

COMMERCIAL COURT OF THE REPUBLIC OF TATARSTAN

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In the name of the Russian Federation JUDGEMENT

Kazan

Case No. A65-26689/2007-SG3-25

Public reading of substantive part of the judgement on 13 November 2007.
Judgement in full prepared on 16 November 2007.

Commercial Court of the Republic of Tatarstan composed of Chairing Judge I. S. Salimzyanov, having considered in open court session the case involving the claim of Grand Aktiv Limited Liability Company, Novochoerkassk, Rostov Region, against Pluton Limited Liability Company, Kazan and against Parfenion Limited Liability Company, Moscow, to collect 17,100,000 rubles of debt,

Involving representatives:

On behalf of the Plaintiff – A. A. Pavlov, Power of Attorney of 12.11.2007,

On behalf of 1st Defendant – V. A. Markelov, Director, Resolution of 26.06.2007,

On behalf of 2nd Defendant – V. A. Markelov, CEO, USRLE excerpt,

F o u n d :

Grand Aktiv Limited Liability Company, Novochoerkassk, Rostov Region, filed a claim with the Republic of Tatarstan Commercial Court against Pluton Limited Liability Company, Kazan and Parfenion Limited Liability Company, Moscow, to collect 17,100,000 rubles of debt.

Prior to hearing the case on its merits, the Plaintiff moved to increase the amount of the claim to 13,880,521,978 rubles pursuant to Article 49 of the Commercial Procedure Code of the Russian Federation. As an increase in the amount of the claim constitutes a Plaintiff's right, it was granted by the court.

Failure to fulfil obligations by the Defendants under the Agreement on Termination of Delivery Agreement and the Surety Agreement to it constitute the grounds for the claim.

Prior to hearing the case on its merits, the court studied the issue of jurisdiction of the Republic of Tatarstan Commercial Court over the dispute pursuant to the judicial decree of 26.10.2007 on initiating proceedings in the case. Whereat, the court found that the claim was filed against Co-Defendants on the basis of the Agreement on Termination of Delivery Agreement and the Surety Agreement to it. Said transactions have no terms on contractual jurisdiction; therefore the case jurisdiction is governed by general rules provided for by Articles 34-36 of the Commercial Procedure Code of the Russian Federation. According to Article 36 paragraph 2 of the Commercial Procedure Code of the Russian Federation, a claim against Defendants located or residing on the territory of different constituent entities of the Russian Federation shall be filed with the Commercial Court at location or place of residence of one of the Defendants at the discretion of the Plaintiff. On the basis of the above, the claim filed by the Plaintiff

at the location of the First Defendant is lawful and the dispute shall be heard on its merits.

At the court session the representative of the Plaintiff upheld the claim.

Pluton Limited Liability Company, hereinafter – the First Defendant, submitted a response, admitting the claim.

Having studied the case file, the court reached a conclusion, granting the claim on the following grounds.

It follows from the case file that the Second Defendant and the Plaintiff entered into the Securities Delivery Agreement No. 2-05/46/A of 19.09.2005, according to which, on the basis of the Amendment Agreement No. 1 of 19.09.2005 it undertook to transfer to the Plaintiff 72,676,695 regular registered shares of Gazprom OJSC. Due to failure to fulfil its obligations by the Second Defendant, said Agreement was terminated on 14.08.2006. When terminating the Amendment Agreement to the Securities Delivery Agreement, the parties established that the Plaintiff incurred losses in the amount of 13,880,521,978 rubles due to the rise in price of the shares of Gazprom CJSC on the stock market. The difference in price of securities as of 19.09.2005 and as of 14.08.2006 is confirmed by letters reference No. 316 and 317 of 12.11.2007 of the Saint Petersburg Stock Exchange Non-profit

Partnership. The ownership of 72,676,695 regular registered shares of Gazprom OJCS by the Second Defendant is confirmed by statement No. 72211 for securities account No. 679555 at the Regional Depository No. 835 of the Depository Operations Administration of Gazprombank JSB.

The First Defendant is the sole shareholder of the Second Defendant, who is the contractual party with the Plaintiff under the Securities Delivery Agreement. For the purpose of guaranteeing the property rights of the Plaintiff under Agreement of 14.08.2006, a Surety Agreement was entered into by the Plaintiff, the First and the Second Defendant, under which the First Defendant should have been liable to the Plaintiff for due fulfilment of obligations by the Second Defendant under the Agreement of 14.08.2006.

Thus, according to the Agreement of 14.08.2006, the parties established the liability of the Second Defendant to the Plaintiff for payment of 13,880,521,978 rubles. According to Article 309 of the Civil Code of the Russian Federation, the obligations shall be duly discharged in compliance with the terms of the obligations and the requirements of laws and other regulations, and in the absence of such terms and requirements – in compliance with business practices or other customary requirements.

According to Article 329 of the Civil Code of the Russian Federation, discharge of obligations may be guaranteed by surety, whereat, according to Article 363 of the Civil Code of the Russian Federation, in case of failure to fulfil or undue fulfilment by the debtor of obligations guaranteed by surety, the guarantor and the debtor shall be liable to the creditor jointly, unless subsidiary liability of the guarantor has been provided for by law or by the agreement. According to said law, the guarantor shall be liable to the creditor for the same amount as the debtor including payment of interest, reimbursement of court expenses for collection of debt, and other losses of the creditor caused by failure to fulfil or undue fulfilment of obligations by the debtor, unless otherwise provided for by the surety agreement.

Co-Defendants do not dispute failure to fulfil contractual obligations and admit the claim in full.

According to Article 49 of the Commercial Procedure Code of the Russian Federation, the court shall accept the admission of claim by a Defendant if it does not contradict the law and does not violate the rights of others. As in this case the admission of claim by the Defendants in the case does not contradict the law nor it violates the rights of others,

it is subject to acceptance by the court. Pursuant to Article 170 paragraph 4 of the Commercial Procedure Code of the Russian Federation, in the event of admission of the claim by the Defendant, the reasons for judgement may only include the admission of the claim by the Defendant and its acceptance by the court.

According to Article 110 of the Commercial Procedure Code of the Russian Federation, the court fee shall be borne by the Defendants equally.

On the basis of the above and pursuant to Articles 110, 112, and 167-171 of the Commercial Procedure Code of the Russian Federation, the Commercial Court

JUDGED:

To grant the claim.

To collect from Pluton Limited Liability Company, Kazan, and Parfenion Limited Liability Company, Moscow, 13,880,521,978 rubles jointly in favor of Grand Aktiv Limited Liability Company, Novochoerkassk, Rostov Region.

To collect from Pluton Limited Liability Company, Kazan, 50,000 rubles in court fees in favor of Grand Aktiv Limited Liability Company, Novochoerkassk, Rostov Region.

To collect from Parfenion Limited Liability Company, Moscow, 50,000 rubles in court fees in favor of Grand Aktiv Limited Liability Company, Novochoerkassk, Rostov Region.

To issue enforcement orders after the judgement takes legal effect.

The judgement may be appealed within one month.

Judge

I. S. Salimzyanov