 04/06/2016 to 09/01/2016, continuing their accrual until the date of payment of the principal amount.

The defendant, pursuant to Article 132 of the Arbitration Procedure Code of the Russian Federation (hereinafter referred to as the APC RF) filed a counterclaim for the recovery of 1,800,000 rubles. debt for rent under a lease agreement dated 12.02.2013 No. 21/13 for the period from 01.01.2014 to 12.01.2014 and 486,438 rubles. 50 kopecks interest for using other people's funds.

By the decision of 01/30/2017, upheld by the resolution of the Twelfth Arbitration Court of Appeal of 03/29/2017, the Arbitration Court of the Saratov Region satisfied the initial claim in the amount of 486,857 rubles. unjust enrichment and 35 601 rubles. 63 kopecks interest for the use of other people's funds, counterclaim - in the amount of 1,800,000 rubles. debt and 372,008 rubles. 24 kopecks interest for the use of other people's funds, in the rest of the counterclaim - refused; made offset counterclaims in the order of part 5 of Article 170 of the Arbitration Procedure Code of the Russian Federation, as a result of which he collected from the plaintiff 1 670 202 RUB. 33 kopecks

By a resolution of June 22, 2017, the Arbitration Court of the Volga District canceled these judicial acts, and sent the case for a new trial.

In a new trial, the defendant increased the amount of counterclaims and asked to collect also 31,500,000 rubles. debt for rent for the period from 01.12.2014 to 30.06.2015.

The defendant, prior to making a decision, reduced the amount of counterclaims in terms of debt collection to 16,200,000 rubles. for the period from 01.12.2014 to 18.03.2015

By definitions dated 29.01.2018 and 06.03.2018, the Arbitration Court of the Saratov Region attracted the public joint-stock company VimpelCom and the joint-stock company Firm SMUR to participate in the case as third parties who do not declare independent claims regarding the subject of the dispute.

By a decision of 10.04.2018 (taking into account the ruling of 26.04.2018 on correcting a typo), upheld by the resolution of the Twelfth Arbitration Court of Appeal dated 20.09.2018, the Arbitration Court of the Saratov Region dismissed the initial claim, partially satisfied the counterclaim in the amount of 1,800,000 rub. debt for the period from 01/01/2014 to 01/12/2014 and 1,800,000 rubles. debt for the period from 01.12.2014

until 12.12.2014, 372,008 rubles. 24 kopecks interest for the use of other people's funds, in the rest of the counterclaim - he refused.

By the decision of the Arbitration Court of the Volga District of December 25, 2018 No. the decision of the Arbitration Court of the Saratov Region dated 10.04.2018. and the Resolution of the Twelfth Arbitration Court of Appeal dated 20.09.2018. regarding the refusal to satisfy the requirements for the counterclaim - canceled, the case in this part was sent for new consideration to the Arbitration Court of the Saratov Region.

In the new consideration of the case, the representative of the plaintiff in the counterclaim supported the stated requirements and, taking into account the decision of the Arbitration Court of the Saratov Region of 10.04.2018, which collected the debt of 1,800,000 rubles. for the period from 01/01/2014 to 01/12/2014 and 1,800,000 rubles. debt for the period from 12/01/2014 to 12/12/2014, as well as the Decree of the cassation instance on the cancellation of the decision of the court of first instance and the decision of the appellate instance regarding the refusal to satisfy the counterclaims on the collection of rent arrears for the period from 12/13/2014. until 03/18/2015, asked to collect the debt under the lease agreement dated 02/12/2013. No. 21/13 for the period from December 13, 2014 to 18 March 2015 in the amount of 14,400,000 rubles.

The representative of the defendant in the counterclaim objected to the satisfaction of the stated requirements.

Third parties, duly notified, did not appear at the hearing. The court considers that all measures to notify the persons involved in the case have been taken.

By virtue of the provisions of Article 156 of the Arbitration Procedure Code of the Russian Federation, the arbitration court considers it possible to consider the case in the absence of third parties duly notified in accordance with the current legislation.

The case is considered in the order of Articles 153-166 of the Arbitration Procedure Code of the Russian Federation. There are no applications in accordance with Articles 24, 47, 48, 49 of the Arbitration Procedure Code of the Russian Federation.

In accordance with Article 65 of the Arbitration Procedure Code of the Russian Federation, each person participating in the case must prove the circumstances to which he refers as the basis for his claims and objections.

The arbitration court is presented with evidence that meets the requirements of Articles 67, 68, 75 of the Arbitration Procedure Code of the Russian Federation.

In accordance with Article 71 of the Arbitration Procedure Code of the Russian Federation, the arbitration court evaluates the evidence according to its inner conviction, based on a comprehensive, complete, objective and direct study of the evidence available in the case.

The arbitration court considers the case on the basis of the evidence in the case.

After listening to the representatives of the parties, examining the evidence, following the principle of the adversarial nature of the parties enshrined in Article 9 of the Arbitration Procedure Code of the Russian Federation, as well as Article 123 of the Constitution of the Russian Federation, the court comes to the following conclusions.

As follows from the case materials, on February 12, 2013, between ALS and TEK Company LLC (lessor) and Kvant-Telecom CJSC, referred to as Quant-Telecom JSC (lessee), a lease agreement No. 21/13 was concluded, in accordance with conditions, which the lessor provided the lessee for temporary use: - two optical fibers in a fiber-optic communication line (FOCL) at the RTRS Voronezh ORTPS section in Tellermanovskiy settlement, Gribovsky district, Voronezh region - Saratov, Saratov region, st. B. Kazachya, 6 on the indicated areas of regeneration; - points of connection of fixed optical cables from the lessee's equipment to the terminal distribution equipment (crosses) of the lessor at the ends of the section provided by Fiber, and the lessee undertook to accept the fibers and pay the rent for the use of the fibers in the amount and terms established by this agreement.

The rented property was transferred by the lessor to the lessee under the acceptance certificate dated 12.02.2013.

According to clauses 2.1 - 2.2 of the agreement, a lump sum payment for leasing fibers is 40,000 rubles, including VAT (18%) - 7,200 rubles, the monthly rent under this agreement is 4,500,000 rubles, including VAT (18 %) - 686 440 rubles 62 kopecks.

In accordance with section 3 of the agreement, it comes into force from the moment it is signed by both parties and is valid until 12.01.2014 inclusive. If none of the parties announced its termination 30 days before the date of completion of this agreement, then the validity of this agreement is automatically extended for every subsequent 11 calendar months.

The lessee's failure to fulfill his obligations to pay rent was the basis for the appeal of LLC "Company" ALS and TEK "to the arbitration court of the Voronezh region for its collection in court.

The decisions of the Arbitration Court of the Voronezh Region that entered into legal force with JSC "Quant-Telecom" in favor of LLC "Company" ALS and TEK "on the basis of the lease agreement

dated 12.02.2013 N 21/13 were collected:

- in case N A14-7412 / 2015 - interest for the use of other people's funds for the period from June 27, 2014 to December 29, 2014 in the amount of 473 389 rubles, state duty in the amount of 12 468

rubles;

- in case N A14-49 / 2015 - arrears of rent payments for the periods from 01/13/2014 to 01/31/2014, from 02/01/2014 to 11/30/2014 in the amount of 47,213,443 rubles 37 kopecks, a penalty in the amount of 336,060 rubles and expenses state duty in the amount of 200,000 rubles;

- in case N A14-4846 / 2014 - rent arrears for the period from 01.10.2013 to 31.12.2013 in the amount of 11 350 000 rubles, forfeit for the period from 02.10.2013 to 26.06.2014 in amount of 270,070 rubles.

LLC "Company" ALS and TEK ", indicating the presence on the lessee's side of rent arrears for the period from 01.01.2014 to 12.01.2014 in the amount of 1,800,000 rubles, as well as for the period from 01.12.2014 to 18.03.2015 in the amount 16,200,000 rubles filed a counterclaim in this case.

By the decision of the court in the present case dated 10.04.2018 (taking into account the ruling of 26.04.2018 on correcting the typo), upheld by the decision of the Twelfth Arbitration Court of Appeal dated 20.09.2018, the counterclaim was partially satisfied in the amount of 1,800,000 rubles. debt for the period from 01/01/2014 to 01/12/2014 and 1,800,000 rubles. debt for

period from 12/01/2014 to 12/12/2014, RUB 372,008 24 kopecks interest for the use of other people's funds, the rest of the counterclaim was denied.

Canceling the decision of the Arbitration Court of the Saratov Region dated 10.04.2018. and the ruling of the Twelfth Arbitration Court of Appeal dated 20.09.2018. regarding the refusal to satisfy the claims on the counterclaim for the collection of rent for the period from 12/13/2014 to 03/18/2015, the court of cassation indicated the absence of proper evidence of termination of the lease in the manner provided for by the contract: notifications 30 days before its termination contract, agreement of the parties on its termination, unilateral withdrawal from the contract, as well as on the fact that the conclusion of the courts of first and appeal instances on the bad faith of ALS and TEK LLC in case of refusal on formal grounds to take actions aimed at exercising by the plaintiff the right to return the leased property is not justified.

Having examined the materials of the case, having studied the arguments of the persons participating in the case, taking into account the instructions of the court of cassation, the court comes to the following conclusions.

From the provisions of Article 606 of the Civil Code of the Russian Federation, Part 1 of Articles 614, 622 of the Civil Code of the Russian Federation, Articles 407, Part 1 of Article 408 of

the Civil Code of the Russian Federation, it follows that the tenant is obliged to pay timely payment for the use of the property (rent). The procedure, conditions and terms for making the rent are determined by the lease agreement. Upon termination of the lease, the lessee is obliged to return the property to the lessor in the condition in which he received it, taking into account normal wear and tear or in the condition stipulated by the contract.

Termination of an obligation at the request of one of the parties is allowed only in the cases provided for by law or contract. Obligations are terminated by proper performance.

According to the legal position of the Presidium of the Supreme Arbitration Court of the Russian Federation, set out in paragraph 38 of the Information letter dated January 11, 2002 N 66 "Review of the practice of resolving disputes related to rent", the termination of the lease agreement does not in itself entail the termination of the obligation to pay rent, it will be terminated by proper performance by the lessee of the obligation to return the property to the lessor.

In accordance with Article 655 of the Civil Code of the Russian Federation, the proper evidence of the return of the leased property is the act of acceptance and transfer, signed in the prescribed manner by the parties to the lease agreement.

According to article 307 of the Civil Code of the Russian Federation, by virtue of obligations, one person is obliged to perform certain actions in favor of another person. In accordance with Articles 309, 310 of the Civil Code of the Russian Federation, obligations must be fulfilled properly in accordance with the terms of the obligation and the requirements of the law, unilateral refusal to fulfill obligations is not allowed.

As the plaintiff points out in the counterclaim, the defendant did not properly fulfill its obligations to pay for the leased property, as a result of which he had arrears in rent for the disputed period, which served as the basis for the plaintiff's appeal to the arbitration court with this counterclaim.

Opposing the satisfaction of counterclaims, Kvant-Telecom JSC indicates the following:

- On November 22, 2013, Kvant-Telecom CJSC sent the plaintiff a registered letter with notification and a list of investments No. 6312/13 on the refusal to prolong and terminate the lease agreement dated February 12, 2013 No. 21/13. The actual actions of Kvant-Telecom CJSC indicated an unwillingness to prolong the controversial agreement.

- 02/05/2014 the defendant sent a notice to the plaintiff to terminate the contract for the provision of a complex of resources to ensure the functioning of technological equipment from 09/10/2012.

- 08.10.2014 the defendant to the plaintiff re-sent the act of return of property under the controversial agreement.

By the effective decision of the Arbitration Court of the Voronezh Region dated April 19, 2016 in case No. A14-49 / 2015, from the joint-stock company Kvant-Telecom in favor of the limited liability company ALS and TEK, a pledge was recovered from the lease agreement No. 21 dated February 12, 2013 / 13 for the period from 13.10.2014 to 30.11.2014 in the amount of 47,213,443.37 rubles; forfeit in the amount of RUB 336,060

During the consideration of this case, the court demanded a scanned copy of this ref. From the materials of case No. A14-4846 / 2014. N 6312/13 of 11/22/2013, according to the content of which it was announced the termination of the lease agreement N 21/13 of 02/12/2013 from 01/13/2014 without information about the direction and attachment of acts of return of the leased property.

The court concluded that since the original letter ref. 6312/13 of 11/22/2013 by the defendant was not presented, copies of this letter are not identical, the evidence provided is not reliable confirmation of the lessee's application to terminate the lease relationship and the direction of acts of return of the transferred property in accordance with the terms of contract No. 21/13 of 02/12/2013.

Within the framework of this case, the defendant in the counterclaim also did not present the original letter ref. 6312/13 dated November 22, 2013, in this connection, the court has no grounds for stating other conclusions in relation to this document than those set forth in the decision of the Arbitration Court of the Voronezh Region dated April 19, 2016 in case No. A14-49 / 2015.

The court in the framework of case No. A14-49 / 2015 also assessed the letter ref. N 4312/14 dated 24.10.2014, in which the defendant informed about a notification previously sent to the plaintiff about the refusal to prolong the lease agreement N 21/13 dated 12.02.2013. and directed acts of return of property; letter ref. N 4145/14 dated 08.10.2014, according to which the address of LLC

“The ALS and TEK company has sent two copies of the act dated 13.01.2014, signed by Kvant-Telecom CJSC. return of property under contract N 21/13 dated 12.02.2013.

As noted by the court, the plaintiff's response to the letter ref. 1169/14 dated 20.01.2014 on the admission of employees of CJSC Kvant-Telecom to facilities for the purpose of switching technological equipment to optical fibers owned by CJSC firm SMUR cannot serve as indisputable proof that the tenant was deprived of the opportunity to use leased communication lines ...

At the same time, the controversial agreement No. 21/13 of 02/12/2013 was recognized by the court in the framework of the case No. A14-49 / 2015 in force from 10/13/2014. until 30.11.2014

As indicated above, in accordance with section 3 of the agreement, it comes into force from the moment it is signed by both parties and is valid until 12.01.2014. inclusive. If none of the parties announced its termination 30 days before the date of completion of this agreement, then the validity of this agreement is automatically extended for every subsequent 11 calendar months.

As follows from the conclusions set out in the decision of the Arbitration Court of the Voronezh Region of 04/19/2016 in case No. A14-49 / 2015, which entered into legal force, as well as the materials of this case, the disputed agreement was extended for 11 months after the end of the initial period, that is until

12.12.2014.

According to the legal position set out in clause 13 of the information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated January 11, 2002 No. 66, early release of the leased premises (until the termination of the lease agreement in accordance with the established procedure) is not grounds for terminating the tenant's obligation to pay rent.

At the same time, the very obligation of the lessee to return the property to the lessor arises when the lease relations are terminated on the grounds provided for by the legislation and the lease agreement, including as a result of the termination of the contract by agreement of the parties or in cases of unilateral cancellation of the contract, when such a cancellation is provided for by law and the lease contract.

The controversial agreement dated 12.02.2013 for the lease of two optical fibers in a fiber-optic communication line (FOCL) with a total length of 694.870 km, the term of the agreement is stipulated until 12.01.2014 from the moment of its signing (clause 3.1 of the agreement).

If none of the parties announced its termination 30 days before the date of completion of the contract, then the contract is automatically extended for every subsequent 11 calendar months (clause 3.2 of the contract).

In addition, the contract can be terminated by mutual agreement of the parties (clause 3.3 of the agreement), as well as - unilaterally at the request of either of the parties with written notification of this to the other party 45 days before the expected date of termination (clause 3.4 of the agreement).

Consequently, the controversial agreement provides for the renewal of the terms of the agreement for each subsequent 11 months in the absence of 30 days before its termination of applications (notifications) of the parties about its termination.

The court notes that in the case file there is no proper evidence of termination of the lease in the manner prescribed by the contract: notifications 30 days before its termination about the termination of the contract, agreement of the parties on its termination, unilateral withdrawal from the contract.

The court does not take into account the letter of November 28, 2014 No. 4488/14 (l.d. 164, v. 4) as evidence of the tenant's proper refusal to renew the contract in accordance with clause

3.2 of the contract, since it contradicts the circumstances established by the decision of the Arbitration Court of the Voronezh Region dated April 19, 2016 in case No. A14-49 / 2015 on the collection of rent for the period from November 22, 2013 No. 6312 on the refusal to prolong the lease agreement, which was not recognized by the Arbitration Court of the Voronezh Region as a proper evidence of the termination of the lease agreement.

The court also notes that the parties in the disputed period also had an agreement on the

provision of a complex of resources to ensure the functioning of technological equipment dated 10.09.2012, an agreement dated 24.05.2011 No. 37-X4732 / 11 for the provision of a complex to ensure the functioning of technological equipment (decision of the Arbitration court of the Voronezh region of 19.04.2016 in case No. A14-49 / 2015).

In addition, the court takes into account that in accordance with clause 1.1 of the disputed lease agreement, the lessor undertook to provide connection points for station optical cables from the lessee's equipment to the terminal distribution equipment (crosses) of the lessor at the ends of the section of the provided "fibers".

Since the object of the lease is an optical fiber with special technical characteristics, and when receiving and transmitting optical fibers, it is necessary to measure the optical fiber with an optical reflectometer for compliance with the technical parameters (resolution of the Twelfth Arbitration Court of Appeal dated 13.12.2017 on case No. A57-233 / 2017), the court recognizes as justified the arguments of LLC "ALS and TEK" about the commission return of the leased property.

Under such circumstances, the court concludes that the term of the disputed lease agreement was extended for 11 months from 13.12.2014, in connection with which, the counterclaims of the limited liability company "ALS and TEK" to recover from the joint-stock company "KVANT-TELECOM" arrears under the lease agreement No. 21/13 dated 12.02.2013 for rent for the period from 13.12.2014 to 18.03.2015 are subject to satisfaction. At the same time, the court, having checked the plaintiff's calculation, taking into account the amount of rent provided for by the lease agreement, comes to the conclusion that for the disputable period the defendant is subject to collection - 14,370,967 rubles. 75 kopecks The rest of the requirements should be refused.

Guided by Articles 110, 167-171 of the Arbitration Procedure Code of the Russian Federation, the arbitration court,

DECIDED:

Collect from the joint-stock company "QUANT-TELECOM" in favor of the limited liability company "ALS and TEK" the debt under the lease agreement No. 21/13 dated 02/12/2013 for the rent for the period from December 13, 2014. to 18 March 2015 in the amount of 14 370 967 rubles. 75 kopecks

For the rest, refuse.

Collect from JSC "QUANT-TELECOM" in the federal budget a state duty in the amount of 94,808 rubles.

To collect from LLC "ALS and TEK" in the income of the federal budget state duty in the amount of 192 rubles.

The decision of the arbitration court shall enter into legal force upon the expiration of one

month from the date of its adoption, unless an appeal is filed.

The decision can be appealed to the Twelfth Arbitration Court of Appeal within one month from the date of making the decision in full, through the Arbitration Court of the Saratov Region.

Send copies of the decision of the arbitration court to the persons participating in the case, in accordance with the requirements of Article 177 of the Arbitration Procedure Code of the Russian Federation.

It is explained to the persons participating in the case that information about the judicial acts adopted in the case is posted on the official website of the Arbitration Court of the Saratov Region

- <http://www.saratov.arbitr.ru> and in information kiosks located in the building of the arbitration court.

Arbitration judge

Saratov region E.L. Bolshedvorskaya