ARBITRATION COURT OF THE SARATOV REGION
410002, Saratov, st. Babushkin Vzvoz, 1; tel / fax: (8452) 98-39-39; http://www.saratov.arbitr.ru; e-mail: info@saratov.arbitr.ru

In the name of the Russian Federation
DECISION

case №A57-23370/2016

Saratov city
April 10, 2018

The operative part of the decision was announced on
April 03, 2018. The full text of the decision was made on
April 10, 2018.

Judge of the Arbitration Court of the Saratov Region E.L. Bolshedvorskaya,
when keeping the minutes of the court session by the secretary of the court session K.O. Neskorozheny,
considered in court at the premises of the arbitration court at the address: Saratov, st.
Babushkin Vzvoz, d. 1 arbitration case on the claim
Joint Stock Company "Quant-Telecom", Voronezh (OGRN 1073667031030, INN 3662124236)
to the limited liability company "Company" ALS and TEK ", Saratov (OGRN 1026402661108, INN 6452045336),
Third parties:
PJSC "VimpelCom", Moscow, JSC firm "SMUR", Voronezh,
o collection of 485 857 rubles. unjust enrichment and 16 972 RUB. 08 kopecks interest for using other people's funds,

on counterclaim
Limited Liability Company "Company" ALS and TEK "to Joint Stock Company" Quant-Telecom "
o collection of rent arrears for the period from 01/01/2014 to 01/12/2014 in the amount of RUB 1,800,000, rent arrears for the period from 12/01/2014 to 03/18/2015 in the amount of RUB 16,200,000, interest for the use of cash funds in the amount of 486,438.50 rubles,

with participation in the meeting:
from the plaintiff: Litvinova N.N., a representative by proxy from 25.08.2015 (before the break), Tatarovich AND.A. representative by power of attorney dated 01.01.2018
from the defendant: Demidov I.A., a representative by power of attorney dated 09/05/2016, Vekozin V.N., a representative by power of attorney from 01.12.2017,
from a third party JSC firm "SMUR" - Litvinova N.N. representative by proxy dated 03/15/2018 (before the break)

found:

The Kvant-Telecom joint-stock company filed a claim to the Arbitration Court of the Saratov Region against the limited liability company “Company

"ALS and TEK" on the recovery of 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.

LLC "Company" ALS and TEK ", in turn, filed a counter statement of claim to recover from JSC" Kvant-Telecom "debt under the lease agreement dated 12.02.2013 No. 21/13 for rent for the period from 01.01.2014 to 12.01 .2014 at the size of 1 800

000 rubles, interest for the use of funds in the amount of 486,438 rubles 50 kopecks.

By a decision of January 30, 2017, upheld by a resolution of the Twelfth Arbitration Court of Appeal dated March 29, 2017, the Arbitration Court of the Saratov Region satisfied the initial claim in the amount of 486,857 rubles. unjust enrichment and 35 601 rubles. 63 kopecks interest for the use of other people's funds, counterclaim - in the amount of 1,800,000 rubles. debt and 372,008 rubles. 24 kopecks interest for the use of other people's funds, the rest of the counterclaim was denied; offset counter claims in the order of part 5 of Article 170 of the APC RF, as a result of which recovered from the plaintiff 1 670 202 RUB. 33 kopecks

By the decision of the Arbitration Court of the Volga District of June 15, 2017 in case No.A57-23370 / 2016, the decision of the Arbitration Court of the Saratov Region of January 30, 2017 and the ruling of the Twelfth Arbitration Court of Appeal dated March 29, 2017 were canceled, the case was sent for 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 Arbitration Procedure Code of the Russian Federation and asks to collect the rent arrears for the period from 01.01.2014 to 12.01.2014 in the amount of 1,800,000 rubles.

rent for the period from 01.12.2014 to 18.03.2015 in the amount of 16,200,000 rubles, interest on the use of funds in the amount of 486,438.50 rubles.

At the court session, Kvant-Telecom JSC received a petition to postpone the court session in connection with the filing of an appeal against the ruling of the Arbitration Court of the Saratov Region to refuse to satisfy the request of Kvant-Telecom JSC to involve in the case as a third party, does not declare independent claims regarding the subject of the dispute between the Office of the Federal Service for Supervision in the Sphere of Communications, Information Technology and Mass Communications in the Saratov Region, and the Office of the Federal Service for Supervision in the Sphere of Communications, Information Technology and Mass Communications in the Voronezh Region.

According to the provisions of Article 51 of the Arbitration Procedure Code of the Russian Federation, third parties who do not declare independent claims regarding the subject of the dispute may intervene on the side of the plaintiff or the defendant before the adoption of the judicial act, which ends the consideration of the case in the first instance of the arbitration court, if this judicial act may affect them rights or obligations towards one of the parties. They can be involved in the case also at the request of a party or at the initiative of the court.

The arbitration court shall issue a ruling on the entry into the case of a third party who does not declare independent claims regarding the subject of the dispute, or on the involvement of a third party in the case or on refusal to do so.

The ruling on the refusal to intervene in the case of a third party who does not declare independent claims regarding the subject of the dispute may be appealed by the person who submitted the relevant petition, within a period not exceeding ten days from the date of this ruling, to the arbitration court of the appellate instance.

Consequently, only the ruling on the refusal to intervene in the case of a third person who independently filed a corresponding petition is subject to appeal.

As follows from the legal position set out in clause 6.1 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated May 28, 2009 N 36 (as amended on November 10, 2011) "On the application of the Arbitration Procedure Code of the Russian Federation when considering cases in an arbitration court of appeal", a ruling on refusal of the entry into the case of a third party who does not declare independent claims regarding the subject of the dispute may be appealed within a period not exceeding ten days from the date of their issuance to the court of appeal.

Taking into account the consequences of considering an appeal against the said ruling, in the event of filing an appeal against such a ruling, the arbitration courts should postpone the consideration of the case pending consideration of the appeal against the said ruling (Part 5 of Article 158 of the APC RF).

Since the ruling on the refusal to involve a third party in the case is not subject to appeal, there are no grounds for postponing the court hearing due to the filing of a relevant complaint.

The representative of Kvant-Telecom JSC in the court session supported the stated requirements in full, objected to the satisfaction of counterclaims.

The representative of LLC "Company" ALS and TEK "objected to the satisfaction of the initial requirements, supported counterclaims.

The rest of the persons, duly notified, did not appear at the hearing. The court considers that all measures to notify the persons involved in the case have been taken.

By virtue of the provisions of Article 156 of the Arbitration Procedure Code of the Russian Federation, the arbitration court considers it possible to consider the case in the absence of third parties duly notified in accordance with the current legislation.

The case is considered in the order of Articles 153-166 of the Arbitration Procedure Code of the Russian Federation. There are no applications in accordance with Articles 24, 47, 48, 49 of the Arbitration Procedure Code of the Russian Federation.

In accordance with 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 arbitration court is presented with evidence that meets the requirements of Articles 67, 68, 75 of the Arbitration Procedure Code of the Russian Federation.

In accordance with Article 71 of the Arbitration Procedure Code of the Russian Federation, the arbitration court evaluates the evidence according to its inner conviction, based on a comprehensive, complete, objective and direct study of the evidence available in the case.

The arbitration court considers the case on the basis of the evidence in the case.

After listening to the representatives of the parties, examining the evidence, following the principle of the adversarial nature of the parties enshrined in Article 9 of the Arbitration Procedure Code of the Russian Federation, as well as Article 123 of the Constitution of the Russian Federation, the court comes to the following conclusions.

As follows from the materials of the case, 12.02.2013. between LLC “Company“ ALS and TEK ”(lessor) and CJSC“ Quant-Telecom ”, now called JSC“ Kvant-Telecom ”(lessee), a lease agreement No. 21/13 (hereinafter referred to as the agreement) was concluded, in accordance with the terms , which the lessor provided to the lessee for temporary use: - two optical fibers in a fiber-optic communication line (FOCL) at the RTRS Voronezh ORTPTS section in Tellermanovsky settlement, Gribanovsky district, Voronezh region. - Saratov, Saratov region, st. B.Kazachya, 6 in the indicated areas of regeneration; - points of connection of fixed optical cables from the lessee's equipment to the terminal distribution equipment (crosses) of the lessor at the ends of the section provided by Fibers, and the lessee undertakes to accept the fibers and pay the rent for using the fibers in the amount and terms established by this agreement.

The leased property was transferred by the lessor to the lessee according to the acceptance certificate dated 12.02.2013.

According to clauses 2.1 - 2.2 of the agreement, a lump sum payment for leasing fibers is 40,000 rubles, including VAT (18%) - 7,200 rubles, the monthly rent under this agreement is 4,500,000 rubles, including VAT (18 %) - 686 440 rubles 62 kopecks.

In accordance with section 3 of the agreement, it comes into force from the moment of its signing by both parties and is valid until 12.01.2014. inclusive. If none of the parties announced its termination 30 days before the date of completion of this agreement, then the validity of this agreement is automatically extended for every subsequent 11 calendar months.

The lessee's failure to fulfill his obligations to pay the rent was the basis for the appeal of LLC

"Company" ALS and TEK "to the arbitration court of the Voronezh region for its collection in court.

By the decisions of the Arbitration Court of the Voronezh Region that entered into force with JSC Kvant-Telecom in favor of LLC Company ALS and TEK on the basis of a lease agreement dated 12.02.2013 No. 21/13, the following were collected:
- in case No. A14-7412 / 2015 - interest for the use of other people's funds for the period from June 27, 2014 to December 29, 2014 in the amount of 473,389 rubles, state duty in the amount of 12,468 rubles;
- in case No. A14-49 / 2015 - rent arrears for the periods from 01/13/2014 to 01/31/2014, from 02/01/2014 to 11/30/2014 in the amount of 47,213,443 rubles 37 kopecks, a penalty in the amount of 336,060 rubles and expenses state duty in the amount of 200,000 rubles;
- in case No.A14-4846 / 2014 - rent arrears for the period from 01.10.2013 to 31.12.2013 in the amount of 11 350,000 rubles, a penalty for the period from 02.10.2013 to 26.06.2014 in amount of 270,070 rubles.
JSC "Kvant-Telecom", referring to the circumstances of occurrence on the side of LLC

"The company" ALS and TEK "of unjust enrichment in the amount of 485,857 rubles due to the simultaneous execution of the decision of the Arbitration Court of the Voronezh Region in case No. A14-7412 / 2015 on a voluntary basis on payment orders dated 03.21.2016

No. 1657, No. 1658 and writing off PJSC Sberbank of Russia from its account in the amount of

485 857 rubles on a collection order dated 06.04.2016 No. 258497 on the basis of a writ of execution from 21.03.2016 series FS No. 007378846 on this case presented by LLC Company ALS and TEK on this case, filed this initial statement of claim.

LLC "Company" ALS and TEK ", in turn, indicating that the lessee has arrears on rent for the period from 01.01.2014 to 12.01.2014 in the amount of 1,800,000 rubles, as well as for the period from 01.12.2014 to 03/18/2015 in the amount of 16,200,000 rubles. filed a counterclaim.

At the same time, objecting to the satisfaction of the initial requirements, LLC

"The company" ALS and TEK "indicates that when considering case No. A14-49 / 2015, initiated by the Arbitration Court of the Voronezh Region by proceedings at the suit of LLC

"Company" ALS and TEK "to JSC" Quant-Telecom "on the recovery of 47,700,000 rubles. debt under a lease agreement and 366,060 rubles. forfeit, the defendant made a set-off for the amount of unjust enrichment - 485 857 RUB. 63 kopecks and reduced the claims to 47,213,443 rubles. 37 kopecks. debt recovered by the decision of the Arbitration Court of the Voronezh Region in the specified case.

In accordance with paragraph 1 of Art. 407 of the Civil Code of the Russian Federation, obligations are terminated in whole or in part on the grounds provided for by the Code, other laws, other legal acts or an agreement.

According to article 410 of the Civil Code of the Russian Federation, the obligation is terminated in full or in part by offsetting a counter-homogeneous claim, the period of which has come or the period of which is not specified or is determined by the moment of demand. In the cases stipulated by law, it is allowed to set off a counter homogeneous claim, the term of which has not come. A statement by one party is sufficient for offset.

At the same time, according to part 1 of Article 49 of the Arbitration Procedure Code of the Russian Federation, the plaintiff has the right, when considering a case in an arbitration court of first instance, before

the adoption of a judicial act, which ends the consideration of the case on the merits, to change the basis or subject of the claim, increase or decrease the amount of claims.

Within the framework of case No. A14-49 / 2015, the reduction of the amount of claims by LLC “Company ALS and TEK” by the amount of unjust enrichment of 485,857 rubles. 63 kopecks could bear the entire scope of legal consequences for the defendant only if it was possible to qualify the specified procedural action as a basis for terminating the obligation to return unjust enrichment.

According to the explanations set forth in clause 4 of the Information Letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated December 29, 2001 N 65 "Review of the practice of resolving disputes related to the termination of obligations by offsetting counter-homogeneous claims", in order to terminate the obligation by offset, the offset application must be received by the relevant party.

To terminate the claim by offset, a statement of offset by at least one of the parties and receipt of such a statement by the other are required. The specified statement must reflect the intention of the party to offset and terminate the obligations in the relevant part.

As follows from the case materials, LLC "Company" ALS and TEK "by letter dated 09/14/2017

No. 1071 informed JSC Kvant-Telecom about the offset of the amount of money debited by PJSC Sberbank of Russia from the account of JSC Kvant-Telecom under the collection order dated 06.04.2016 No. 258497 by reducing the amount of claims in the framework of case No. A14-49 / 2015.

In addition, in the ruling of the Arbitration Court of the Volga District dated 06.22. In the present case, it is noted that the court, during the initial consideration of the case, had no grounds for rejecting the objections of LLC "Company" ALS and TEK "that when considering case No. ALS and TEK Company to JSC Kvant-Telecom on the recovery of 47,700,000 rubles. debt under a lease agreement and 366,060 rubles. forfeit, the defendant made a set-off for the amount of unjust enrichment - 485 857 RUB. 63 kopecks and reduced the claims to 47,213,443 rubles. 37 kopecks. debt recovered by the decision of the Arbitration Court of the Voronezh Region in the specified case.

In accordance with Chapter 60 of the Civil Code of the Russian Federation (hereinafter referred to as the Code), obligations from unjust enrichment arise when one person is enriched at the expense of another, if such enrichment occurs in the absence of legal grounds for this or their subsequent disappearance.

By virtue of paragraph 1 of Article 1102 of the Code, a person who, without the grounds established by law, other legal acts or a transaction, has acquired or saved property (acquirer) at the expense of another person (victim) is obliged to return to the latter the property acquired or saved unjustly (unjust enrichment).

In accordance with the requirements of Art. Art. 65, 66 of the APC RF the parties provide evidence to substantiate their arguments and objections to the claim.

Thus, the court concludes that ALS and TEK Company LLC had an unjustified enrichment in the amount written off by Sberbank of Russia PJSC from the account of Kvant-Telecom JSC on collection order No. 258497 dated 06.04.2016. Meanwhile, in view of the offset made, the specified obligation was terminated by reducing the claims in the consideration of case No. A14-49 / 2015.

Consequently, there are no grounds for satisfying the claims of Kvant-Telecom JSC.

- With regard to counterclaims, the court comes to the following conclusions.
- From the provisions of Articles 309, 310 of the Civil Code of the Russian Federation (hereinafter - the Civil Code of the Russian Federation) on obligations, Article 606 of the Civil Code of the Russian Federation, part 1 of Articles 614, 622 of the Civil Code of the Russian Federation on a lease agreement, Articles 407, part 1 of Article 408 of the Civil Code of the Russian Federation, it follows that the tenant is obliged make timely payments for the use of property (rent). The procedure, conditions and terms for making the rent are determined by the lease agreement. Upon termination of the lease, the lessee is obliged to return the property to the lessor in the condition in which he received it, taking into account normal wear and tear or in the condition stipulated by the contract.
- Termination of an obligation at the request of one of the parties is allowed only in the cases provided for by law or contract. Obligations are terminated by proper performance.

- According to the legal position of the Presidium of the Supreme Arbitration Court of the Russian Federation, set out in paragraph 38 of the Information letter dated January 11, 2002 N 66 "Review of the practice of resolving disputes related to rent", the termination of the lease agreement does not in itself entail the termination of the obligation to pay rent, it will terminated by proper performance by the lessee of the obligation to return the property to the lessor.
- In accordance with Article 655 of the Civil Code of the Russian Federation, the proper evidence of the return of the leased property is the act of acceptance and transfer, signed in the prescribed manner by the parties to the lease agreement.
- According to article 307 of the Civil Code of the Russian Federation, by virtue of obligations, one person is obliged to perform certain actions in favor of another person. In accordance with Articles 309, 310 of the Civil Code of the Russian Federation, obligations must be performed properly in accordance with the conditions
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- obligations and requirements of the law, unilateral refusal to fulfill obligations is not allowed.
- As the plaintiff in the counterclaim points out, the defendant did not properly fulfill its obligations to pay for the leased property, as a result of which he had arrears in rent for the disputable periods, which served as the basis for the plaintiff's appeal to the arbitration court with this counterclaim.
- Opposing the satisfaction of counterclaims, Kvant-Telecom JSC indicates the following:
- On November 22, 2013, Kvant-Telecom CJSC sent the plaintiff a registered letter with notification and a list of investments No. 6312/13 on the refusal to prolong and terminate the lease agreement dated February 12, 2013 No. 21/13. The actual actions of Kvant-Telecom CJSC indicated an unwillingness to prolong the controversial agreement.

- 02/05/2014 the defendant sent a notice to the plaintiff to terminate the contract for the provision of a complex of resources to ensure the functioning of technological equipment from 09/10/2012.

- 08.10.2014 the defendant to the plaintiff re-sent the act of return of property under the controversial agreement.

By the effective decision of the Arbitration Court of the Voronezh Region dated April 19, 2016 in case No. A14-49 / 2015, from the joint-stock company Kvant-Telecom in favor of the limited liability company ALS and TEK, a pledge was recovered from the lease agreement No. 21 dated February 12, 2013 / 13 for the period from 13.10.2014 to 30.11.2014 in the amount of 47,213,443.37 rubles; forfeit in the amount of RUB 336,060

During the consideration of this case, the court demanded a scanned copy of this ref. From the materials of case No. A14-4846 / 2014. N 6312/13 of 11/22/2013, according to the content of which it was announced the termination of the lease agreement N 21/13 of 02/12/2013 from 01/13/2014 without information about the direction and attachment of acts of return of the leased property.

The court concluded that since the original letter ref. 6312/13 of 11/22/2013 by the defendant was not presented, copies of this letter are not identical, the evidence provided is not reliable confirmation of the lessee's application to terminate the lease relationship and the direction of acts of return of the transferred property in accordance with the terms of contract No. 21/13 of 02/12/2013.

Within the framework of this case, the defendant in the counterclaim also did not present the original letter ref. 6312/13 dated November 22, 2013, in this connection, the court has no grounds for stating other conclusions in relation to this document than those set forth in the decision of the Arbitration Court of the Voronezh Region dated April 19, 2016 in case No. A14-49 / 2015.

The court in the framework of case No. A14-49 / 2015 also assessed the letter ref. N 4312/14 dated 24.10.2014, in which the defendant informed about a notification previously sent to the plaintiff about the refusal to prolong the lease agreement N 21/13 dated 12.02.2013. and directed acts of return of property; letter ref. N 4145/14 dated 08.10.2014, according to which the address of LLC

“The ALS and TEK company has sent two copies of the act dated 13.01.2014, signed by Kvant-Telecom CJSC. return of property under contract N 21/13 dated 12.02.2013.

As noted by the court, the plaintiff's response to the letter ref. 1169/14 dated 20.01.2014 on the admission of employees of CJSC Kvant-Telecom to facilities for the purpose of switching technological equipment to optical fibers owned by CJSC firm SMUR cannot serve as indisputable proof that the tenant was deprived of the opportunity to use leased communication lines ...

At the same time, the controversial agreement was recognized by the court in the framework of the case No. 21/13 of 12.02.2013, in force from 13.10.2014. until 30.11.2014

As indicated above, in accordance with section 3 of the agreement, it comes into force from the moment it is signed by both parties and is valid until 12.01.2014. inclusive. If none of the parties announced its termination 30 days before the date of completion of this agreement, then the validity of this agreement is automatically extended for every subsequent 11 calendar months.

As follows from the conclusions set out in the decision of the Arbitration Court of the Voronezh Region of 04/19/2016 in case No. A14-49 / 2015, which entered into legal force, as well as the materials of this case, the disputed agreement was extended for 11 months after the end of the initial period, that is until 12.12.2014.

Based on the foregoing, the court concludes that the counter claims of the limited liability company "Company" ALS and TEK "for the collection of debt on rent for the period from 01.01.2014 to 12.01.2014 in the amount of 1,800,000 rubles. are subject to satisfaction.

At the same time, the court rejects the argument of the defendant in the counterclaim of Kvant-Telecom JSC that the disputed property was not actually transferred to the lessee, since this circumstance is refuted by the conclusions set forth in the decision of the Arbitration Court of the Voronezh Region of 19.04.2016 on the case No. A14-49 / 2015, which recovered the debt on rent from the defendant under the same lease agreement.

Meanwhile, the court concludes that LLC “Company“ ALS and TEK ”did not provide adequate evidence of the extension of the disputed agreement after 12.12.2014.

Thus, Kvant-Telecom CJSC sent the following documents to the ALS and TEK Company LLC: letter dated 08.10.2014 No. 4145/14 on the direction of the property return certificate; letter dated 24.10.2014 No. 4312/14 with a message that the company had previously sent the lessor a notice of refusal to extend the contract and that earlier acts of return of property were sent; letter dated 28.11.2014 No. 4488/2014 with a message that a notice of refusal to prolong the controversial agreement was previously sent.
At the same time, receipt of a letter dated November 28, 2014 No. 4488/2014 by LLC "Company" ALS and TEK "is confirmed by a reply letter dated October 17, 2014 No. 1638, in which the company indicates that the acts of return of property have not been received.
At the same time, the court qualifies the letter of Kvant-Telecom CJSC dated November 28, 2014 No. 4488/2014 as clearly expressing the will of the company to refuse to prolong the controversial agreement for a new term.
Thus, regardless of the actual direction of the earlier notification of the refusal to prolong the controversial contract, the will of Kvant-Telecom CJSC to terminate the civil relations arising under the controversial contract should have been obvious to LLC ALS and TEK Company based on this letter ...
According to part 1 of article 610 of the Civil Code of the Russian Federation, a lease agreement is concluded for a period specified in the agreement.
Due to the fact that after the expiration of the sublease agreement, the lessee objected to the use of the leased item, on the basis of paragraph 1 of Article 610 of the Civil Code of the Russian Federation, this agreement terminated due to its expiration from 12.12.2014.
In accordance with Articles 1 and 10 of the Civil Code, when establishing, exercising and protecting civil rights and performing civil duties, participants in civil legal relations must act in good faith. The exercise of civil rights solely with the intention of causing harm to another person, actions bypassing the law for an unlawful purpose, as well as other knowingly unfair exercise of civil rights (abuse of law) are not allowed. In case of non-compliance with the requirements provided for in paragraph 1 of this article, the court, arbitration court or arbitration court, taking into account the nature and consequences of the abuse committed, refuses the person to protect his right in whole or in part, and also applies other measures provided for by law (paragraph 2 of Article 10 of the Civil Code).

After evaluating the evidence presented in the case materials, the court concludes that LLC "Company ALS and TEK", repeatedly receiving letters from the defendant, containing an explicit declaration of will about the non-extension of the disputed agreement and the return of property, acted in bad faith, actually refusing on formal grounds to commit actions aimed at exercising the tenant's right to refuse to extend the term of the lease agreement and return the leased property.

In accordance with clause 37 of the information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated January 11, 2002 N 66 "Review of the practice of resolving disputes related to rent", the lessor is not entitled to demand from the tenant rent for the period of delay in returning the property due to the termination of the contract in the event if the landlord himself avoided accepting the leased property.

Based on the foregoing, the court concludes that the rent is subject to collection until the end of the disputed agreement, namely, until 12.12.2014.

Thus, regarding the period declared by the plaintiff, the claims are subject to satisfaction for the period from 01.12.2014 to 12.12.2014 in the amount of 1,800,000 rubles.

According to clause 1 of Article 395 of the Civil Code of the Russian Federation, for the use of other people's funds due to their unlawful withholding, evasion of their return, other delay in their payment, or unjustified receipt or savings at the expense of another person, interest on the amount of these funds is subject to payment.

The amount of interest is determined by the existing in the place of residence of the creditor, and

if the creditor is a legal entity, in the place of its location by the discount rate of the bank interest on the day of the fulfillment of the monetary obligation or its corresponding part. When collecting a debt in court, the court may satisfy the creditor's claim based on the discount rate of the bank interest on the day the claim is filed or on the day the decision is made. These rules apply unless a different interest rate is established by law or contract.

From 01.06.2015, in accordance with clause 1 of Article 395 of the Civil Code of the Russian Federation as amended by Federal Law of 08.03.2015 N 42-FZ, the amount of interest is determined by the existing in the place of residence of the creditor or, if the creditor is a legal entity, in the place of its location, published The Bank of Russia and the average rates of bank interest on deposits of individuals that took place in the corresponding periods.

According to Article 2 of Federal Law No. 42-FZ of 08.03.2015, this Law shall enter into force on June 1, 2015. Provisions of the Civil Code of the Russian Federation (as amended by

of this Federal Law) apply to legal relations arising after the date of its entry into force.

With regard 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) apply to those rights and obligations that arise after the date of its entry into force.

The right to collect interest for the use of other people's funds due to their unlawful withholding, evasion of their return, other delay in their payment, or unjustified receipt or savings at the expense of another person in accordance with Article 395 of the Civil Code of the Russian Federation arises as a result of the occurrence of a corresponding delay, and not since the conclusion of the contract. Since interest is charged for each day of delay (paragraph 3 of Article 395 of the Civil Code of the Russian Federation), and the violation of the obligation to pay is a continuing violation, the requirement to bring the debtor to the property liability established by law must be carried out on the basis of the norms in force on the day of the violation.

Average rate of bank interest on deposits of individuals - the rate of interest when paying interest for the use of someone else's money due to their unlawful withholding, evasion of their return, other delay in their payment, or unjustified receipt or savings at the expense of another person.

Changes were introduced by Federal Law No. 42-ФЗ dated 08.03.2015 "On Amendments to Part One of the Civil Code of the Russian Federation".

Thus, starting from June 1, 2015, when calculating interest for late payment, the refinancing rate of the Bank of Russia should be applied, the lender should take into account the average bank interest rates on deposits of individuals published on the official website of the Bank of Russia by federal districts.

In addition, according to Part 4 of Art. 395 of the Civil Code of the Russian Federation, in the case when the agreement of the parties provides for a penalty for non-fulfillment or improper fulfillment of a monetary obligation, the interest provided for in this article shall not be subject to collection, unless otherwise provided by law or contract.

At the same time, in accordance with the legal position set forth in paragraph 6 of Section II of the "Review of Judicial Practice of the Supreme Court of the Russian Federation N 4", approved by the Presidium of the Supreme Court of the Russian Federation on 20.12.2016, the Regulation of paragraph 4 of Art. 395 of the Civil Code of the Russian Federation as amended by Federal Law No. 42-FZ of March 8, 2015 "On Amendments to Part One of the Civil Code of the Russian Federation" shall not be applied to contracts concluded before June 1, 2015.

The court calculated the interest under Art. 395 of the Civil Code of the Russian Federation.

The court concluded that interest for the use of other people's funds in the amount of RUB 372,008

should be collected. 24 kopecks

The rest of the counterclaims are not subject to satisfaction. Guided by Articles 110, 167-171 of the Arbitration Procedure Code Russian Federation, arbitration court,

DECIDED:

In satisfaction of claims of JSC "QUANT-TELECOM" - to refuse, counter claims - to partially satisfy.

To collect from the joint-stock company "QUANT-TELECOM" in favor of the limited liability company "ALS and TEK" the debt under the lease agreement No. 21/13 dated 12.02.2013 for rent for the period from 01.01.2014 to 12.01.2014 in in the amount of 1 800,000 rubles, for the period from 01.12.2014 to 12.12.2014. in the amount of 1,800,000 rubles., interest for the use of funds in the amount of 372,008.24 rubles.

The rest of the counterclaims should be denied.

To collect from JSC "QUANT-TELECOM" in favor of LLC "ALS and TEK" the state duty in the amount of 24 802 rubles.

The decision of the arbitration court shall enter into legal force upon the expiration of one month from the date of its adoption, unless an appeal is filed.

The decision can be appealed to the Twelfth Arbitration Court of Appeal within one month from the date of making the decision in full, through the Arbitration Court of the Saratov Region.

Send copies of the decision of the arbitration court to the persons participating in the case, in accordance with the requirements of Article 177 of the Arbitration Procedure Code of the Russian Federation.

It is explained to the persons participating in the case that information about the judicial acts adopted in the case is posted on the official website of the Arbitration Court of the Saratov Region

- http://www.saratov.arbitr.ru and in information kiosks located in the building of the arbitration court.

Arbitration judge

Saratov region E.L. Bolshedvorskaya