Appendix P: Petition for Supervisory Protest

Letter head of Ryazan'chai

Date and number of letter

Chair of the Higher Arbitrazh Court
of the RF V. F. Yakovlev

Case No. 259/99

Petitioner (Respondent)
OAO "Ryazan'chai"
[address]

Plaintiff
GP "KF Pishchepromsir'yo"
[address]

PETITION

On the bringing of a protest and the suspension of execution of the decree of the Arbitrazh Court of Ryazan Oblast of 16/09/98 in Case No. 1-1496-98/C-9

By a decision of the Arbitrazh Court of Ryazan Oblast of 22/07/98, 551,529.96 rubles in underlying debt and 3,400,162.02 rubles in interest for the use of the money[1] were exacted from the respondent (OAO "Ryazan'chai") to the benefit of the plaintiff (GP KF Pishchepromsir'yo, under Article 395 of the Civil Code of the RF.

By a decree of the appellate instance of the same court of 16/09/98, the stated decision was changed, and specifically 551,529.96 rubles in underlying debt and 1,645,808.45 rubles in interest for the use of someone else's money was exacted to the benefit of the plaintiff under Article 395 of the Civil Code of the RF.

The cassational instance of the Federal Arbitrazh Court for the Central Circuit left the above-stated decree without change.

By a letter of 26/02/99 in Case No. 259/99, a Deputy Chair of the Higher Arbitrazh Court of the RF left without satisfaction the petition of OAO "Ryazan'chai" concerning the bringing of a protest.

By a letter of 28/06/99 in Case No. 259/99, the first Deputy Chair of the Higher Arbitrazh Court of the RF informed [the petitioner] of the absence of a basis for the bringing of a protest.

[1] Literally "interest for the use of someone else's money" — this is statutory interest applied where an obligation has not been met on time -Trans/Auth

I believe that the court instances did not fully examine circumstances having significance for the resolution of the case in its substance, which in its turn led to the issuance of court acts which are without basis and which violate the norms of substantive law.

On 21/04/93, a contract was concluded between the plaintiff and the respondent "On the provision of middleman services in the acquisition of imported raw tea", No. 6006-06/230-69. In accordance with the conditions of the contract (points 1, 3 and 6), GP "KF Pishchepromsir'yo" was obligated to provide to OAO "Ryazan'chai" middleman services in the acquisition of imported raw tea and to participate in the settlements between the foreign trade organizations and OAO "Ryazan'chai" concerning transport operations, for which the firm would take a mark-up in the amount of one percent of the value (issue price) of the product shipped, which would be stated in a copy of the demand for payment on account sent by post in a separate line.

On the basis of an account from VAO "Soyuzplodoimport" of 31/03/94 N. 20023, the plaintiff sent to the address of the respondent Tranzit a payment document of 11/04/94, No. 127, in the amount of 1,267,450.57 rubles. The value of the raw tea was 12,223,281.60 rubles. The mark-up (in accordance with point 6 of the Contract) was stated in the account on a separate line and consisted of 1% of the value of the raw tea, in the sum of 12,232.81 rubles.

In account No. 127, VAO "Soyuzplodoimport" is named as the shipper, there is a reference to the contract of 13/01/94 No. 6006/06-30-02 concluded between "Soyuzplodoimport" and "Pishchepromsir'yo" and to the account of VAO "Soyuzplodoimport" No. 20023.

It follows that the Plaintiff was not the owner of the goods (raw tea).

Taking into account the circumstances set forth, the contract of 21/04/93 No. 6006-06/230-69 is a contract of commission, the subject of which was the completion of trade-middleman operations for transport (Article 404 of the Civil Code of the RSFSR, Article 990 of the Civil Code of the RF).

The plaintiff, acting in the capacity of a principle, bears liability before the commissionaire (plaintiff) [agent] only for the payment to it of the commission payment (Article 415 of the Civil Code of the RSFSR, Article 991 of the Civil Code of the RF).

No evidence was provided by the plaintiff supporting the sum of the expenses incurred by it for the execution of the contract of commission and the period of delay in the payment of the sum of the commission payment, defined by point 6 of the contract as a mark-up in the amount of one percent of the value of the shipped product, and the interests on the stated sum.

In addition, the failure by the respondent to execute its monetary obligations is not due to its fault and the amount of interest requested by the plaintiff and recognized by the

court is clearly not proportional to the consequences of the delay in the execution of the monetary obligation.

Neither the court of the first instance nor the following instances investigated the question of the proper observance of the procedure for the payment for the product, nor concerning whether there was a change in this procedure.

By point 4 of the Contract of 21/04/93 No. 6006-06/230-69, the parties envisioned that the shipping of the product by the plaintiff to the respondent would take place only after 100% prepayment by the respondent. In fact, the plaintiff shipped the product without asking for payment and without confirmation from the respondent concerning the possibility of payment.

Thus, the plaintiff itself violated the conditions of the contract, the respondent is not at fault in the violation of the obligation to pay for the product and on the basis of Article 401 of the Civil Code of the RF, the respondent should not bear any civil-law liability, including in the form of interest.

In addition to this, the limitations period for filing the suit had passed when the plaintiff filed the suit, and the respondent petitioned concerning this in the court of the first instance. "Tranzit" presented its demand for payment No. 127 to the plaintiff on 11/04/94. The plaintiff made recourse to the court with its suit on 05/06/98, in violation of the three year limitations period (Articles 196 and 199 of the Civil Code of the RF).

On the basis of that set forth, we consider that the Decision and the Decrees of the court instances of the arbitrazh court are without basis and were adopted in violation of the norms of substantive law.

Being guided by Articles 180 and 182-185 APC RF, I request that the Chair of the Higher Arbitrazh Court of the RF:

1. Request from the Arbitrazh Court of Ryazan Oblast the materials of Case No. A54-1496-98/C-9;
2. Bring a protest in which the Presidium of the Higher Arbitrazh Court of the RF is requested to wholly reverse the decision of the Arbitrazh Court of Ryazan Oblast of 22/07/98 in Case No. A54-1496-98/C-9 and the decrees of the appellate and cassational instances and to refuse the suit of GP "KF Pishchepromsir'yo."
3. Suspend the execution of the Decree of the appellate instance of the Arbitrazh court of Ryazan Oblast of 16/09/98 until the completion of the supervision proceedings.

Director [of the enterprise "Ryazan'chai"] V.V. Nemchinov