



**Arbitration court of the Volga district  
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**RESOLUTION  
arbitration court of cassation  
F06-21174 / 2017**

**Kazan Case No. A57-23370 / 2016 06 February 2020**

The operative part of the resolution was announced on January 30, 2020. The full text of the resolution was issued on February 06, 2020.

The Arbitration Court of the Volga District, composed of: the presiding judge I.R. Nagimullina,

judges Alexandrova V.V., Nafikova R.A., with the participation of representatives: the plaintiff - Litvinova N.N. (power of attorney from 25.08.2015), Tatarovich I.A. (power of attorney dated 01.01.2020),

defendant - Demidova AND.A. (power of attorney dated 16.12.2019 No. 27), Joint Stock Company "Firm" SMUR - Litvinova N.N. (power of attorney dated 05/17/2018),

Having considered in open court the cassation appeal of the Kvant-Telecom Joint Stock Company, Voronezh,

on the decision of the Arbitration Court of the Saratov Region dated 05.15.2019 and the ruling of the Twelfth Arbitration Court of Appeal dated 03.10.2019

in case No. A57-23370 / 2016

according to the claim of the joint-stock company Kvant-Telecom, Voronezh (OGRN 1073667031030, TIN 3662124236) to the limited liability company ALS and TEK Company, Saratov (OGRN 1026402661108, TIN 6452045336) for the recovery of 485,857 rubles.

unjust enrichment and 16 972 RUB. 08 kopecks interest for the use of other people's funds, with the participation of third parties - public joint stock company "VimpelCom", Moscow, joint stock company "Firm" SMUR ", Voronezh, on the counterclaim of the limited liability company "Company" ALS and TEK "to the joint stock company

Kvant-Telecom on the recovery of 1,800,000 rubles. debt and 486,438 rubles. 50 kopecks interest for the use of funds,

**found:**

Joint Stock Company Kvant-Telecom (hereinafter referred to as JSC Kvant-Telecom) filed a claim with the Arbitration Court of the Saratov Region against the limited liability company ALS and TEK Company (hereinafter referred to as ALS and TEK Company LLC) about collection 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 filed a counterclaim for the recovery of 1,800,000 RUB. 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 the Arbitration Court of the Saratov Region dated January 30, 2017, upheld by the resolution of the Twelfth Arbitration Court of Appeal dated March 29, 2017, the initial claim was satisfied 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, the rest of the counterclaim was denied; offset counterclaims in the order of part 5 of Article 170 of the Arbitration Procedure Code of the Russian Federation (hereinafter - the APC RF), as a result of which recovered from the plaintiff 1 670 202 RUB. 33 kopecks

By the decision of the Arbitration Court of the Volga District of June 22, 2017, these judicial acts were canceled, the case was sent 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.

The following are involved in the case as third parties who do not declare independent claims regarding the subject of the dispute: the public joint-stock company VimpelCom (hereinafter referred to as PJSC VimpelCom) and the joint-stock company Firm SMUR.

By the decision of the Arbitration Court of the Saratov Region 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 initial claim was rejected, the counterclaim was partially satisfied 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 to 12.12.2014, 372,008 rubles. 24 kopecks interest for the use of other people's funds, the rest of the counterclaim was denied.

By the decision of the Arbitration Court of the Volga District of December 25, 2018, the decision of the Arbitration Court of the Saratov Region of April 10, 2018 and the resolution of the Twelfth Arbitration Court of Appeal dated September 20, 2018 regarding the refusal to satisfy the claims in the counterclaim

was canceled, the case in this part was sent for new consideration to the Arbitration Court Saratov region.

By the decision of the Arbitration Court of the Saratov Region dated 05.15.2019, upheld by the ruling of the Twelfth Arbitration Court of Appeal dated 03.10.2019, the debt under the lease agreement dated 02.12.2013 No. 21 was collected from Kvant-Telecom in favor of LLC Company ALS and TEK / 13 for rent for the period from 12/13/2014 to 03/18/2015 in the amount of 14,370,967 rubles. 75 kopecks The rest was denied.

In its cassation appeal, Kvant-Telecom JSC asks to cancel the judicial acts and make a new decision.

In support of the complaint, it is indicated that the courts did not assess the letters dated 08.10.2014 No. 4145 and 24.10.2014 No. 4312, confirming the fact that Kvant-Telecom JSC expressed its will to refuse to prolong the lease agreement dated 12.02.2013 No. 21/13.

At the same time, the courts' indication that these letters were assessed in the framework of case No. A14-49 / 2015 is unfounded, since during the consideration of the case no assessment was given and could not be given to these letters in relation to the new period of collection of rent.

The complainant believes that, taking into account these letters, the lease agreement dated 12.02.2013 No. 21/13 ceased to be effective from 13.12.2014.

The courts also did not take into account that the parties to the contract for the sale and purchase of property dated November 27, 2014 No. 1906, concluded between the plaintiff and PJSC VimpelCom, indicated that at the time of the conclusion of the contract, the optical fibers that are its subject were not the subject of any existing contracts lease.

In addition, Kvant-Telecom JSC was actually deprived of the opportunity to use the equipment due to the fact that ALS and TEK Company LLC had limited access to the premises.

JSC "Kvant-Telecom" also claims that the courts unreasonably accepted the argument of LLC "Company ALS and TEK" about the need for a commission return of property; the court unreasonably did not apply the rule of law on abuse of the right against the lessor.

Having checked the materials of the case, having discussed the arguments of the cassation appeal, having listened to the representatives of the parties, the Arbitration Court of the Volga District finds no grounds to satisfy the appeal.

The courts established and follows from the case materials, on February 12, 2013, between ALS and TEK Company LLC (the lessor) and the closed joint stock company Kvant-Telecom, referred to as Kvant-Telecom JSC (the lessee), a lease agreement No. 21 / 13, in accordance with the terms of which the lessor provided the lessee for temporary use two optical fibers in a fiber-optic communication line (FOCL) at the RTRS Voronezh ORTPTS section in Tellermanovskiy settlement, Gribanovsky 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 Fibers, and the lessee undertakes to accept the fibers and pay the rent for using 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 one-time payment for leasing fibers is 40,000 rubles, including value added tax (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 the rent was the basis for the appeal of LLC "Company" ALS and TEK "to the arbitration court for its collection in court.

The decisions of the Arbitration Court of the Voronezh Region with JSC Kvant-Telecom in favor of LLC Company

"ALS and TEK" on the basis of the lease agreement dated 12.02.2013 No. 21/13 collected:

in case No. A14-7412 / 2015 - interest for the use of other people's funds for the period from 06/27/2014 to 12/29/2014 in the amount of 473,389 rubles, state duty in the amount of 12,468 rubles;

in case No. A14-49 / 2015 - rent arrears for the periods from 13.01.2014 to 31.01.2014, from 01.02.2014 to 30.11.2014 in the amount of

RUB 47 213 443 37 kopecks, forfeit in the amount of RUB 336,060. and costs for

state duty in the amount of 200,000 rubles;

in case No. 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 the amount of 270,070 rubles.

LLC "Company" ALS and TEK ", indicating that the lessee has arrears on rent for the period from 01.01.2014

until 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 of 16 200 000 rubles., filed a counterclaim in the framework of this case.

Upon a new examination, the arbitration court concluded that the counterclaims were partially satisfied, proceeding from the following.

In accordance with article 606 of the Civil Code of the Russian Federation (hereinafter referred to as the Civil Code of the Russian Federation), under a lease (property lease) agreement, the lessor (lessor) undertakes to provide the lessee (lessee) with property for a fee for temporary possession and use or for temporary use.

According to part 1 of article 614 of the Civil Code of the Russian Federation, the tenant is obliged to pay the payment for the use of the property (rent) on time. The procedure, conditions and terms for making the rent are determined by the lease agreement.

By virtue of paragraph 1 of Article 408 of the Civil Code of the Russian Federation, obligations are terminated by proper execution.

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 No. 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.

Opposing the satisfaction of counterclaims, Kvant-Telecom JSC indicated that on November 22, 2013, Kvant-Telecom closed joint-stock company sent the plaintiff a registered letter with

notification and list of attachments No. 6312/13 about the refusal to prolong and terminate the lease agreement dated 12.02.2013 No. 21/13. The actual actions of the closed joint-stock company Kvant-Telecom indicated a reluctance 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; On 10/08/2014, the defendant re-sent to the plaintiff the act of returning the property under the controversial agreement.

The courts disagreed with these arguments, stating that the decision of the Arbitration Court of the Voronezh Region dated April 19, 2016 in case No. A14-49 / 2015 with Kvant-Telecom JSC in favor of ALS and TEK LLC recovered a pledge of the lease agreement from 12.02.2013

No. 21/13 for the period from 10/13/2014 to 11/30/2014 in the amount of RUB 47,213,443.37;

forfeit in the amount of RUB 336,060

During the consideration of the specified case by the court from the case

materials

No. A14-4846 / 2014 a scanned copy of the letter dated 22.11.2013 No. 6312/13 was requested.

After examining this letter, the court concluded that since the original letter of 22.11.2013 No. 6312/13 was not submitted by the defendant, the copies of this letter are not identical, the evidence presented is not reliable confirmation of the tenant's statement about the termination of the lease relationship and the direction of acts of return of the transferred property in accordance with the terms of the contract dated 12.02.2013

No. 21/13.

The court of appeal examined the original letter of 22.11.2013 No. 6312/13 and the arbitration case at the hearing

No. A14-49 / 2015, requested from the Arbitration Court of the Voronezh Region, which also contains the original letter dated 22.11.2013

No. 6312/13, and the court of appeal established that they are not identical, have different signatures.

In addition, the effective judicial acts in case No. A14-49 / 2015 recognized the letter No. 6312/13 of November 22, 2013 as unreliable evidence.

In addition, Kvant-Telecom JSC stated during the consideration of case No. A14-49 / 2015 that the letter dated 22.11.2013 No. 6312/13 was not received by the addressee in Saratov and was returned by mail to the post office of Kvant-Telecom JSC "In Voronezh.

The court in the framework of case No. A14-49 / 2015 assessed the letter dated 24.10.2014 No. 4312/14, in which the defendant informed about the notification previously sent to the plaintiff about the refusal to prolong the lease agreement dated 12.02.2013 No. 21/13 and the sent acts return of property; letter dated 08.10.2014 No. 4145/14, according to which two copies of the act dated 13.01.2014 on the return of property under the agreement dated 12.02.2013 No.1 were sent to ALS and TEK Company LLC, signed by the closed joint-stock company Kvant-Telecom. 21/13.

At the same time, the controversial agreement of 12.02.2013 No. 21/13 was recognized by the court in the framework of the case No. A14-49 / 2015, in force from 13.10.2014 to 30.11.2014.

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 second period.

Having examined the evidence presented, the courts in the present case concluded that the case file did not contain adequate evidence of the termination of the lease agreement during the disputed period.

The argument of the applicant that the courts in this case did not assess letters dated 08.10.2014 No. 4145 and 24.10.2014 No. 4312, confirming the fact of expression of the will to refuse to prolong the contract by Kvant-Telecom JSC, is not grounds for canceling judicial acts lease dated 12.02.2013 No. 21/13; At the same time, the courts' indication that these letters were assessed in the framework of case No. A14-49 / 2015 is unfounded, since during the consideration of the case no assessment was given and could not be given to these letters in relation to the new lease collection period.

Since the court, within the framework of case No. A14-49 / 2015, concluded that these letters do not indicate the termination of the lease agreement dated February 12, 2013 No. 21/13, and other evidence of termination of the lease agreement during the disputed period of Kvant-Telecom JSC did not presented, the conclusion of the courts about the validity of the lease agreement in the disputed period is justified.

In such circumstances, the courts came to the correct conclusion that the term of the disputed lease agreement was extended by 11 months from 13.12.2014, in connection with which the counterclaims of LLC "Company ALS and TEK on the collection from Kvant-Telecom JSC of debt under the lease agreement dated February 12, 2013 No. 21/13 for rent for the period from December 13, 2014 to March 18, 2015, were satisfied for 14,370,967 rubles. 75 kopecks

The applicant's arguments were the subject of examination by the courts, received an appropriate legal assessment and, in essence, were aimed at a different assessment of the evidence and factual circumstances of the case.

A different assessment by the applicant of the circumstances of the dispute does not confirm significant violations by the courts of the norms of substantive and procedural law that influenced the outcome of the case, and is not a sufficient basis for reviewing judicial acts in cassation.

Reevaluation of the circumstances of the case established by the courts and the



evidence available in the case is not within the competence of the court of cassation.

The factual circumstances relevant to the case were established by the courts of first and appeal instances on the basis of a complete, comprehensive and objective study of the evidence in the case, taking into account the arguments and objections of the persons involved in the case, the conclusions of the courts correspond to the factual circumstances and the evidence presented, and are based on the correct application of the rules substantive and procedural law, in connection with which the court of cassation has no grounds for canceling or changing the judicial acts adopted in the case.

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

**sentenced:**

the decision of the Arbitration Court of the Saratov Region dated 15.05.2019 and the resolution of the Twelfth Arbitration Court of Appeal dated 03.10.2019 in case No. A57-23370 / 2016 shall be left unchanged, the cassation appeal - dismissed.

The decision comes into force from the day of its adoption.

The presiding judge I.R. Nagimullin

Judges V.V. Alexandrov

R.A. Nafikova