



ARBITRATION COURT OF THE VORONEZH REGION

IN THE NAME OF THE RUSSIAN FEDERATION DECISION

Voronezh Case No. A14-13744 / 2015

September 01, 2016

The operative part of the decision was announced on August 25, 2016. The full text of the decision was made on September 1, 2016.

The Arbitration Court of the Voronezh Region, composed of Judge V.I. Lukavenko, while keeping the minutes by the court secretary M.D. Orlova, having considered the case in open court

at the claim of the joint-stock company firm "SMUR", Voronezh (OGRN 1023601610878 INN 3662020332)

to the limited liability company "Company ALS and TEK", Saratov (OGRN 1026402661108 INN 6452045336) invalidation by virtue of the nullity of the contract No. 3 / 12-12 of the purchase and sale of optical fibers and a share in the right of common shared ownership in a fiber-optic communication line on the territory of the Voronezh and Saratov regions dated 09/10/2012 regarding the alienation of the buyer 4 OF standard G. 652 and 4/64 shares in the right of common share ownership of the sheath, protective and power elements of an optical cable, couplings, crosses in the FOCL "Saratov-Ozinki", the application of the consequences of the invalidity of a void transaction, debt collection third party: Joint Stock Company Retnnet, Moscow (OGRN 1057747699261 INN 7725545445)

with the participation of representatives in the court session:

from the plaintiff: Krapivko O.V., power of attorney No. 10 dated 01.01.2016,

from the defendant: Vekozin V.N., power of attorney No. 40 dated 01/19/2016, from a

third party: did not appear, duly notified, УСТАНОВИЛ:

Joint-stock company firm "SMUR" (hereinafter - the plaintiff, JSC firm "SMUR") applied to the Arbitration Court of the Voronezh region with a claim against the limited liability company "Company ALS and TEK" (hereinafter - the defendant, LLC

"Company ALS and TEK") on invalidation due to the nullity of the contract

No. 3 / 12-12 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 dated 09/10/2012 regarding the alienation of 4 OV of the G.652 standard and 4/64 shares in the right of common share ownership of the sheath, protective and power elements of an optical cable, couplings, crosses in the Saratov-Ozinki FOCL; the application of the consequences of the invalidity of a void transaction in the form of an obligation on the defendant to return to the plaintiff the funds paid under this agreement in the amount of 10504601 RUB. 95 kopecks; collection of interest for the use of someone else's money in the amount of 2498870 RUB. 52 kopecks, with interest accrued on the day of actual performance of the obligation.

By a court ruling dated January 13, 2016, RetnNet Joint Stock Company (hereinafter referred to as a third party, RetnNet JSC) was involved in the case as a third party who does not declare independent claims regarding the subject of the dispute; accepted for consideration the petition of LLC "Company ALS and TEK" to terminate the proceedings in the case and the petition of JSC firm "SMUR" to suspend the proceedings pending the resolution of case No.A14-2754 / 2014.

The third party did not appear at the hearing on August 18, 2016, and was duly notified of the time and place of the trial, including publicly, by posting information on the website of the Arbitration Court of the Voronezh Region. On the basis of Article 156 of the Arbitration Procedure Code of the Russian Federation (hereinafter referred to as the APC RF), the case was considered in the absence of a third party.

At the hearing, the representative of the plaintiff, with reference to Article 179 of the Civil Code of the Russian Federation (hereinafter - the Civil Code of the Russian Federation), supplemented the legal basis of the claim, indicating that the disputed transaction was made under the influence of deception on the part of the seller, and also filed a petition for the appointment of a judicial technical examination, asked to entrust its conduct to LLC "Voronezh Forensic Examination Center" or LLC "Bastion", putting the following questions to the expert:

1) what markings, as well as what other identifying signs (manufacturer's name, cable purchase and sale number, production date, etc.) does the fiber-optic cable actually laid on the Ershov-Ozinki section in the Saratov-Ozinki fiber-optic link on the territory of the Saratov region, a share in the ownership right to which LLC "Company ALS and TEK" is alienated in accordance with contract No. 3 / 12-12 dated 09/10/2012?

2) whether there are optical fibers "5 gray, 6 white, 7 red, 8 black" in the module "No. 1 unpainted", alienated by the seller on the section "Ershov - Ozinki" in the fiber optic communication line "Saratov - Ozinki" in accordance with the contract No. 3 / 12-12 from 10.09.2012?

3) what markings, as well as what other identifying signs (manufacturer's name, cable purchase and sale number, production date, etc.) does the fiber-optic cable actually laid by ALS and TEK Company LLC on the Ershov - Ozinki section, included

in the FOCL "Saratov - Ozinki" in the Saratov region, a share in the ownership of which is alienated by LLC "Company ALS and TEK" in accordance with contract No. 3 / 12-12 of 10.09.2012?

4) whether there are optical fibers "5 gray, 6 white, 7 red, 8 black" in the module "No. 1 unpainted", alienated by the seller on the section "Ershov - Ozinki" in the fiber optic communication line "Saratov - Ozinki" in accordance with the contract No. 3 / 12-12 of 10.09.2012, in a fiber-optic cable actually laid in this section, in accordance with the technical documents for it, in particular, the cable passport?

5) how are the technical concepts "OK Type" and "Cable Brand" related? Is it possible to determine the type of cable by its brand?

6) Is it possible to identify individual optical fibers in a fiber-optic cable as part of an operating FOCL with the included (operating) equipment?

The defendant's representative objected to the granting of this motion.

The petition of the plaintiff's representative for the appointment of a forensic technical examination was accepted by the court for consideration.

At the hearing, he was announced until 25.08.2016.

After the break, the plaintiff's representative increased the amount of the claim in terms of interest for the use of other people's funds, asked to collect interest from the defendant in the amount of 3,440,217 rubles. 73 kopecks, as well as to accrue them on the day of the actual fulfillment of the obligation.

On the basis of Article 49 of the Arbitration Procedure Code of the Russian Federation, the court adopted a clarification of the claims.

In addition, the plaintiff's representative supported the petition for the appointment of a forensic technical examination in the case, the conduct of which he asked to instruct LLC Voronezh Forensic Center.

The representative of the defendant submitted written objections to the petition of the plaintiff to appoint a forensic technical examination in the case.

Proceeding from the subject of the claim, taking into account the opinion of the representative of the defendant, the petition of JSC firm "SMUR" to conduct a forensic technical examination in the case was rejected by the court, due to the absence of the need for it.

The plaintiff's representative supported the petition to suspend the proceedings until the resolution of case No.A14- 2754/2014, which was previously accepted by the court for consideration, and also filed a motion to suspend the proceedings in the case until the resolution of case No.A14-8464 / 2015.

The representative of the defendant objected to the satisfaction of the stated motions.

The petitions of JSC firm "SMUR" to suspend the proceedings in the case were rejected by the court due to the lack of legal grounds for their satisfaction.

The defendant's representative upheld the motion to terminate the proceedings, which had been previously accepted by the court, referring to the fact that the company

SMUR reiterated the claims under consideration, previously they were considered in the framework of case No.A14-2754 / 2014 and in fact the plaintiff refused them.

By virtue of clause 2 of part 1 of article 150 of the Arbitration Procedure Code of the

Russian Federation, the arbitration court terminates the proceedings on the case if it finds that there is a judicial act of the arbitration court that has entered into legal force on a dispute between the same persons, on the same subject and on the same grounds, a court of general jurisdiction or a competent court of a foreign state, unless the arbitration court has refused to recognize and enforce the decision of a foreign court.

The petition of LLC "Company ALS and TEK" to terminate the proceedings in the case was rejected by the court, due to the failure to submit to the case file a legally binding dispute between the same persons, on the same subject and on the same grounds of a judicial act.

The plaintiff's representative filed a motion to postpone the trial in order to familiarize himself with the documents received from the defendant.

The representative of LLC "Company ALS and TEK" objected to the postponement of the consideration of the case, referring to the fact that the plaintiff had delayed the proceedings, and also that the defendant had not submitted new documents.

The court rejected the motion to postpone the trial, and a 15-minute break was announced in the trial. to familiarize the plaintiff's representative with the documents presented by the defendant.

The plaintiff's representative supported the claim.

The representative of the defendant objected to the satisfaction of the claims of JSC firm "SMUR" on the grounds set out in the response to the claim and in the additions to it.

The third party did not submit a response to the claim.

As follows from the materials of the case, 04.09.2012 between LLC "Company" ALS and TEK "(seller) and CJSC firm" SMUR "(buyer) entered into an agreement for the purchase and sale of optical fibers and a share in the right of common share ownership in a fiber-optic line communications on the territory of the Voronezh and Saratov regions No. 3 / 12-12, under the terms of which (clause 1.1.) the buyer undertook to pay and take ownership, and the seller undertook to transfer the following property into the ownership of the buyer after payment:

- four optical fibers (OF) of the G.652 standard and 4/72 (four seventy-second) shares in the right of common share ownership of the shell, protective and power elements of the optical cable (OC), couplings, cross-sections in the fiber-optic communication line Borisoglebsk - Rogachevka in the section from the M2A clutch of ORTPTs in the Tellermanovskiy settlement of the Gribanovsky district of the Voronezh region to the M1 clutch at the automatic telephone exchange of OJSC "Rostelecom" Borisoglebsk, st. K. Marx, 76 with a total length of 6.8 km (clause 1.1.1. Of the agreement);

- four OV of the G.652 standard and 4/64 (four sixty-fourth) shares in the right of common share ownership of the shell, protective and power elements of the OK, couplings, crosses in the Saratov-Ozinki fiber-optic communication line with a total length of 345.078 km

(clauses 1.1.2. contract).

According to subparagraph 1.1.3 of the agreement, the individualizing characteristics of the transferred property, as well as the route of the FOC, the list of OM sites, the agreed price of the OM are indicated in the statement of the transferred property (Appendix No. 1 to the agreement). The total length of the OC, which includes the transmitted OM, is 351.878 km.

- The total length of the transmitted OV is 1407.512 km (clause 1.2 of the agreement).
- In accordance with clause 1.3 of the agreement, the transfer of property from the seller to the buyer, first for temporary use, and then into ownership is carried out according to the acts of acceptance and transfer of property signed by the parties.
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- Simultaneously with the transfer of the property into the ownership of the buyer, the seller is obliged to transfer to the buyer the technical documentation provided for by the technical requirements for the property (clause 1.6 of the contract).
- On the basis of clause 2.3.1 of the contract, the buyer undertook to pay for and accept the property on the terms of the contract and in accordance with the annexes thereto.
- The total value of the property and the share transferred to the buyer under the contract is RUB 18,520,211. 79 kopecks, plus VAT 18% - 3 333 638 rubles. 12 kopecks (clause 3.5 of the agreement).
- In accordance with clause 3.7 of the agreement, payments and transfer of property for temporary use, and then into ownership, are made in stages in the following order:
 - the first payment in the amount of 25% of the property value, amounting to RUB 4630052. 95 kopecks, plus 18% VAT in the amount of RUB 833409. 53 kopecks, the buyer makes no later than 10 days after receiving the invoice issued by the seller. The seller undertakes to issue an invoice within 3 calendar days after signing the contract by both parties (subparagraph 3.7.1);
 - after the buyer makes the first payment, the seller, within 10 calendar days, carries out the procedure for the acceptance and transfer of property for temporary use to the buyer 4 optical fibers in the FOCL Saratov - Ozinki and FOCL ORTPTS - Borisoglebsk, specified in the statement of transferred property for temporary use (Appendix No. 1 to the contract) and the parties sign the act of acceptance and transfer of property for temporary use (Appendix No. 2 to the contract) 4 optical fibers in the fiber-optic communication line Saratov - Ozinki and the fiber-optic communication line ORTPTS - Borisoglebsk (subparagraph 3.7.2);
 - after the seller has provided 4 optical fibers and the parties have signed the transfer and acceptance certificate of 4 optical fibers in the Saratov-Ozinki and ORTPTS-Borisoglebsk fiber optic communication lines for temporary use, the buyer shall, within 10 calendar days after signing the specified transfer and acceptance certificate for temporary use, pay the second payment in the amount of 25% of the value of the property, amounting to 4630052 RUB. 95 kopecks, plus 18% VAT in the amount of RUB 833409. 53 kopecks If the second payment is not

made within the specified time period, the temporary use of 4 optical fibers in the Saratov-Ozinki FOCL and the ORTPTS-Borisoglebsk FOCL is terminated until the second payment is made (subparagraph 3.7.3);

- - after the buyer makes the second payment, the seller, within 30 calendar days, carries out the procedure for transferring 4 optical fibers into the ownership of the buyer in the Borisoglebsk-Rogachevka fiber optic link in the area from the M2A coupling
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- ORTPTS Settlement Tellermanovskiy, Gribanovsky District, Voronezh Region, up to MI ATS of OJSC Rostelecom Borisoglebsk, st. K. Marx, 76 and 4 (four) optical fibers in the fiber-optic communication line Saratov - Ozinki on the Ozinki-Ershov section, indicated in the statement of transferred property into ownership according to stage I (Appendix No. 3 to the contract) and the parties sign an act of acceptance and transfer of property into ownership Stage I (Appendix No. 4 to the Agreement) 4 optical fibers in the Borisoglebsk-Rogachevka FOCL in the section from the M2A coupling of the ORTPTs settlement Tellermanovskiy, Voronezh region to the MI ATS of OJSC Rostelecom Borisoglebsk, st. K. Marx, 76 and 4 optical fibers in the fiber-optic communication line Saratov - Ozinki on the Ozinki - Ershov section (pod. 3.7.4);

- the third payment in the amount of 50% of the value of the property, amounting to 9260105 rubles. 90 kopecks, besides VAT 18% in the amount of 1,666,819 rubles. 06 kopecks paid by the buyer within one calendar year from the date of signing the contract, after making the first and second payments (subparagraph 3.7.5);

- after the buyer makes the third payment, the seller, within 30 calendar days, carries out the procedure of acceptance and transfer of 4 optical fibers into the ownership of the buyer in the Saratov-Ozinki fiber-optic link on the Ershov-Saratov section, indicated in the list of transferred property into ownership of stage II (Appendix No. 5 to the contract) and the parties sign an act of acceptance and transfer of property into ownership according to stage II (Appendix No. 6 to the contract) of optical fibers in the Saratov-Ozinki fiber-optic communication line at the Ershov-Saratov section If the third payment is not made within the specified period, the temporary use of 4 optical fibers in the FOCL on the Ershov - Saratov section is terminated until the third payment is made (subparagraph 3.7.6).

Pursuant to the terms of the agreement, the plaintiff, as the first payment, transferred funds to the defendant's account in the total amount of 5,463,462 rubles. 48 kopecks, which is confirmed by payment orders No. 932 dated 10/04/2012 in the amount of RUB 4,000,000,

No. 944 dated 05.10.2012 in the amount of 1,463,462 rubles. 48 kopecks

10.10.2012 between CJSC firm "SMUR" and LLC "Company ALS and TEK" signed an act of acceptance and transfer of property for temporary use, in accordance with which the seller transferred and the buyer accepted for temporary use the property, consisting of 4 optical fibers in the fiber-optic communication line Borisoglebsk - Rogachevka in the section from the M2A

coupling of the ORTPTs in Tellermanovskiy settlement of the Gribanovsky district of the Voronezh region to the MI coupling at the automatic telephone exchange of OJSC Rostelecom Borisoglebsk, st. Marks, 76 and 4 optical fibers in a fiber-optic communication line Saratov - Ozinki.

For payment orders No. 782 dated November 26, 2012 for the amount of 1,000,000 rubles, No. 900 dated December 7, 2012 for the amount of 200,000 rubles, No. 936 dated 12.12.2012 for the amount of 1,000,000 rubles, No. 91 dated December 28, 2012 for the amount of 3263462 rubles. 48 kopecks the plaintiff made the payment of the second payment in the amount of 5463462 RUB. 48 kopecks

According to the act of acceptance and transfer of property into ownership according to stage I of 11/21/2012, the seller transferred, and the buyer took ownership of the property, consisting of optical fibers and a share in the right of common ownership in the Saratov-Ozinki fiber-optic communication line of the Saratov region on the Ozinki site - Ershov.

In clause 2 of this act of acceptance and transfer, it is indicated that after signing this act, the buyer has the right to own, dispose and use 4 optical fibers in the Borisoglebsk-Rogachevka fiber-optic communication line in the section from the M2A clutch of the ORTPTs in the village of Tellermanovsky Gribanovsky district of the Voronezh region to the clutch MI at the automatic telephone exchange of OJSC "Rostelecom" Borisoglebsk, st. Marks, 76 and 4 optical fibers in a fiber-optic communication line Saratov-Ozinki.

FOCL "Saratov-Ozinki", which includes FOCL "Ershov-Ozinki", according to the plaintiff, is an object of real estate, since it includes line-cable structures (LKS), classified as real estate in accordance with the Regulation on the specifics of state registration of ownership and other property rights to line-cable communication facilities, approved by the Government of the Russian Federation of 11.02.2005 №68. Since the ownership of the property sold for the defendant was not registered in the manner prescribed by law, the disputed agreement is invalid. In addition, according to the plaintiff, the identification of optical fibers specified in the contract does not correspond to the passport for the alienated fiber-optic cable. The defendant sold under the contract non-existent optical fibers on the section of the FOCL "Saratov-Ershov" in a non-existent cable, and then transferred, according to the act of transfer and acceptance of property for temporary use dated 10.10.2012, optical fibers in a fiber-optic cable of the brand "DKP-7-6- 6/64 ", which does not exist in this line on the section of FOCL" Saratov-Ershov ".

Considering that the controversial agreement was concluded in violation of the requirements of Articles 218, 209,

179 of the Civil Code of the Russian Federation, the plaintiff appealed to the arbitration court with a demand to declare it invalid, apply the consequences of the invalidity of a void transaction and collect interest for the use of other people's funds.

Having considered the materials presented in the case, having heard the explanations of the representatives of the parties, the arbitration court finds the claim not subject to satisfaction

on the following grounds.

According to clause 2 of article 218 of the Civil Code of the Russian Federation, the right of ownership to the property that the owner has can be acquired by another person on the basis of a sale and purchase agreement, exchange, donation or other transaction on the alienation of this property.

The legal relationship of the parties arose from the agreement No. 3 / 12-12 dated 04.09.2012, which by its legal nature is a purchase and sale agreement (Chapter 30 of the Civil Code of the Russian Federation).

In accordance with clause 1 of Article 454 of the Civil Code of the Russian Federation, under a sale and purchase agreement, one party (the seller) undertakes to transfer the thing (goods) to the ownership of the other party (the buyer), and the buyer undertakes to accept this product and pay a certain amount of money for it (price).

On the basis of clause 1 of Article 456 of the Civil Code of the Russian Federation, the seller is obliged to transfer to the buyer the goods provided for in the purchase and sale agreement.

In accordance with Article 4 of the Arbitration Procedure Code of the Russian Federation and Article 11 of the Civil Code of the Russian Federation, an interested person has the right to apply to an arbitration court for the protection of his violated or disputed rights and legitimate interests. By virtue of the provisions of Article 12 of the Civil Code of the Russian Federation, protection of civil rights can be carried out, including by declaring a voidable transaction invalid and applying the consequences of its invalidity, applying the consequences of the invalidity of a void transaction. The disputable agreement was concluded on 04.09.2012, therefore, the norms of the Civil Code of the Russian Federation on the grounds and on the consequences of the invalidity of transactions in the edition that were in force before the entry into force of the Federal Law of 07.05.2013 No. 100-FZ "On Amendments to Subsections 4 and 5 of Section I of part one and article 1153 of part three of the Civil Code of the Russian Federation ”.

In accordance with clause 1 of article 166 of the Civil Code of the Russian Federation, the transaction is invalid on the grounds established by this Code, by virtue of its recognition as such by a court (voidable transaction) or regardless of such recognition (void transaction).

On the basis of Article 168 of the Civil Code of the Russian Federation, a transaction that does not meet the requirements of the law or other legal acts is void if the law does not establish that such a transaction is voidable, or does not provide for other consequences of the violation.

According to Article 167 of the Civil Code of the Russian Federation, an invalid transaction does not entail legal consequences, with the exception of those related to its invalidity, and is invalid from the moment of its execution.

By virtue of paragraphs 1, 2 of Article 209 of the Civil Code of the Russian Federation, the owner owns the rights to own, use and dispose of his property.

The owner has the right, at his discretion, to perform any actions with respect to the property belonging to him that do not contradict the law and other legal acts and do not violate the rights and interests of other persons protected by law, including alienate his property into the ownership of others, transfer them, while remaining the owner, rights possession, use and disposal of property, pledge property and burden it in other ways, dispose of it in a different way.

According to clause 1 of article 130 of the Civil Code of the Russian Federation, immovable things (real estate, real estate) include land plots, subsoil plots and everything that is firmly connected with the land, that is, objects whose movement is impossible without disproportionate damage to their purpose, including buildings, structures, objects of unfinished construction.

By virtue of clause 1 of Article 131 of the Civil Code of the Russian Federation, ownership and other property rights to immovable things, restrictions on these rights, their occurrence, transfer and termination are subject to state registration in the unified state register by the bodies that carry out state registration of rights to real estate and transactions with it.

According to article 2 of the Federal Law of July 21, 1997 No. 122-FZ "On state registration of rights to real estate and transactions with it", state registration of rights to real estate and transactions with it is a legal act of recognition and confirmation by the state of occurrence, restriction (encumbrance), transfer or termination of rights to real estate in accordance with the Civil Code of the Russian Federation. State registration is the only proof of the existence of a registered right.

According to the JSC firm "SMUR", the fiber-optic communication line (FOCL), which is the subject of the disputed purchase and sale agreement, refers to real estate. Lack of state registration of LLC rights "Company ALS and TEK" on FOCL entails invalidity of the disputed transaction.

The court considers the plaintiff's argument untenable, since the provisions of paragraph 7 of Chapter 30 of the Civil Code of the Russian Federation do not contain provisions prohibiting the conclusion of contracts of sale and purchase in relation to real estate, to which the seller's ownership right at the date of the contract was not registered in the unified state register of rights to real estate and transactions with him. Accordingly, the absence of state registration for the real estate being sold does not entail the invalidity of the transaction.

Meanwhile, the court concluded that the disputed object (FOCL) is not an object of real estate, and the rights to it are not subject to state registration in the unified state register of rights to real estate and transactions with it in view of the following.

According to clause 1 of article 8 of the Federal Law of 07.07.2003 No. 126-FZ "On Communication", communication structures that are firmly connected to the ground and the movement of which is impossible without disproportionate damage to their purpose, including line-cable communication facilities, include to real estate. The specifics of state registration of ownership and other property rights to line-cable communication facilities are established by the Government of the Russian Federation.

In accordance with clause 2 of the Regulation on the specifics of state registration of

ownership and other property rights to line-cable communication facilities, approved by Decree of the Government of the Russian Federation of 11.02.2005 No. 68 (hereinafter - Regulation No. 68), to line-cable communication facilities, which are real estate objects include communications structures firmly connected to the ground, the movement of which is impossible without disproportionate damage to their purpose.

Thus, by virtue of these legal norms, immovable property does not include any communication facilities (including line-cable facilities), but only those that are firmly connected to the ground and, at the same time, the movement of which is impossible without disproportionate damage to their purpose.

The controversial FOCL is not such a structure, since, unlike a stationary cable duct, it is a communication cable, which is directly attributed to movable property of subparagraph 1 of paragraph 3 of Regulation No. 68.

In such circumstances, the plaintiff's argument about the need for state registration of fiber-optic communication lines is not based on the current legislation, and Articles 218, 209 of the Civil Code of the Russian Federation, to which the plaintiff refers to substantiate the stated requirements, do not confirm the nullity of the contested agreement.

Inconsistency of the property specified in the controversial agreement with the passport for the alienated fiber-optic cable by identifying characteristics is also not a basis for declaring the transaction invalid, and therefore, the petition of JSC "SMUR" for the appointment of forensic technical expertise in the case was denied ...

By virtue of clause 1 of Article 179 of the Civil Code of the Russian Federation, a transaction made under the influence of deception, violence, threat, malicious agreement of a representative of one party with the other party, as well as a transaction that a person was forced to complete due to a combination of difficult circumstances on extremely unfavorable conditions for himself, than the other party took advantage of (enslaving deal), can be declared invalid by the court at the claim of the victim.

If the transaction is recognized as invalid on one of the grounds specified in paragraph 1 of this article, then the other party returns everything received by the other party under the transaction, and if it is impossible to return what was received in kind, its value in money is reimbursed. The property received under the transaction by the victim from the other party, as well as due to him in compensation transferred to the other party, turns into the income of the Russian Federation. If it is impossible to transfer the property to the state income in kind, its value in money is collected. In addition, the victim is compensated by the other party for the actual damage caused to him.

Thus, from the meaning of the provisions of Articles 166, 179 of the Civil Code of the Russian Federation, it follows that such a transaction is voidable; for the court to declare it invalid, the plaintiff must provide evidence of the presence of one of the vices of will, named in Article 179 of the Civil Code of the Russian Federation, during the transaction.

According to the plaintiff, he was deceived by LLC Company ALS and TEK, since the defendant did not have any property specified in the disputable agreement: the defendant sold non-existent optical fibers on the FOCL section under the contract

"Saratov-Ershov" in a non-existent cable, and then transferred, according to the act of acceptance and transfer of property for temporary use dated 10.10.2012, optical fibers in a fiber-optic cable of the "DKP-7-6-6 / 64" brand, which does not exist in this lines on the FOCL section "Saratov-Ershov".

From the meaning of Article 179 of the Civil Code of the Russian Federation and the general provisions of civil law, it follows that deception is deliberate (intentional) misleading a party to a transaction by the other party or by a person in whose interests the transaction is being made.

Deception can relate both to elements of the transaction itself, and to circumstances outside of it, including motives, if they were important for the formation of the will of the participant. Fraudulent actions can be committed in an active form or consist in inaction (deliberate omission of facts that could prevent the transaction).

By virtue of Part 1 of 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 plaintiff did not present any evidence that the JSC firm "SMUR" had a wrong idea about the nature and subject of the contested contract (Articles 9, 65 of the Arbitration Procedure Code of the Russian Federation).

In such circumstances, the court concluded that there was no fraud on the part of the defendant.

In addition, the defendant announced that the company "SMUR" JSC had missed the limitation period for the claim to invalidate the disputed agreement.

According to Article 195 of the Civil Code of the Russian Federation, the limitation period is the period for protecting the right at the claim of the person whose right has been violated.

In accordance with clause 2 of Article 199 of the Civil Code of the Russian Federation, the limitation period is applied by the court only at the request of a party to the dispute made before the court makes a decision.

By virtue of clause 2 of Article 181 of the Civil Code of the Russian Federation, the limitation period for a request to declare a voidable transaction invalid and to apply the consequences of its invalidity is one year. The course of the limitation period for this requirement begins from the date of the termination of the violence or threat under the influence of which the transaction was made (Clause 1 of Article 179 of the Civil Code of the Russian Federation), or from the day when the plaintiff learned or should have learned about other circumstances that are the basis for recognition of the transaction as invalid.

The limitation period for the claim in question began to run from the date of the conclusion of the disputed purchase and sale agreement, i.e. from 04.09.2012.

JSC firm "SMUR" applied to the arbitration court with a claim, clarified in the course of the trial, on September 25, 2015, that is, with the omission of the limitation period provided for in paragraph 2 of Article 181 of the Civil Code of the Russian Federation.

The plaintiff did not present evidence in the case file for the suspension or interruption of the limitation period.

By virtue of the provisions of clause 2 of article 199 of the Civil Code of the Russian Federation, the expiration of the limitation period is an independent basis for refusing a claim.

In such circumstances, the claims of JSC firm "SMUR" should be refused.

The costs of the state duty on the basis of Article 110 of the Arbitration Procedure Code of the Russian Federation are borne by the plaintiff.

Guided by Articles 110, 167-170, 176 of the Arbitration Procedure Code of the Russian Federation, the arbitration court

DECIDED :

Dismiss the claim.

Collect from the joint-stock company of the firm "SMUR", Voronezh (OGRN 1023601610878 TIN 3662020332) to the federal budget 4707 rubles. state fees.

The decision can be appealed within one month from the date of its adoption in the Nineteenth Arbitration Court of Appeal and within two months from the date of entry into force in the Arbitration Court of the Central District by filing a complaint through the arbitration court that made the decision.

Judge V.I. Lukavenko