



**ARBITRATION COURT OF THE VORONEZH REGION**  
**394030, Voronezh, st. Srednemoskovskaya, 77,**  
**fax (473) 252-47-09, tel. (473) 252-53-44**

**DEFINITION**  
**on leaving the statement of claim without consideration**

Voronezh Case No. A14-835 / 2015  
 April 14, 2015

The Arbitration Court of the Voronezh Region, composed of Judge V.M. Shishkina, during the keeping of the minutes of the preliminary court session by the assistant judge E.V. Kalashnikova, considering the case on the claim Closed Joint Stock Company of the firm "SMUR", Voronezh (OGRN 1023601610878, INN 3662020332), to the Limited Liability Company "Company ALS and TEK", Saratov (OGRN 1026402661108, TIN 6452045336), on termination of the sale and purchase agreement and collection of 10 396 309 rubles. 35 kopecks with the participation:

from the Closed Joint Stock Company of the firm "SMUR": Torokhova ND - General Director, decision of 15.01.2009 (copy of vol. 2 case sheet 8), Litvinova N.N. - representative, power of attorney No. 285 dated 04/16/2012 (until 04/16/2015, copy of vol. 2 case sheet 24);

from the Limited Liability Company "Company ALS and TEK": D.A. Goldybina - a representative, a power of attorney dated 02.19.2015 (for a year, a copy of vol. 2 case sheet 44);

**found:**

Closed joint-stock company firm "SMUR" (hereinafter also - CJSC firm "SMUR", the plaintiff) on 28.01.2015 filed a lawsuit in the arbitration court against the Limited Liability Company "Company ALS and TEK" (hereinafter also - LLC "Company" ALS and TEK ", The respondent), in which he asks:

1. To terminate 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, signed on 09/10/2012:

1.1. as regards the alienation to the Buyer of 4 OV of standard G.652 and 4/64 shares in the right of common share ownership of the sheath, protective and power elements of the optical cable, couplings, crosses in the Ershov-Ozinki FOCL;

1.2. in terms of alienation to the Buyer of 4 OV of standard G.652 and 4/72 of a share in the right of common share ownership of the sheath, protective and power elements of an optical cable, couplings,

crosses in the Borisoglebsk-Rogachevka FOCL in the section from the M2A coupling of the ORTPTS in Tellermanovskiy, Griбанovsky district Voronezh region to the MI coupling at the automatic telephone exchange of OJSC Rostelecom Borisoglebsk, st. K. Marx, 76.

To collect from LLC "Company" ALS and TEK "in favor of CJSC firm" SMUR "unjust enrichment - funds transferred in pursuance of contract No. 3 / 12-12 for the purchase and sale of optical fibers and a share in the right of common share ownership in fiber optical communication line on the territory of the Voronezh and Saratov regions, signed on 10.09.2012, in the amount of 8 782 766 rubles. 13 kopecks, of which:

1.1. regarding the alienation to the Buyer of 4 OV of standard G.652 and 4/64 shares in the right of common share ownership of the sheath, protective and power elements of the optical cable, couplings, crosses in the Ershov-Ozinki FOCL, in the amount of 8,360,443 rubles. 12 kopecks;  
1.2. in terms of alienation to the Buyer of 4 OV of standard G.652 and 4/72 of a share in the right of common share ownership of the sheath, protective and power elements of an optical cable, couplings, crosses in the Borisoglebsk-Rogachevka FOCL in the section from the M2A coupling of the ORTPTS in Tellermanovskiy, Griбанovsky district Voronezh region to the MI coupling at the automatic telephone exchange of OJSC Rostelecom Borisoglebsk, st. K. Marx, 76, in the amount of 422 323 rubles. 01 kopecks

2. To collect from LLC "Company" ALS and TEK "in favor of CJSC firm" SMUR "the contractual forfeit calculated on cash in the amount of 10,926,924 rubles. 96 kopecks. (executed under the terminated agreement No. 3 / 12-12 for the purchase and sale of optical fibers and a share in the right of common shared ownership in a fiber-optic communication line in the Voronezh and Saratov regions, concluded on 09/10/2012) for the period from 03/22/2014 to 06/30/2014 .2014 in the amount of 1,092,692 rubles. 50 kopecks

3. To collect from LLC "Company" ALS and TEK "in favor of CJSC firm" SMUR "interest for the use of other people's funds, accrued on the amount of unjust enrichment 10,926,924 rubles. 96 kopecks, for the period from 01.07.2014 to 28.01.2015 in the amount of 520,850 rubles. 72 kopecks. and further, until the day of actual fulfillment of monetary obligations.

The defendant believes that the claim should be left without consideration due to the plaintiff's failure to comply with the claim procedure when filing a claim, provided for in clauses 5.1., 5.2. contract No. 3 / 12-12.

The plaintiff's representatives in the hearing explained that when filing a claim, the plaintiff proceeded from the fact that there was a long correspondence between the parties under the contract

No. 3 / 12-12 on various issues, but essentially did not challenge the arguments of the defendant, agreeing that the pre-trial claim ref. No. 192 of 23.01.2015, containing all of the above claim (monetary) claims (vol. 1 ld. 148-150), was sent to the defendant on 26.01.2015 (vol. 2 ld. 4, 5), and the claim was filed 01/28/2015, without taking into account the thirty-day period established by clause 5.2. contract No. 3 / 12-12.

The court announced a break in the session from 13.04.2015 to 14.04.2015.

Having studied the materials of the case, having heard the explanations of the representatives of the parties, the court considers the claim to be left without consideration on the following grounds.

According to part 5 of Article 4 of the Arbitration Procedure Code of the Russian Federation, if a claim or other pre-trial settlement procedure is established by federal law for a

certain category of disputes or it is provided for by an agreement, the dispute is referred to the arbitration court for resolution after compliance with this procedure.

It follows from the statement of claim that the said dispute between the parties arose from the agreement No. 3 / 12-12 for the purchase and sale of optical fibers and a share in the right of common shared ownership in a fiber-optic communication line in the Voronezh and Saratov regions, dated 04.09.2012, signed by the plaintiff 10.09.2012. In this case, one of the requirements of the plaintiff is the requirement to terminate the contract.

By virtue of clause 2 of Article 452 of the Civil Code of the Russian Federation (hereinafter referred to as the Civil Code of the Russian Federation), a requirement to amend or terminate a contract can be brought to court by a party only after the other party has received a refusal to offer to change or terminate the contract or if a response is not received within the time period specified in the proposal or established by law or contract, and in its absence - within thirty days.

In clause 5.1. Agreement No. 3 / 12-12 stipulates that disputes that may arise during the execution of the terms of this agreement, the parties will seek to resolve amicably through pre-trial proceedings: through negotiations. If a mutually acceptable solution is not reached within 30 (thirty) calendar days from the date of the claim, the disputed issue is subject to consideration in the Arbitration Court at the location of the plaintiff in accordance with the current legislation of the Russian Federation.

In support of the observance of the claim procedure established by law and the contract, the plaintiff presented numerous correspondence between the parties.

However, only in the claim ref. No. 192 of 23.01.2015 (vol. 1 Id 148-150), received by the defendant on 02.02.2015, contains specific monetary claims stated in the claim under consideration, which was submitted to the arbitration court on 28.01.2015. Requirements in terms of termination of contract No. 3 / 12-12 (clause 1 of the petitionary part of the claim) are not contained in this claim.

Notice No. 226 dated January 27, 2014 (vol. 1 Id 69, 71), referred to by the plaintiff, named by him as "notice of termination of the contract No. 3 / 12-12 ...", actually contains the plaintiff's unilateral refusal to perform the contract in part and the claim for the return of funds in the amount of 10,926,924 rubles. Paid for the not transferred property.

Other appeals from the plaintiff to the defendant relate to the requirements for the submission of information, documents and other issues under the contract.

Thus, the court considers that the plaintiff has not complied with the claim procedure established in relation to the dispute under consideration by law and contract.

According to paragraph 2 of Part 1 of Article 148 of the Arbitration Procedure Code of the Russian Federation, the arbitration court leaves the statement of claim without consideration if, after its acceptance for proceedings, it establishes that the plaintiff has not complied with the claim or other pre-trial procedure for resolving the dispute with the defendant, if this is provided for by federal law or agreement.

In such circumstances, the claim should be left without consideration.

Leaving the statement of claim without consideration does not deprive the plaintiff of the right to reapply to the arbitration court with a statement in a general manner after the elimination of the circumstances that served as the basis for leaving the statement without consideration (Part 3 of Article 149 of the APC RF).

State fee in the amount of 80,981 rubles. 55 kopecks, paid by the plaintiff when filing a claim on payment orders No. 202 dated 23.01.2015 in the amount of 72,377 rubles. 29 kopecks, No. 212 dated 26.01.2015 in the amount of 6,000 rubles. 00 kopecks, No. 221 dated 01/27/2015 in total

2 604 RUB 26 kopecks. (vol. 2 case sheets 26 - 28), to be returned to the plaintiff from the federal budget

(Article 104, part 1 of Article 149 of the Arbitration Procedure Code of the Russian Federation, subparagraph 3 of paragraph 1 of Article 333.40. of the Tax Code of the Russian Federation, Article 50 of the Budget Code of the Russian Federation), and may be used by the plaintiff for other appeals to the arbitration court.

Guided by Articles 148, 149, 184-188 of the Arbitration Procedure Code of the Russian Federation, the Arbitration Court

DEFINED:

Leave the claim without consideration.

Return 80,981 rubles to the Closed Joint Stock Company to the firm "SMUR" from the federal budget. 55 kopecks state duty.

The ruling may be appealed within one month from the date of its delivery to the Nineteenth Arbitration Court of Appeal through the Arbitration Court of the Voronezh Region.

Judge V.M. Shishkina