



NINETEENTH ARBITRAL OF APPEAL COURT

STATEMENT

September 20, 2019 Case No. A14-470 / 2017 Voronezh

The operative part of the resolution was announced on September 13, 2019 The resolution was issued in full on September 20, 2019
Nineteenth Arbitration Court of Appeal composed of: the presiding judge Porotikov A.I.,
judges Korableva G.N.,
Ushakova I.V.,

when keeping the minutes of the court session by the secretary of the court session Izmailova S.V.,

with the participation:

from Joint Stock Company Kvant-Telecom: N. V. Khizhkova, a representative by power of attorney No. 5 dated 01.01.2019;

from the limited liability company "Company" ALS and TEK ": the representative did not appear, the evidence of proper notification is available in the case file.

having considered in an open court session the appeal of the limited liability company "ALS and TEK" Company against the decision of the Arbitration Court of the Voronezh Region dated July 26, 2019 in the case

No. A14-470 / 2017 (judge Esakova M.S.) on the claim of the limited liability company "Company ALS and TEK" (OGRN 1026402661108, TIN 6452045336), Saratov, against the joint-stock company Kvant-Telecom (OGRN 1073667031030 , TIN 3662124236), Voronezh, on the collection of interest for the use of other people's funds in the amount of RUB 7,919,388. 53 kopecks,

found:

limited liability company "Company" ALS and TEK "(hereinafter -" Company "ALS and TEK" LLC, the plaintiff) filed a claim with the Arbitration Court of the Voronezh Region (subject to clarification in accordance with Article 49 of the Arbitration Procedure Code of the Russian Federation) against the joint-stock company "Kvant-Telecom" (hereinafter - JSC "Kvant-Telecom", the defendant) on the collection of the amount of interest for the use of someone else's money in the amount of

7,919,388 rubles. 53 kopecks, accrued for the period from 02.11.2014 to 16.09.2016 for rent arrears under the lease agreement No. 21/13 dated 12.02.2013 for the period from 17.01.2014 to 30.11.2014.

By the decision of the Arbitration Court of the Voronezh Region of July 26, 2019 in case No.A14-470 / 2017, the plaintiff's claims were partially satisfied: 4,484,889 rubles were collected from the defendant in favor of the plaintiff. 06 kopecks interest for the use of other people's funds for the period from 02.11.2014 to 15.09.2016. The rest of the claims were denied.

Disagreeing with the adopted judicial act regarding the refusal to satisfy the claim, believing it to be illegal and unreasonable, the plaintiff appealed to the Nineteenth Arbitration Court of Appeal with an appeal (taking into account the addition to the complaint), in which he asks the court's decision to cancel in this part and take on the case a new judicial act to satisfy the claim in full.

The representative of the plaintiff did not appear at the hearing of the court of appeal on September 13, 2019, sending an application for the consideration of the case in his absence.

Given the presence of evidence of proper notification of the above-named person about the time and place of the trial, the appeal was considered in accordance with Articles 123, 156, 266 of the Arbitration Procedure Code of the Russian Federation in his absence.

The representative of the defendant, who appeared at the hearing, objected to the arguments of the complaint, considering the decision of the first instance court to be lawful and justified on the grounds set out in the response to the complaint, asked to leave the decision of the court unchanged, and the complaint was not satisfied.

According to the rules of Part 5 of Article 268 of the Arbitration Procedure Code of the Russian Federation, if only part of the decision is appealed in the procedure of appeal, the arbitration court of the appellate instance verifies the legality and validity of the decision only in the part complained of, if at the same time the persons participating in the case do not raise objections ...

Considering that there were no objections from the persons participating in the case against verifying the decision in the contested part, the Court of Appeal, on the basis of Part 5 of Article 268 of the Arbitration Procedure Code of the Russian Federation, verifies the legality and validity of the court's decision only in this part.

The panel of judges, having examined the presented materials of the case, having studied the arguments of the appeal and the response to it, as well as having heard the explanations of the representative of the defendant, comes to the conclusion that the contested decision of the court of first instance is subject to cancellation in terms of the refusal to satisfy the claim due to the following.

As seen from the case materials, on February 12, 2013, a lease agreement No. 21/13 was concluded between ALS and TEK Company LLC (lessor) and Kvant-Telecom CJSC (lessee, currently Kvant-Telecom JSC), under the terms of which the lessor transfers to the lessee for use two optical fibers in a fiber-optic communication line (FOCL) on the RTRS Voronezh ORTPTS section in Tellermanovskiy settlement, Gribanovsky district of Voronezh region - Saratov, Saratov region, B. Kazachya st. 6, on the regeneration sections specified in the contract with a total length of 694.870 km. The lessor undertakes to provide the points of connection of 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".

According to the act dated 02/12/2013, the leased object was transferred to the defendant.

By clause 4.2 of the agreement, the parties provided for liability for violation by the tenant of the terms of payment of the rent in the amount of 0.01% for each day of delay.

By the decision of the Arbitration Court of the Voronezh Region dated 05.09.2014 in case No. A14-4846 / 2014 with JSC Kvant-Telecom, 11 350 000 rubles were collected in favor of LLC Company ALS and TEK. rent arrears under the lease agreement No. 21/13 dated 12.02.2013 for the period from October to December 2013, as well as 324,900 rubles. contractual forfeit.

The decision entered into legal force, by the decision of the Nineteenth Arbitration Court of Appeal dated 20.11.2014, it was left unchanged, in connection with which a writ of execution was issued for the enforcement of the judicial act on 05.12.2014.

The debt collected by the decision of the Arbitration Court of the Voronezh Region dated 05.09.2014 in case No. A14-4846 / 2014 was paid by the closed joint stock company Kvant-Telecom by payment order No. 114 dated 26.12.2014 in the amount of 11,756,275 rubles. (debited from the account on 12/29/2014), in connection with which the decision of the Arbitration Court of the Voronezh Region of 09/05/2014 in the case

No. A14-7412 / 2015 from Kvant-Telecom JSC in favor of ALS and TEK Company LLC interest was charged for using other people's funds (RUB 11,756,275) for the period from June 27, 2014 to December 29, 2014 in the amount of 473,389 rub. The decision came into legal force.

In addition, by 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 LLC

"Company ALS and TEK" collected 47 213 443 rubles. 37 kopecks. rent arrears under lease agreement No. 21/13 dated 12.02.2013 for the period from 13 January to November 2014, as well as 336,060 rubles. contractual forfeit.

The decision came into legal force, the decision of the Nineteenth Arbitration

Court of Appeal dated 05.08.2016 and the decision of the Arbitration Court of the Central District of 13.12.2016 was left unchanged. By the ruling of the Supreme Court of the Russian Federation dated 12.04.2017 No. 310-ES17-2624, the transfer of the cassation appeal to JSC was refused

“Kvant-Telecom” for consideration in a court session of the Judicial Collegium for Economic Disputes of the RF Armed Forces.

On 23.08.2016, a writ of execution was issued for the enforcement of the decision of the Arbitration Court of the Voronezh Region of 19.04.2016 in case No.A14-49 / 2015.

Within the framework of case No.A14-49 / 2015, interest for the use of other people's funds in the amount of debt is 47,213,443 rubles. 37 kopecks. were not charged and were not claimed for collection, and the penalty was charged before 11/01/2014.

At the same time, the debt collected by the decision of the Arbitration Court of the Voronezh Region dated 04.19.2016 in case No. A14-49 / 2015 was paid by JSC

“Kvant-Telecom” by payment order No. 734026 dated September 16, 2016 in the amount of 44 341 549 rubles, by payment order No. 734026 dated September 16, 2016 in the amount of 3 070 681 rubles.

45 kopecks. and payment order No. 734026 dated September 16, 2016 for the amount of 347,272 rubles. 92 kopecks

In connection with the defendant's failure to pay rent payments within the established time frame, the plaintiff accrued interest on the amount of the debt for the use of other people's funds and sent a request to Kvant-Telecom JSC dated 08.06.2016 (out. No. 1150) about the need to pay within 5 days from the moment of receipt of the claim, the amount of interest for the use of other people's funds in the amount of RUB 13,423,095 accrued on the rent arrears in the amount of RUB 47,213,443. 37 kopecks.

Failure to fulfill this claim served as the basis for the plaintiff's appeal to the court with this requirement (taking into account its clarification).

Refusing to collect 3 434 499 rubles. 47 kopecks interest for use other people's funds from June 01, 2015 to September 15, 2016 in the part exceeding the penalty established by the contract, the court of first instance did not take into account the following.

By virtue of clause 1 of Article 395 of the Civil Code of the Russian Federation as amended by Federal Law No. 42-FZ of 03/08/2015 "On Amendments to Part One of the Civil Code of the Russian Federation", which entered into force on 06/01/2015, for the use of other people's funds due to their illegal withholding, evasion from their return, other delay in their payment or unjustified receipt or savings at the expense of another person shall be subject to payment of interest on the amount of these funds. The amount of interest is determined by the average bank interest rates existing in the place of residence of the lender or, if the lender is a legal entity, in the place of its location, published by the Bank of Russia and existing in the relevant periods on average bank interest rates on deposits of individuals. These rules apply unless a different interest rate is established by law or contract.

In accordance with paragraph 4 of Article 395 of the Civil Code of the Russian Federation (enacted by Law No. 42-FZ), in the event that an agreement of the parties provides for a penalty for non-performance or improper performance of a monetary obligation, interest provided for in this article is not subject to collection, unless

otherwise provided by law or contract ...

At the same time, on the basis of clause 2 of Article 2 of Law No. 42-FZ, the provisions of the Civil Code of the Russian Federation (as amended by this Federal Law) apply to legal relations arising after the date of entry into force of this Federal Law. In relation to legal relations that arose before the date of entry into force of this Federal Law, the provisions of the Civil Code of the Russian Federation (as amended by this Federal Law) shall apply to those rights and obligations that arise after the date of entry into force of this Federal Law, unless otherwise provided by this article.

According to the explanations set out 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 the 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 are not apply to rights and obligations arising from contracts concluded before the date of its entry into force (before June 1, 2015). When considering disputes from these agreements, one should be guided by the previously valid edition of the Civil Code of the Russian Federation, taking into account the existing practice of its application (paragraph 2 of Article 4, paragraph 2 of paragraph 4 of Article 421, paragraph 2 of Article 422 of the Civil Code of the Russian Federation).

At the same time, as follows from these explanations, when deciding on the accrual of interest for non-fulfillment of a monetary obligation arising on the basis of an agreement concluded before June 1, 2015, in relation to periods of delay that have occurred since June 1, 2015, the amount of interest is determined in accordance with with clause 1 of article 395 of the Civil Code of the Russian Federation as amended by Law No. 42-FZ.

Thus, the only exception is clause 1 of Article 395 of the Civil Code of the Russian Federation, which provides for the procedure for determining the amount of interest for non-fulfillment of a monetary obligation arising on the basis of an agreement concluded before June 1, 2015, in relation to periods of delay that have occurred since that date.

The provisions of Article 395 of the Civil Code of the Russian Federation in the version in effect until June 1, 2015 did not contain a prohibition on the collection of interest for the use of other people's funds in the event that the contract provided for a penalty for non-performance or improper performance of a monetary obligation.

In accordance with the legislation in force prior to the entry into force of Law No. 42-FZ, in the event of a violation of a monetary obligation arising from the contract, the creditor, at his own discretion, had the right to present a claim to collect the forfeit stipulated by the contract, and (or) demand for the collection of interest on the basis of Article 395 of the Civil Code.

Since the contract, for failure to fulfill obligations under which a claim was made to collect interest for the use of someone else's money, was concluded before the entry into force of Law No. 42-FZ, the provisions of paragraph 4 of Article 395 of the Civil Code as amended by this Law could not be applied to the legal relations of the parties under this dispute.

By virtue of clause 37 of the resolution of the Plenum of the Supreme Court of the Russian Federation dated March 24, 2016 No. 7, the provisions of Article 395 of the Civil Code provide for the consequences of non-fulfillment or delay of a monetary obligation.

The plaintiff, in accordance with Article 12 of the Civil Code of the Russian Federation, to protect his rights, chose a method that does not contradict the Civil Code, in the form of liability for the delay in fulfilling a monetary obligation by calculating interest for the use of other people's funds.

Thus, the conclusion of the regional court on the inadmissibility of collecting interest for the use of someone else's money due to the presence in the contract of a condition on the possibility of calculating a forfeit, taking into account the agreed restriction, is based on the incorrect application of substantive law, contradicts paragraph 2 of Article 2 of Law No. 42-FZ and allows an unjustified derogation on the conditions from which the parties proceeded when concluding the contract.

This legal approach is consistent with the law enforcement practice of the Supreme Court of the Russian Federation, reflected in the definitions of 10.11.2016 No. 309-ES16-9411, dated 18.05.2017 No. 306-ES17-621, dated 09.01.2018

No. 83-KG17-27.

Taking into account the foregoing, the court of appeal considers that the claims made by the plaintiff are subject to full satisfaction, and therefore considers it necessary to cancel the appealed court decision in terms of refusal to recover

RUB 3,434,499 47 kopecks interest for using other people's funds from June 01, 2015 to September 15, 2016.

The defendant's arguments about the need to apply the norms of Article 333 of the Civil Code of the Russian Federation cannot be recognized as justified, since, as a general rule, the provisions of Article 333 of the Civil Code of the Russian Federation do not apply to the amount of interest charged under paragraph 1 of Article 395 of the Civil Code of the Russian Federation, which corresponds the explanations set out in paragraph four of clause 48 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 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."

In accordance with paragraph 6 of Article 395 of the Civil Code of the Russian Federation, if the amount of interest payable is clearly disproportionate to the consequences of the violation of the obligation, the court, upon the application of the debtor, has the right to reduce the interest provided for by the contract, but not less than to the amount determined based on the rate specified in paragraph 1 of this articles.

In addition, within the meaning of paragraph 2 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated December 22, 2011 No. 81 "On some issues of the application of Article 333 of the Civil Code of the Russian Federation", the reduction of the amount of liability applied to the debtor

below the one-time discount rate of the Bank of Russia is allowed only in extraordinary cases when the creditor's losses are compensated due to the fact that the amount of payment for the use of funds provided for by the terms of the obligation (loan, credit, commercial loan) significantly exceeds the interest usually charged in such circumstances.

However, no evidence of these circumstances was presented in the case.

The Court of Appeal rejects the defendant's objections to the abuse of rights by the plaintiff, who had previously applied for a forfeit on the controversial obligation, calculated for the period preceding the controversial one.

In accordance with paragraph 1 of Article 9 of the Civil Code of the Russian Federation, citizens and legal entities at their own discretion exercise their civil rights, while the limits of the exercise of civil rights are defined in Article 10, and the methods of protection - in

Article 12 of the Civil Code of the Russian Federation.

The evidence that the plaintiff went beyond the statutory limits in exercising his right to collect interest for the defendant's violation of the monetary obligation he had assumed was not presented in the case.

Under the above circumstances, in their totality, the decision of the court of first instance is subject to cancellation in terms of refusal to satisfy claims, claims are subject to satisfaction in full.

According to Part 1 of Article 110 of the Arbitration Procedure Code of the Russian Federation, court costs incurred by persons participating in the case, in favor of whom the judicial act was adopted, are recovered by the arbitration court from the side.

Taking into account the results of the consideration of this case, the costs of paying the state fee for the consideration of the claim in the amount of 62,597 rubles, as well as the costs of paying the state fee for considering the appeal in the amount of 3000 rubles. relate to the defendant and are subject to recovery from him in favor of the plaintiff.

Guided by articles of Art. 269 - 271 of the Arbitration Procedure Code of the Russian Federation,

DECIDED:

The decision of the Arbitration Court of the Voronezh Region of July 26, 2019 in the case

No. A14-470 / 2017 regarding the refusal to satisfy the claims, as well as regarding the collection from the joint-stock company "Kvant-Telecom" in favor of the limited liability company "Company" ALS and TEK "35 449 rubles. to cancel legal costs for the payment of state fees.

Collect from the joint-stock company Kvant-Telecom (Voronezh, the entry into the Unified State Register of Legal Entities was made by the MIFNS of Russia for the largest taxpayers in the Voronezh Region on May 18, 2007 for the OGRN 1073667031030, TIN 3662124236) in favor of the limited liability company ALS and TEK (Saratov, entry into the Unified State Register of Legal Entities was made by the Inspectorate of the Ministry of Taxes and Duties of Russia in the Kirovsky District of Saratov on 10.10.2002 for OGRN 1026402661108, TIN 6452045336):

- 3 434 499 rubles. 47 kopecks interest for the use of other people's funds;

- RUB 62,597 court costs for the payment of state fees. Collect from the Kvant-Telecom Joint Stock Company (OGRN

1073667031030, INN 3662124236) in favor of the limited liability company "Company" ALS and TEK "(PSRN 1026402661108, INN 6452045336) 3000 rubles. the cost of paying the state fee for the consideration of the appeal.

The decision comes into legal force from the date of its adoption and can be appealed on cassation to the Arbitration Court of the Central District within two months through the arbitration court of first instance in accordance with Part 1 of Article 275 of the Arbitration Procedure Code of the Russian Federation.

Presiding judge: A.AND. Porotikov

Judges G.N. Korableva

I.V. Ushakova