



**Arbitration court of the Volga district
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**RESOLUTION
arbitration court of cassation
Φ06-31920 / 2018**

Kazan Case No. A57-233 / 2017

March 20, 2019

The operative part of the resolution was announced on March 14, 2019. The full text of the resolution was prepared on March 20, 2019.

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

judges Koroleva N.N., Galiullina E.R., with the participation of representatives: plaintiff - Puzyreva E.G. by proxy dated 12.11.2018, the defendant - Litvinova N.N. by power of attorney dated 05/17/2018, in the absence of:

third party - duly notified,

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 12.12.2018 in case No. A57-233 / 2017

at the claim of a limited liability company

"Company" ALS and TEK "(INN 6452045336, OGRN 1026402661108) to closed joint-stock company "firm" SMUR "(INN 3662020332, OGRN 1023601610878) on the reclamation of property, a third party: joint-stock company" QUANT-TELECOM ", Voronezh,

FOUND:

limited liability company "Company" ALS and TEK "(hereinafter - the plaintiff, LLC" Company "ALS and TEK") appealed to the Arbitration Court of the Saratov Region, filed a statement of claim, specified in accordance with Article 49 of the Arbitration Procedure Code of the Russian Federation, to a closed joint stock company society "firm

"SMUR" (hereinafter - the defendant, CJSC "firm" SMUR ") on the return (reclamation from someone else's illegal possession) of four optical fibers (gray, white, red, black in an unpainted module) received for temporary use by CJSC" firm "SMUR" according to the act of acceptance and transfer of property dated

10.10.2012 in accordance with the terms of 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, concluded on 04.09.2012 between LLC "Company ALS and TEK" and CJSC "firm SMUR" (The second stage - optical fibers in the section from Ershov to Saratov) in the fiber-optic communication line "Saratov-Ozinki": from the optical crossbar in a container on the territory RTRS "Saratov Regional Broadcasting Center" at the address Saratov region, Ershov, Meliorativnaya str., 32A to the main distribution coupling MRM28 near the village of Pushkino, Sovetsky district, Saratov region, from the distribution main coupling MRM28 near the village of Pushkino, Sovetsky district Saratov kaya region to the optical crossbar in a container on the territory of JSC "Urbakhskiy kombinat khleboproduktov" at the address Saratov region, Sovetskiy district, settlement Pushkino, Zavodskaya str., 1a, from the distribution main coupling MRM28 near the settlement Pushkino, Sovetsky district, Saratov region. to optical cross-country "VOSTOK", Saratov, B. Kazachya st., 6, from optical cross-platform "VOSTOK", Saratov, B. Kazachya st., 6 to optical cross-platform on the territory of JSC

"Integral" at the address Saratov, Chernyshevsky st., 153.

By the decision of the Arbitration Court of the Saratov Region of August 31, 1017, the claims were refused, due to the lack of evidence of the fact that the defendant was in possession and unlawful use of the disputed property, as well as due to the lack of proper and reliable evidence of the transfer of the defendant for temporary use under the act of acceptance -transfer from 10.10.2012 directly to the property that is claimed, the lack of evidence that the property is in the use of the defendant, the lack of identifying signs of the property.

By the decision of the Twelfth Arbitration Court of Appeal dated 13.12.2017, upheld by the decision of the Arbitration Court of the Volga District of 17.05.2018, the decision of the court of first instance was canceled. A new judicial act was adopted, by which the appellate court ordered the defendant to return the disputed property to the plaintiff.

In this case, the court of appeal proceeded from the following: according to the terms of the contract of sale, the company (seller) transfers the property to the firm (buyer) for temporary use until it is paid in accordance with the stages established by the contract; the firm has not denied the fact of acceptance of the disputed property and its use; since, in violation of the terms of this agreement, the buyer did not fulfill the obligation to make a second payment for the acquired property, the seller, by letter dated May 27, 2014 No. 841, terminated the specified agreement unilaterally; the firm did not provide evidence of the return to the seller of the property transferred to it for temporary use; the argument of the company about the discrepancy between the identification data of the claimed property and the actually used is untenable, since, taking into account the specific

characteristics of this property, the discrepancy of the cable brand does not indicate the absence of the disputed property and the arisen legal relations under the purchase and sale agreement; the materials of the case confirmed the absence of disagreements and uncertainties between the parties regarding the subject of the sale and purchase agreement during the period of its execution; after the termination of the sale-purchase agreement, the defendant must return to the plaintiff the received possession and use of the fibers.

The Supreme Court of the Russian Federation found no grounds for reviewing judicial acts.

The defendant filed a request to clarify the ruling of the Twelfth Arbitration Court of Appeal dated December 13, 2017, referring to its ambiguity regarding the identifying features of the optical fibers to be returned and the place where enforcement actions were taken to return them.

By decision of 12.12.2018, the Twelfth Arbitration Court of Appeal refused to satisfy the said application.

In the cassation appeal, CJSC “firm“ SMUR ”asks to cancel the ruling of the court of appeal dated 12.12.2018, citing a violation of procedural law, the discrepancy between the court's findings and the circumstances of the case.

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 board finds no grounds to satisfy the cassation appeal.

In accordance with Article 179 of the Arbitration Procedure Code of the Russian Federation, if the decision is unclear, the arbitration court that made this decision, at the request of the person participating in the case, the bailiff, other bodies executing the decision of the arbitration court, the organization has the right to explain the decision without changing its content.

An explanation of the decision is allowed if it has not been enforced and the time limit has not expired during which the decision can be enforced.

Within the meaning of this provision, the explanation of the judicial act consists in a more complete and clear presentation of those parts of it, the understanding of which causes difficulty. At the same time, the court does not have the right to change its content and cannot touch upon those issues that were not reflected in the judicial act.

Refusing to satisfy the defendant's application for clarification of the judicial act, the court of appeal proceeded from the fact that the decision of 12/13/2017 does not contain any ambiguities and ambiguities that allow for ambiguous interpretation and require clarification in accordance with Article 179 of the Arbitration Procedure Code of the Russian Federation.

The conclusions of the court of appeal correspond to the established circumstances of the case and the norms of procedural law.

The cassation board takes into account the explanations of the claimant that the ruling of the Twelfth Arbitration Court of Appeal dated 12/13/2017 in this case was actually executed, which excludes the possibility of its clarification in accordance with Article 179 of the Arbitration Procedure Code of the Russian Federation.

In addition, the property (4 optical fibers in the fiber-optic communication line on the Saratov-Ershov section of the Saratov-Ozinki fiber-optic communication line) awarded by the Resolution of the Twelfth Arbitration Court of Appeal on 12/13/2017 in case No.A57-233 / 2017 was alienated by the Company Company ALS and TEK "in favor of a third party - LLC Directorate of Communications Enterprises under Construction" under a sale and purchase agreement dated 12.09.2018 No. ALS-DSPS / OB-12092018.

The arguments presented in the cassation appeal represent disagreement with the conclusions of the court, the assessment of the evidence given by the court, and the established factual circumstances of the case, which, in fact, is not a basis for clarifying the judicial act.

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

RULED:

the determination of the Twelfth Arbitration Court of Appeal dated 12.12.2018 in case No. A57-233 / 2017 shall be left unchanged, the cassation appeal - dismissed.

The decision comes into force from the day of its adoption.

Presiding judge I.N. Smolensk

Judges N.N. Queen

E.R. Galiullin