



**Arbitration court of the Volga district
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RESOLUTION

arbitration court of cassation
Ф06-31920 / 2018

Kazan Case No. A57-233 / 2017
20 February 2020

The operative part of the resolution was announced on February 13, 2020. The full text of the resolution was issued on February 20, 2020.

The Arbitration Court of the Volga District consisting of: the presiding judge Smolenskiy I.N.,

judges Alexandrova V.V., Nagimullina I.R., with the participation of representatives:

plaintiff - Puzyreva E.G. (power of attorney dated 09.24.2019), Demidova I.A. (power of attorney dated 16.12.2019),

defendant - Tatarovich AND.A. (power of attorney dated 01.01.2020), Litvinova N.N. (power of attorney dated 05/17/2018),

third person - N.N. Litvinova (power of attorney dated 25.08.2015),

Having considered in open court the cassation appeal of the joint-stock company firm "SMUR"

on the determination of the Twelfth Arbitration Court of Appeal dated 20.11.2019 in case No. A57-233 / 2017

at the claim of a limited liability company

"Company" ALS and TEK "(PSRN 1026402661108, INN 6452045336)

to the joint-stock company firm "Smur" (OGRN 1023601610878,

TIN 3662020332) on the reclamation of property, a third party: Joint Stock Company "QUANT-TELECOM"

found:

By the effective resolution of the Twelfth Arbitration Court of Appeal dated 13.12.2017, the decision of the Arbitration Court of the Saratov Region dated 31.08.2017 on the present case was canceled, the claims of the limited liability company ALS and TEK Company (hereinafter - the plaintiff, LLC "Company" ALS and TEK ") on the obligation of the joint-stock company firm" SMUR "(hereinafter - the defendant, JSC firm" SMUR ") to return the property under the second stage of contract No. 3 / 12-12 dated 04.09.2012.

In particular, the court of appeal ruled to oblige JSC firm "SMUR" to return to the benefit of LLC "Company" ALS and TEK "four optical fibers in a fiber-optic communication line

"Saratov-Ozinki" in the part of the second stage - optical fibers in the section from Ershov to Saratov: from an optical crossbar in a container on the territory of the RTRS "Saratov ORTPTS" at the address: Saratov region, Ershov, st. Meliorative, 32A to the main distribution coupling MRM28 near the settlement of Pushkino, Sovetsky district, Saratov region, from the distribution main coupling MPM28 near the settlement Pushkino, Sovetsky district, Saratov region. to the optical cross-country in a container on the territory of the Urbakhskiy Kombinat Khleboproduktov Open Joint Stock Company at the address: Saratov Region, Sovetskiy District, Pushkino, st. Zavodskaya, 1a, from the main distribution coupling MRM28 near the village of Pushkino, Sovetsky district, Saratov region. to optical cross-country "VOSTOK" LLC "Company" ALS and TEK ", Saratov, st. B. Kazachya, 6, from the optical crossover "VOSTOK" LLC "Company

"ALS and TEK", Saratov, st. B. Kazachya, 6 to the optical crossover of LLC "Company" ALS and TEK "on the territory of JSC" Integral "at the address: Saratov, st. Chernyshevsky, 153, actually received for temporary use by CJSC firm "SMUR" under the act of acceptance and transfer of property for temporary use of 10.10.2012 in accordance with the terms of the contract

No. 3 / 12-12 purchase and sale of optical fibers and shares in the right of common share ownership in a fiber-optic communication line for the territory of the Voronezh and Saratov regions, concluded on 04.09.2012 between LLC "Company ALS and TEK" and CJSC firm SMUR ".

The defendant appealed to the Twelfth Arbitration Court of Appeal with an application to revise the said decision of 12/13/2017 due to newly discovered circumstances.

By the determination of the Twelfth Arbitration Court of Appeal dated 20.11.2019, the application of JSC firm "SMUR" to reconsider the ruling of the Twelfth Arbitration Court of Appeal dated 13.12.2017 on the basis of newly discovered circumstances was rejected.

In the cassation appeal, the defendant, referring to the violation of the rules of procedural law, the inconsistency of the conclusions of the court of appeal with the actual circumstances of the case, asks to cancel the specified ruling of the Twelfth Arbitration Court of Appeal.

Having checked the legality of the contested judicial act according to the

rules of Chapter 35 of the Arbitration Procedure Code of the Russian Federation, the judicial collegium finds no legal grounds for satisfying the cassation appeal.

As follows from the materials of the case, in support of the application for revising the decision of the Twelfth Arbitration Court of Appeal dated 13.12.2017 on the present case on new circumstances, JSC firm "SMUR" referred to the response of LLC INTEGRAL (out. No. 106 dated 17.09.2019) to the lawyer's a request, according to which, in the period from 10.10.2012 to 22.06.2018 neither ALS and TEK Company LLC, nor MMTS LLC, nor DSPS LLC, nor I.I. Salimov IE, nor QUANTTELECOM JSC, nor JSC firm "SMUR" on any rights, any premises and / or places in the premises of LLC "INTEGRAL" at the address: Saratov, st. Chernyshevsky, 153, for the purpose of creating access to fiber-optic lines and / or placing telecommunication equipment and / or entering and placing any fiber-optic cable in the building for the use of optical fibers, no contracts were provided with the specified persons on the requested subject in the specified the period from 10.10.2012 to 22.06.2018 were not concluded.

The applicant considered that this answer contains information about the newly discovered circumstance - the absence at the time of making

decisions of the Twelfth Arbitration Court of Appeal dated 12/13/2017 in the possession of JSC SMUR of optical fibers in the section from Saratov, Bolshaya Kazachya st., 6 to Saratov, Chernyshevskogo st., 153, due to the lack of "Company" ALS and TEK "access node - optical distribution at the address: Saratov, Chernyshevsky st., 153, the absence of a fiber-optic cable LLC" Company "ALS and TEK" included in the specified optical distribution frame and, accordingly, optical fibers in it, which should have been in the use of the claimant on the basis of contract No. 3 / 12-12 dated 04.09.2012.

The applicant also referred to the forensic technical examination carried out in the framework of the case A14-1036/2017, which established the absence of property subject to transfer under contract No. 3 / 12-12 dated 04.09.2012. At the same time, the applicant indicated that he did not have a procedural opportunity during the examination of case No.A57-233 / 2017 to file a petition for the appointment and conduct of a forensic technical examination. According to the JSC firm "SMUR", the specified conclusion of the technical examination contains conclusions that are newly discovered circumstances for the case.

Refusing to satisfy the application for reconsideration of the court decision due to

newly discovered circumstances, the courts, guided by the provisions of Articles 309, 311 of the Arbitration Procedure Code of the Russian Federation, the explanations set out in the resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated 30.06.2011 No. 52 "On the application of the provisions of the Arbitration procedural Code of the Russian Federation when revising judicial acts for new or newly discovered circumstances ", proceeded from the fact that the circumstances referred to by the defendant do not correspond to the signs of newly discovered circumstances, but are new evidence related to the circumstances already investigated by the court related to the actual transfer of property under contract 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.

The court of cassation considers the conclusions of the court of appeal to be consistent with the factual circumstances of the case and the norms of law.

The arguments of the cassation appeal essentially boil down to a different assessment by the applicant of circumstances that the courts have not recognized as new or newly discovered, and to a different interpretation of the rules of Chapter 37 of the Arbitration Procedure Code of the Russian Federation, which in itself does not indicate a violation by the courts of these rules.

A judicial act cannot be arbitrarily revised in order to rehear the case and make a new decision without the existence of the statutory grounds.

Based on the foregoing and guided by paragraph 1 of part 1 of Article 287, Articles 286, 289, 290 of the Arbitration Procedure Code of the Russian Federation, the Arbitration Court of the Volga District

sentenced:

the determination of the Twelfth Arbitration Court of Appeal dated 20.11.2019 in case No. A57-233 / 2017 shall be left unchanged, the cassation appeal - without satisfaction.

The decision comes into legal force from the date of its adoption and can be appealed to the Judicial Collegium of the Supreme Court of the Russian Federation in the manner and terms established by Articles 291.1.,

291.2. Arbitration Procedure Code of the Russian Federation.

Presiding judge I.N. Smolensk

Judges V.V. Alexandrov

I.R. Nagimullin