



NINETEENTH ARBITRAL OF APPEAL COURT

STATEMENT

September 17, 2019 Case No. A14-5417 / 2018 Voronezh city

The operative part of the resolution was announced on September 10, 2019
The resolution was issued in full on September 17, 2019

Nineteenth Arbitration Court of Appeal composed of: presiding judge
Shcherbatykh E. Yu.,
judges Porotikova A.I.,
Ushakova I.V.,
when keeping the minutes of the court session by the secretary of the court
session Sidorenko V.V.,

with the participation:
from the limited liability company "Company" ALS and TEK ": the
representative did not appear, the evidence of proper notification is in the
case file;
from Joint Stock Company Kvant-Telecom: N. V. Khizhkova, a
representative by power of attorney No. 5 dated 01.01.2019,

Having considered in open court the appeal of the limited liability company
ALS and TEK against the decision of the Arbitration Court of the Voronezh
Region dated 26.03.2019 on the case
No. A14-5417 / 2018 (Judge Stegantsev A.I.), according to the statement of
claim of the limited liability company "Company" ALS and TEK "(OGRN
1026402661108 TIN 6452045336) to the joint-stock company Kvant-
Telecom (OGRN 1073667031030 TIN 3662124236) about collection of
interest for the use of other people's funds,

found:

limited liability company "Company" ALS and TEK "(hereinafter - the plaintiff,
LLC" Company ALS and TEK ") applied to the arbitration

court with claims against the joint-stock company "Kvant-Telecom" (hereinafter
- the defendant, JSC "Kvant-Telecom") on the recovery of interest for the use of other
people's funds in the amount of 673 855 rubles. 75 kopecks for the period from
20.12.2014 to 15.10.2018, accrued on rent arrears under the lease agreement No. 21/13
dated 12.02.2013, for the period from 01.12.2014 to 12.12.2014 (taking into account
the clarification of claims in accordance with Article 49 The Arbitration Procedure

Code of the Russian Federation (hereinafter referred to as the APC).

By the decision of the Arbitration Court of the Voronezh Region dated March 26, 2019 in case No. A14-5417 / 2018, the claims were rejected.

Disagreeing with the decision, referring to its illegality and groundlessness, the plaintiff appealed to the Nineteenth Arbitration Court of Appeal with an appeal, in which he asks to cancel the decision of the first instance court in part of the refusal to satisfy claims on the collection of interest for the use of other people's money in the amount of 524 118 RUB 25 kopecks for the period from 01.06.2015 to 15.10.2018, accrued on the rent arrears under the lease agreement No. 21/13 dated 12.03.2013, for the period from 01.12.2014 to 12.12.2014, to satisfy the claim in this part.

At the hearing of the court of appeal LLC "Company

"ALS and TEK", duly notified, did not ensure the attendance of the authorized representative.

By virtue of Articles 156, 266 of the Arbitration Procedure Code of the Russian Federation, failure to appear at the court session of duly notified persons or their representatives does not interfere with the consideration of the case, in connection with which the case was considered in the absence of a participant in the process that did not appear.

The representative of Kvant-Telecom JSC disagrees with the arguments of the appeal, considers the court decision in the contested part to be lawful and justified, asks to leave it unchanged, the appeal - dismissed.

In the court session, in accordance with Article 163 of the Arbitration Procedure Code of the Russian Federation, a break was announced until 09/10/2019.

09.09.2019 through the electronic service "My Arbiter" from LLC "Company

ALS and TEK received a clarification of the appeal, according to which LLC Company ALS and TEK will appeal the decision of the Arbitration Court of the Voronezh Region dated 03.26.2019 regarding the refusal to collect interest from the defendant for using other people's funds in the amount of 552,993 rubles ... 25 kopecks for the period from 21.03.2015 to 15.10.2018, accrued on rent arrears under the lease agreement

No. 21/13 dated 12.02.2013, for the period from 01.12.2014 to 12.12.2014.

The representative of Kvant-Telecom JSC indicated that he did not agree with the arguments of the revised appeal on the grounds set out in the response.

Taking into account that the decision of the court of first instance in this case is being appealed by LLC Company ALS and TEK in part, taking into account the provisions of part 5 of Article 268 of the Arbitration Procedure Code of the Russian Federation and the absence of objections from the defendant, the arbitration court of the appellate instance verifies the legality and validity of the decision of the Arbitration Court of the Voronezh Region from 26.03.2019 in case No. A14-5417 / 2018 in the part complained of by LLC "Company ALS and TEK".

Having studied the case materials, having discussed the arguments set out in the appeal and withdrawal, additions, the court of appeal comes to the conclusion that the judicial act in the contested part is canceled and the claim is satisfied in this part.

As follows from the case materials and established by the courts of first and appellate instances, on 12.02.2013 between ALS and TEK Company LLC (lessor) and Kvant-Telecom Closed Joint Stock Company (lessee) a lease agreement No. 21/13 was concluded, according to which the lessor undertakes to provide the lessee for temporary use the following property: two optical fibers in a fiber-optic

communication line (FOCL) at the RTRS Voronezh ORTPTS section in Tellermanovskiy, Gribanovskiy district, Voronezh region. - Saratov, Saratov region, st. B. Kazachya, 6, in the areas of regeneration specified in clause 1.1 of the contract.

The lessee undertakes to accept the fibers and pay the rent for the use of the fibers in the amount and terms established by this agreement.

According to clause 2.2 of the agreement, the monthly rent under this agreement is RUB 4,500,000, including VAT (18%) 686

440 RUB 62 kopecks.

Based on clauses 2.4, 2.5 of the agreement, the lessor issues an invoice for the rent monthly by the 5th day of the settlement month. Settlement month

- the month in which the services are rendered. The original invoice is sent to the tenant by mail. The rent is paid by the lessee to the lessor on a monthly basis, within 10 banking days from the date of receipt of the invoice.

In clause 4.2 of the agreement, the parties agreed on the lessee's liability for late payment of payment under the agreement in the form of a forfeit in the amount of 0.01% of the monthly rent for each day of delay.

According to the acceptance certificate dated 12.02.2013, the property was transferred to the lessee. JSC "Kvant-Telecom" applied to the Arbitration Court of the Saratov Region with a claim against LLC "Company" ALS and TEK "to recover 485,857 rubles. unjust enrichment and 16 972 RUB. 08 kopecks interest for the use of 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 (case No. A57-23370 / 2016).

LLC "Company" ALS and TEK "filed a counterclaim for the recovery of 1,800,000 rubles. rent debt under the lease agreement dated 12.02.2013

No. 21/13 for the period from 01/01/2014 to 01/12/2014 and 486,438 rubles. 50 kopecks interest for the use of other people's funds, accrued on the specified debt.

By the decision of the Arbitration Court of the Saratov Region dated January 30, 2017 in case No. A57-23370 / 2016, upheld by the resolution of the Twelfth Arbitration Court of Appeal dated March 29, 2017, the claim of JSC

Kvant-Telecom is 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, the counterclaim of LLC "Company ALS and TEK" was satisfied in terms of debt collection for the period from 01.01.2014 to 12.01.2014 in the amount of 1,800,000 rubles. and 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 June 22, 2017 in case No. A57-23370 / 2016, the decision of the Arbitration Court of the Saratov Region of January 30, 2017 and the resolution of the Twelfth Arbitration Court of Appeal dated March 29, 2017 were canceled, the case was sent for a new consideration to the Arbitration Court of the Saratov Region.

During the new consideration of the case, LLC "Company" ALS and TEK "clarified the counterclaims in accordance with Article 49 of the APC RF and asked to collect the rent arrears for the period from 01.01.2014 to 12.01.2014 in the amount of RUB 1,800,000. payment for

the period from 01.12.2014 to 18.03.2015 in the amount of 16,200,000 rubles, interest on the use of other people's funds in the amount of 486,438 rubles. 50 kopecks

By the decision of the Arbitration Court of the Saratov Region dated 10.04.2018

in case No. A57-23370 / 2016, the claim of Kvant-Telecom JSC was rejected, the counterclaims of ALS and TEK Company LLC were partially satisfied: Kvant-Telecom JSC was recovered debt under lease agreement No. 21/13 dated 12.02.2013 for rent for the period from 01.01.2014 to 12.01.2014 in the amount of RUB 1,800,000, for the period from 01.12.2014 to

12.12.2014 in the amount of 1,800,000 rubles. and interest for the use of other people's funds in the amount of 372,008 rubles. 24 kopecks, the rest of the counterclaims were denied.

By the resolution of the Twelfth Arbitration Court of Appeal dated 20.09.2018 in case No. A57-23370 / 2016, the decision of the Arbitration Court of the Saratov Region dated 10.04.2018 was left unchanged.

The amount recovered by the decision of the Arbitration Court of the Saratov Region dated 10.04.2018 for the period from 01.12.2014 to 12.12.2014 was debited from the settlement account of Kvant-Telecom JSC without acceptance on 15.10.2018.

By the decision of the Arbitration Court of the Volga District of December 25, 2018 in case No. A57-23370 / 2016, 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 were canceled in terms of refusal to satisfy the counterclaims of LLC Company ALS and TEK "on the collection of rent arrears for the period from 12/13/2014 to 03/18/2015, the case in this part was sent for new consideration to the Arbitration Court of the Saratov Region. The rest of the decision is left unchanged.

Referring to the delay in the payment of the rent for the period from 01.12.2014 to 12.12.2014, the plaintiff went to court with this claim to collect interest for the use of funds in the amount of 673,855 rubles. 75 kopecks for the period from 20.12.2014 to 15.10.2018, accrued on the specified debt.

Refusing to satisfy the claims in the contested part, the regional court came to the conclusion that the plaintiff had missed the statute of limitations, the application of which was claimed by the plaintiff.

Disagreeing with the conclusion of the first instance court, the panel of judges is guided by the following.

The payment of interest for the use of other people's funds within the meaning of Article 395 of the Civil Code of the Russian Federation is a measure of civil liability for violation of a monetary obligation, which is applied taking into account the provisions of Article 401 of the Civil Code of the Russian Federation.

Interest for the use of other people's funds is charged on the day the amount of these funds is paid to the creditor, unless a shorter period is established for the accrual of interest by law, other legal acts or an agreement (Part 3 of Article 395 of the Civil Code of the Russian Federation).

The interest provided for by this rule of law is a measure of civil liability for non-performance or delay in performance of a monetary obligation.

Taking into account the provisions of Article 196 of the Civil Code of the Russian Federation, the requirement to collect interest for the use of other people's funds shall be satisfied within a three-year period.

The limitation period for claims for the payment of interest should be calculated separately for each overdue payment for the corresponding period, determined in relation to each day of delay (paragraph 25 of the Resolution of the Plenum of the

Supreme Court of the Russian Federation dated 09.29.2015 No. 43 "On some issues related to the application of norms Of the Civil Code of the Russian Federation on the limitation period ", the ruling of the Supreme Court of the Russian Federation dated 20.11.2018 No. 303-ES18-10142, dated 18.05.2016 No. 305-ES15-19057,

Resolutions of the Presidium of the Supreme Arbitration Court of the Russian Federation dated 10.02.2009 No. 11778/08, dated 05.03.2013 No. 13374/12).

Since LLC "Company ALS and TEK" filed this claim with the arbitration court on 03/21/2018, the three-year limitation period for the claim to collect interest for the use of other people's funds did not expire in terms of interest for the three-year period preceding the date of the claim, that is from 21.03.2015 to 15.10.2018.

A similar legal position was reflected in the ruling of the Supreme Court of the Russian Federation dated 06.08.2019 No. 307-ES19-12583 in case No. A56-17474/2018.

The defendant's reference to the provisions of Article 207 of the Civil Code of the Russian Federation, according to which the limitation period for additional requirements (interest, forfeit, bail, surety, etc.), including those arising after the start of the limitation period for the main claim, is considered to have expired with the expiration of the period of the claim limitation on the main claim, is insolvent, since the claims for the collection of rent arrears for the period from 12/01/2014 to 12/12/2014 were presented by the plaintiff during the limitation period and were satisfied by the decision of the Arbitration Court of the Saratov Region dated 04/10/2018 in the case No. A57-23370 / 2016.

By virtue of clause 2 of Article 69 of the Arbitration Procedure Code of the Russian Federation, the circumstances established by a judicial act of an arbitration court on a previously considered case that has entered into legal force are not proven again when the arbitration court is considering another case in which the same persons are involved.

At the same time, the subject of consideration in case No. A57-23370 / 2016 was the claims of LLC Company ALS and TEK to collect interest for the use of other people's funds accrued on the debt for the period from 01.01.2014 to 12.01.2014, which follows from the calculation of the counter the claim of 11/23/2016, clarification of the counterclaim of 01/29/2018 in case No. A57-23370/2016.

Thus, this claim is not identical to the claim for the recovery of interest for the use of other people's funds, considered in case No. A57-23370 / 2016.

Objecting to the collection of interest for the use of other people's funds in the declared amount, the defendant referred to the illegality of their accrual after 01.06.2015, taking into account the liability established by clause 4.2 of the lease agreement No. 21/13 of 12.02.2013 in the form of a penalty in the amount of 0.01% of the monthly rent fees for each day of delay.

According to clause 4 of Article 395 of the Civil Code of the Russian Federation as amended by Federal Law No. 42-FZ of 03/08/2015 (hereinafter - Law No. 42-FZ), in effect from 06/01/2015, in the case when the agreement of the parties provides for a penalty for non-performance or improper performance of a monetary obligation , the interest provided for by this article is not subject to collection, unless otherwise provided by law or contract.

In accordance with the clarifications contained in paragraph 83 of the

Resolution of the Plenum of the Supreme Court of the Russian Federation dated March 24, 2016 No. 7 "On the application by courts of certain provisions of the Civil Code of the Russian Federation on liability for violation of obligations", the provisions of the Civil Code of the Russian Federation as amended by Law No. 42-FZ do not apply to the rights and obligations arising from contracts concluded before the date of its entry into force (before 01.06.2015); when considering disputes from these agreements, one should be guided by the previously valid version of the Civil Code of the Russian Federation, taking into account the existing practice of its application (paragraph 2 of Article 4, paragraph two, paragraph 4 of Article 421, paragraph 2 of Article 422 of the Civil Code of the Russian Federation). At the same time, when deciding on the accrual of interest for non-fulfillment of a monetary obligation arising on the basis of an agreement concluded before 06/01/2015, in relation to periods of delay that have occurred from 06/01/2015, the amount of interest is determined in accordance with paragraph 1 of Article 395 of the Civil Code of the Russian Federation as amended Law No. 42-FZ.

Thus, the previously valid version of the Civil Code of the Russian Federation applies to relations arising from contracts concluded before the entry into force of Law No. 42-FZ. The only exception is clause 1 of Article 395 of the Civil Code of the Russian Federation, which regulates the procedure for determining the amount of interest accrued in accordance with this rate and which also applies to these contracts in relation to periods of delay that took place after the entry into force of Law No. 42-FZ.

The wording of Article 395 of the Civil Code of the Russian Federation, which was in effect until 06/01/2015, did not contain a prohibition on the collection of interest for the use of other people's funds in the event that the agreement of the parties provides for a penalty for non-performance or improper performance of a monetary obligation. Such a restriction appeared only in connection with the entry into force of paragraph 4 of Article 395 of the Civil Code of the Russian Federation from 01.06.2015.

According to the practice of applying the Civil Code of the Russian Federation that developed before June 1, 2015, in the event of a violation arising from the contract of a monetary obligation, the creditor had the right to present either a claim to collect interest from the debtor on the basis of Article 395 of the Civil Code of the Russian Federation, or a claim to collect a penalty provided for by the contract.

Since the lease agreement No. 21/13 dated 02/12/2013, for failure to fulfill obligations under which the plaintiff accrued interest to the defendant, was concluded before the entry into force of Law No. 42-FZ, paragraph 4 of Article 395 of the Civil Code of the Russian Federation does not apply to the legal relations of the parties to this dispute.

This legal position is set out in paragraph 6 of Section II of the Review of Judicial Practice of the Supreme Court of the Russian Federation No. 4, approved on 12/20/2016, in the rulings of the RF Supreme Court of 05/18/2017

No. 306-ES17-621, dated September 27, 2017 No. 302-ES17-14420, dated November 10, 2016 No. 309-ES16- 9411.

The defendant's reference to the ruling of the Supreme Court of the Russian Federation of 07/27/2017 in case No. 305-ES17-2343 is untenable, since this judicial act was adopted in a case with other circumstances: on the recovery of a legal penalty provided for by the Housing Code of the Russian Federation.

Based on the foregoing, the court of appeal came to the conclusion that the plaintiff's claims for the collection of interest on the use of other people's funds for the period from 03.21.2015 to 10.15.2018 accrued on the rent arrears under the lease agreement No. 21/13 dated 02.12.2013 for period from 01.12.2014 to 12.12.2014.

The calculation of the amount of interest presented by LLC "Company" ALS and TEK "by the court of appeal has been verified and found to be correct.

Thus, the court of appeal comes to the conclusion that the claims of the plaintiff were satisfied in the contested part and that the defendant was charged interest for the use of other people's money in the amount of 552,993 rubles. 25 kopecks for the period from 21.03.2015 to 15.10.2018.

Consequently, in this part, the decision of the Arbitration Court of the Voronezh Region of 03/26/2019 is subject to cancellation, and the claims must be satisfied.

By virtue of Article 101 of the Arbitration Procedure Code of the Russian Federation, court costs consist of state fees and court costs associated with the consideration of the case by an arbitration court.

On the basis of Article 110 of the Arbitration Procedure Code of the Russian Federation, court costs incurred by persons participating in the case, in whose favor the judicial act was adopted, are recovered by the arbitration court from the side. If the claim is partially satisfied, the court costs are borne by the persons participating in the case in proportion to the amount of the satisfied claims.

According to the payment order, the plaintiff, when filing a statement of claim, paid a state fee of 45,500 rubles. by payment order No. 747 dated 04.24.2018. At the same time, taking into account the cost of the claim, the amount of the state fee for considering this claim in the court of first instance is 16,477 rubles.

State fee in the amount of 16 477 rubles. refers to the parties in proportion to the size of the satisfied claims against the plaintiff in the amount of 2,966 rubles., for the defendant in the amount of 13,511 rubles.

In accordance with article 104 of the Arbitration Procedure Code of the Russian Federation, the grounds and procedure for the return or offset of the state duty are established in accordance with the legislation of the Russian Federation on taxes and fees.

On the basis of subparagraph 1 of paragraph 1 of Article 333.40 of the Tax Code of the Russian Federation, the paid state duty is subject to refund if the state duty is paid in a larger amount than is provided for in Chapter 25.3 of the Tax Code of the Russian Federation.

Subject to the foregoing, overpaid by payment order

No. 747 dated 04.24.2018 state fee in the amount of 29,023 rubles. to be returned by LLC "Company" ALS and TEK "from the federal budget.

Considering the satisfaction of the appeal, the state fee for the consideration of the case in the court of appeal is also subject to collection from the defendant in the amount of 3,000 rubles. in favor of the plaintiff.

Guided by Articles 269, 270, 271 of the Arbitration Procedure Code of the Russian Federation,

DECIDED:

the decision of the Arbitration Court of the Voronezh Region dated 26.03.2019 in the case

No. A14-5417 / 2018 in the contested part - regarding the refusal to collect from the joint-stock company Kvant-Telecom in favor of the limited liability company ALS and TEK Company of interest for the use of other people's funds in the amount of 552,993 rubles. 25 kopecks for the period from 21.03.2015 to 15.10.2018, as well as in the part of collection from the limited liability company "Company" ALS and TEK "to the federal budget of the state duty in the amount of 13,511 rubles. cancel. Satisfy the claim in this part.

Collect from the joint-stock company Kvant-Telecom (OGRN 1073667031030 INN 3662124236) in favor of the limited liability company ALS and TEK Company (OGRN 1026402661108 INN 6452045336) interest for the use of other people's funds in the amount of 552,993 rubles. 25 kopecks and the cost of paying the state duty in the amount of 16 511 rubles. for consideration of the case in the courts of first and appeal instances. Issue to the limited liability company "Company" ALS and TEK "(OGRN 1026402661108 INN 6452045336) a certificate of return from federal budget state duty in the amount of 29,023 rubles.

The decision comes into legal force from the moment of its adoption and can be appealed in cassation procedure to the Arbitration Court of the Central District within two months through the arbitration court of first instance.

Presiding judge E.Yew. Shcherbatykh

Judges A.I. Porotikov

I.V. Ushakova