

APPEAL DETERMINATION

Krasnogorsk, Moscow region

24 December 2020

The Judicial Collegium for Civil Cases of the Moscow Regional Court composed of:

presiding Rizina A.N.

judges Gordienko E.S., Tereshchenko A.A., with an assistant Gridchinoy S.R., considered in open court the case on the claim of Hasan Janeid Zapsu, ZhilinvestXM limited liability company against Mehmet Zaki Uchdogan, Aytach Erkaya, Art Aztek Limited limited liability company, Credit Europe Bank Joint Stock Company ", Credit Europe Bank N.V., Company" Minkarlo Limited "on invalidation due to the nullity of surety agreements and credit agreements, application of the consequences of invalidity of transactions, on the appeal of the joint-stock company" Credit Europe Bank ", Credit Europe Bank N.V. , The Company "Minkarlo Limited" on the decision of the Solnechnogorsk City Court of the Moscow Region dated January 20, 2020. After hearing the report of Judge Rizina A.N., the explanations of the Hungarian D.The. - a representative from LLC "Zhilushvest XXI", Sixthyrova MV. representative from the bankruptcy commissioner 000 "ART AZTEK LimitVd" S.V. Kotii, E. Molosova. representative from the Company "Minkarlo Limited", Buiko OI and Nurtdinova R.G.

representatives from Credit Europe Bank N.V., Sysoeva A.A. a representative from JSC "Credit Europe Bank", established:

Zapsu H. D. filed a lawsuit against Credit Europe Bank-N.V., Credit Europe Bank JSC, Uchdogan M.Zs, Aytach Erkaya, Art Aztek Limited LLC, Minkarlo Limited company with a claim to invalidate credit contracts, loan agreements and additional agreements to them, as well as surety agreements listed in the request for part of the statement of claim.

In support of the claim, it is indicated that Zapsu Kh.D. is the creditor of Uchdogan M.Z. and Art Aztek Limited LLC on the basis of a loan agreement and a guarantee agreement dated January 10, 2009.

As part of the consideration by the Moscow Arbitration Court of case N2 A4098386 / .15-24-212B on insolvency (bankruptcy) of Art Aztek Limited LLC, the plaintiff became aware of the existence of debts under the contested contracts.

2

PG mnenpo plaintiff, Uchdogan M.Z. and Aytach Erkaya did not sign the contracts, and their signatures were forged, which indicates that the transactions were not straightforward.

Since there are other legal ways to protect their legitimate interest in obtaining satisfaction of the requirements for Uchdogan MV. and LLC "Art Aztek Lgmtsted" at the expense of their property, except for the ED. as a challenge to prisoners from the gmen of Uchdogan M.Z. and Aytach Erkaya loan agreements, additional agreements to them and agreements of surety, the plaintiff does not have, he went to court with this claim.

LLC ZHIJMINVEST XXI filed an independent statement of claim against the same defendants D invalidating the same transactions, which are listed in the petitionary part of the statement of claim Zapsu Kh.D.

In addition, LLC asked to acknowledge 3., invalid concluded by Art Aztek Limited LLC as security for loan obligations of Aytach Erkaya Uchdogan M.Z. real estate pledge (mortgage) agreements with additional agreements to them.

In support of the claim, the company referred to the fact that LLC XM "is the bankruptcy creditor of" Art Aztek Limited "LLC. Defendants Credit Europe Bank NTV. and "Credit Europe Bank" JSC are also bankruptcy creditors of "Art Azgek Limited" LLC and base their claims against "Aztek Limited" LLC on the contested agreements,

In the opinion of the plaintiff, the contested loan agreements are fasifsirovanny, which entails. constitutes the nullity of both the main contracts and the obligations securing them. The claimant's claim is directed to the protection of his legitimate interest in obtaining satisfaction of the claims from Art Aztek Limited LLC at the expense of his property. By the protocol determination of April 18, 2018, LLC YUS was involved in the case as a co-plaintiff.

z = gu X-D- 000 "zhpgpnvest XXB asked the court to recognize from the head what was said: knost:

.DGGGZOБ .hZVSA? MI-O4106 from 14.03.2006, concluded

JSC "Kge = p EB> 2E2 Bank" E Uchdogan M.Z., with additional from 01.032007, .V22 from 26.02.2009, N23 from 6.11.2009, N2

1.06.2012; gogla = ence (dya

individuals) N2NBCAFUSD01607 o

12022037, z = -echo between JSC "Credit Europe Bank" and Uchdogan M.Z., with somashenpy to him Jf2 1 from 2.02.2009, N22 from 26.02.2009, -E z = 6.112009, from 9.11.2009: .N25 from 1.06.2012; Khrezt agreement (for individuals) N2NLCAFUSD02607 dated 012007, concluded between Credit Europe Bank N.V. and Uchdogan M.Z., with agreements to him JF 1 dated 2.02.2009, N22 dated 30.10.2009.

2.112009, ЛБ 4 from 1.11.2010, N25 from 1.06.2012;

- loan agreement concluded between Uchdogan M.Z.

(borrower), AytachErkaya (guarantor), Art Aztek Limited LLC (entrust) and Minkarlo Ltusted (voucher) with Credit Europe Bank N.V. from 05/22/2012;

- loan agreement N2MBCAFMTJL04006 of March 14, 2006, concluded between Credit Europe Bank JSC and Aytach Erkaya, with additional agreements to it N2 1 of March 1, 2007, J \ G22 of February 26, 2009, N23 of November 6, 2009, N2 4 of November 9 .2009, N25 from 24.06.2010, 6 from 1.06.2012,

- credit agreement (for individuals) N2NfBCAFUSD01507 dated 12.01.2007, concluded between Credit Europe Bank JSC and Aytach Erkaya, with additional agreements to it N2 1 dated 2.02.2009, N22 dated 26.02.2009, N2 3 dated 6.11.2009, .N24 from 9.11.2009, N25 from 1.06.2012;

- credit agreement (for individuals • mx persons) N2NLCAFUSD02507 dated 12.01.2007, between Credit Europe Bank N.V. and Aytach Erkaya, with

additional agreements N21 of 2.02.2009, N22 of 11/9/2009, N23 of 06/01/2012, 4 of 11/01/2010, 5 of 06/01/2012;

- loan agreement concluded between Aytach Erkaya (borrower), Uchdogan M.Z. (entrust.l), Art Aztek Limited LLC (guarantor) and Minkarlo Limited (guarantor) with Credit Europe Bank N.V. from 22.05.2012; surety agreement N2MBSAIUSD01507 dated 12.01.2007, concluded between Uchdogan M.Z. and JSC "Credit Europe Bank", with additional agreements to it N21 from 2.02.2009, N22 from 9.11.2009, N23 from 1.06.2012; surety agreement N2MBSAIMUL04006 dated March 14, 2006, concluded between Credit Europe JSC from Uchdogan M.Z., with additional agreements to him N21 of 11/9/2009, N22 of 06/24/2010, N23 of 06/01/2012; surety agreement N2MBSAIMUL04106 of March 14, 2006, concluded between Credit Europe Banu JSC) and Aytach Erkaya, with supplementary agreements to it N21 of November 9, 2009, N22 of June 24, 2010, Z of June 1, 2012; guarantee agreement Jf2ME; SAIUSD01607 dated 12.01.2007, concluded between Credit Europe Bank JSC and Aytach Erkaya, with additional agreements to it N21 of 02/02/2009, N22 of 11/9/2009, Jf23 of 06/01/2012,

from surety agreement N2NLSAIUSD02607 dated 12.01.2007, L.Z., with concluded between Credit Europe Bank N.V. and Aytach Erkaya, with

additional agreements to it N21 of 2.02.2009, N22 of 2.11.2009, N23 from 1.11.2010, 4 from 1.06.2012;

surety agreement N2NLSAIUSD02507 dated 12.01.2007, V1.3., Concluded between Credit Europe Bank N.V. and Uchdogan M.Z., with

additional agreements to it N21 from 2.02.2009, N22 from 2.11.2009, N23 from 1.11.2010, N24 from 1.06.2012.

four

In the procedure for applying the consequences of the invalidity of void transactions of basic obligations under credit agreements - to invalidate the security obligations by virtue of their nullity:

- surety agreement N2NBSAEMJSD01507 dated January 12, 2007, concluded between JSC "Credit Europe Bank" and 000 "Art Aztek Limited", with additional agreements to Jf21 of 2002.2009, N22 of 11/9/2009, N23 of 06/01/2012; surety agreement NgMBSAEMUL04006 dated March 14, 2006, concluded between Credit Europe Ban JSC and Art Aztek Limited 000, with additional agreements to it N2A dated November 9, 2009, N22 dated June 24, 2010, Z dated 1.06.2012; surety agreement Ng-IVfBSAEMUL04106 of March 14, 2006, concluded between JSC "Credit Europe Bank" and 000 "Art Aztek Limited",

with additional agreements to it U21 of November 9, 2009, N22 of June 24, 2010, Z of June 1, 2012; surety agreement N2MBSALEMUSD01607 dated 12.01.2007, concluded between Credit Europe Bank.: k JSC and 000 Art Aztek Limited, with additional agreements to it 1 dated 2.02.2009, N22 dated 9.11.2009, N23 dated 1.06.2012, surety agreement N2NLSI! kEUSD02607 / 1 of 12.01.2007, concluded between the loan Europe Bank NN, and 000 "Art Aztek Limited", with additional agreements to it N2 of 2.02.2009, N22 of 2.11.2009, N23 of 1.11. 2010, N24 dated 1.06.2012; surety agreement N2NLSAEUSD02507 / 1 of 12.01.2007, concluded between the loan Europa Bank N.V, and 000 "Art Aztek Limited >>, with additional agreements to it N21 of 02/02/2009, N22 of 11/2/2009, N23 of 11/01/2010, Jf2 4 of 06/01/2012.

AI80, 000 ZHILINVEST asked the court in order to apply the consequences of the invalidity of void transactions - the main obligations under credit agreements - to invalidate the security obligations due to the nullity:

- real estate pledge agreement property (mortgage) N2 1003564 from 07/31/2008, concluded between 000 << Art Aztek Limited "and JSC" Credit Europe Bank ", with additional agreements to it N2 1 of 9.11.2009, N2 2 of 24.06.2010, N23 of 1.06.2012; pledge agreement for real estate (mortgage) N21003565 dated July 31, 2008, concluded between 000 (Art Aztek Limited "and Credit Europe Bank JSC, with additional agreements to it N21 dated 2.02.2009, N2 2 dated November 9, 200, JI23 from 1.06.2012;

- contract of pledge of real estate (mortgage) N21003566 from 07/31/2008, concluded between 000 Aztek LPMited "and" Credit Europe Bank "JSC, with additional agreements to it JY21 dated 2.02.2009, N22 dated 9.11.2009, 3 dated 1.06.2012;

- contract of pledge of real estate (mortgage) N21003567 from 07/31/2008, concluded between 000 "Art Aztek Limited" and JSC "Credit _

Bath), with additional agreements to it N2 1 of November 9, 2009, N22 = June 24, 2010, N2 3 of June 1, 2012;

- real estate pledge agreement, article 17.10.2008, concluded between Art Aztek Limited LLC and Credit Europe Bank N.V., with additional agreements N2 1 of 2.02.2009, N22 of 2009, MZ of 1.11.2010, N24 of 1.06 .2012;

- real estate pledge agreement (mortgage) dated 10/17/2008 L • NLPAEUSD02608, concluded between Art Aztek Limited LLC and Credit Europe Bank N.V., with additional agreements N21 of 2.02.2009, N22 of 2.11.2009, N23 of 1.11.2010, N24 of 1.06.2012; real estate pledge agreement (mortgage) N210083080T

May 22, 2012, concluded between Art Aztek Limited LLC and Credit Europe Bank N.V.; real estate pledge agreement (mortgage) X21008309from May 22, 2012, concluded between Aztek Limited LLC and Credit Europe Bank N.V.

Plaintiff Zapsu Kh.D. did not appear at the hearing.

The plaintiff - a representative from LLC in the court session supported the stated requirements.

Defendants Uchdogan M.Z. and Aytach Erkaya did not appear at the hearing, their representative supported the stated claims, explained to the court that Aytach Erkaya signed only the loan agreement dated 14.03.2006 N2 MBCAFMUL4006, and Uchdogan M.Z. only loan agreement dated 14.03.2006N2

FROM NfBCFFMUL4106 and agreements on mutual surety under these agreements. All other contested agreements and additional agreements concluded with OJSC "Kreddt Europe Bank" and Credit Europe Bank N.V., indicated in the claims, were not signed or concluded, the funds were not received. When considering the case, the fact of the conclusion of the contract

ti defendant Uchdogan M.Z. it was with the plaintiff Zapsu Kh.D. and the execution by the plaintiff of the loan agreement, the representative admitted, objections about the lack of money in the agreement

Mouth did not declare a loan.

shield The defendant, a representative of Art Aztek Limited LLC, supported the claims in the court session.

from Defendants - representatives from JSC "Credit Europe Bank", from Credit Europe Bank N.V., from Minkarlo Limited stated at the hearing dit the requirements were not accepted.

; from By the decision of the Sozhenogorsk City Court of the Moscow Region dated April 20, 2018, the claims of Zapsu Kh.D. and LLC edits satisfied in full.

N22 By the appellate ruling of the Judicial Collegium for Civil In the cases of the Moscow Regional Court dated July 18, 2018, the said court decision was upheld.

7 off By the decision of the Presidium of the Moscow Regional Court dated November 7

) edits

In 2018, the court decision and the appellate ruling of the panel of judges were dismissed.

By the decision of the judge of the Supreme Court of the Russian Federation dated January 22, 2019, the refusal to transfer the cassation appeal Credit Europe Bank N.V. for consideration in a court session of the Judicial Collegium for Civil Cases of the Supreme Court. Russian Federation.

By the determination of the Deputy Chairman of the Supreme Court of the Russian Federation dated June 6, 2019, the determination of the judge of the Supreme Court of the Russian Federation dated No. January 22, 2019 canceled, cassation complaints Credit Europe Bank N.V. and JSC << Credit Europe were transferred for consideration in the court session of the Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation.

By the determination of the judicial collegium for civil cases of the Supreme Court of the Russian Federation of July 9, 2019, the decision of the Solnechnogorsk City Court of the Moscow Region of April 20, 2018, the appeal ruling of the judicial collegium for civil cases of the Moscow Regional Court of July 18, 2018 and the decision of the Presidium of the Moscow Regional the courts of November 7, 2018 were canceled, the case was sent for new consideration to the court of first instance.

In the course of the new consideration of the case, the plaintiff Zapsu Kh.D. did not appear at the hearing.

The plaintiff's representative from LLC "ZhilinvestXH1" at the hearing supported the stated requirements,

Defendants Uchdogan M.Z. and Aytach Erkaya did not appear at the hearing, their representatives supported the claim

The defendant is a representative from LLC "Art Aztek Lrtsted" in the court session, and he supported the claim.

Defendants - representatives from JSC "Credit Europe Bank", from Credit Europe Bank N.V., from Minkarlo Limited in the court session did not recognize the stated requirements.

By the decision of the Solnechnogorsk City Court of the Moscow Region dated January 20, 2020, the claims of ZhishnvestKhM LLC were satisfied, in the satisfaction of the claim of Zapsu Kh.D. denied.

Disagreeing with the court decision, Credit Europe Bank JSC, Credit Europe Bank NV, Minkarlo.Limited Company filed appeals, in which they asked for the cancellation of the decision delivered in the case in terms of satisfying the requirements of ZhilinvestXM LLC, citing its illegality and unfoundedness in this parts.

Part 3 of Art. 167 of the Civil Procedure Code of the Russian Federation stipulates that the court has the right to consider the case if any of the persons participating in the case and notified of the time and place of the court session fail to appear, if they have not provided information about the reasons for their failure to appear, or the court recognizes the reasons for their failure to appear disrespectful.

such consequences from the time of delivery. appropriate communication to him or his representative.

A message is considered delivered even if it was received by the person to whom it was sent (addressee), but due to circumstances, dependent on him, was not given to him the addressee has not read it.

As explained in paragraph 67 of the Ruling of the Plenum of the Supreme Court Of the Russian Federation of 23.06.2015 N 25 11 0 the application by the courts of some provisions of the Gazette 1 of the first part of the Civil Code of the Russian Federation "a legally significant message is considered delivered even if it was received by the person to whom it was sent, but by circumstances in his control have not been delivered to him or the addressee has not got acquainted with it (paragraph 1 of Article 165.1 of the Civil Code of the Russian federation).

Article 165.1 of the Civil Code of the Russian Federation shall also apply to court notices and summons, if civil procedural or arbitration procedural legislation does not provide otherwise (paragraph 68 of the named Resolution of the Plenum Supreme Court of the Russian Federation).

The court of appeal, if there is information about the proper notification of the persons participating in the case, about the place and time of the court session (ld 258-260 volume 47), also the fact that the parties were notified by advance placement in accordance with Articles 14 and 16 of the Federal Law dated 22.12.2008 N 262-FZ << 06 providing access to information on the activities of courts in the Russian Federation "information on the time and place of consideration of the appeal on the website Of the Moscow Regional Court, given the lack of data on the reasons failure of the parties to appear, held a hearing in their absence.

According to part 1 of article 327 of the Civil Procedure Code Of the Russian Federation, the court of appeal re-examines the case in the court session according to the rules of procedure in the court of the first instance, taking into account the specifics provided for in Chapter 39 of this Code.

The panel of judges, after hearing the explanations of those who appeared, checked case materials within the arguments of the appeal, having discussed the arguments appeal, comes to the following.

As follows from the materials of the case, the plaintiff and the co-plaintiff are contested conclusion by the Uchdogan MH. and Aytach Erkaya of the above credit agreements with Bankasht and agreements ensuring the fulfillment of obligations borrowers under these agreements, with reference to the fact that Uchdogan M.Z. and Aytach Erkaya did not sign these agreements.

At the same time, according to the position of representatives from Uchdogan M.Z. and Aytaya Erkaya, they did not sign the contested agreements, the funds were not

nye
wails
itza

you get it.

In order to verify the arguments of the parties about the falsification of the relevant contracts by the determination of the Solnechnogorsk City Court of the Moscow

By virtue of paragraph 1 of Article 165.1 of the Civil Code of the Russian Federation, statements, notifications, notifications, demands or other legally significant messages, with which a law or a transaction links civil consequences for another person, entail for this person 7

region of December 27, 2019 in the case was appointed handwriting and _____ krtainajshsticheskaya examination, which is entrusted to the OP "Forensic examinations and research

For the examination, the expert was presented with copies of the contested contracts, copies of the statements of Uchdogan M.V. and Aytach Erkaya regarding the disposal of credit funds, opening bank accounts, as well as free samples of handwriting and signature of M.Z. Uchdogan. and Aytach Erkai, experimental samples of the signature of Uchdogan M.Z., taken from him at the hearing of the court of first instance on December 27, 2017, experimental samples of the handwriting and signature of Aytach Erkai on the forms.

According to the expert's conclusions, the signatures in the documents submitted for the study were not made by M.Z. Uchdogan. and Aytach Erkaya, and by other persons with imitation of their signatures with preliminary preparation.

The specified expert opinion is ACCEPTED by the court as appropriate evidence in a case that meets the requirements of Art. 86 of the Civil Procedure Code of the Russian Federation.

In resolving the dispute under such circumstances and recognizing the contested agreements as invalid, the court of the first instance took into account the conclusions of the examination carried out in the case and proceeded from the fact that M.Z. Uchdogan. and Aytach Erkaya did not sign the contested agreements and additional agreements to them. 43

At the same time, the court rejected the arguments of the banks about the presence of an expression of will on the part of M.Z. Uchdogan. and Aytach Erkai to conclude the contested transactions, pointing out that there is no evidence in the case file indicating that the borrowers have fulfilled their obligations under the contested transactions.

In addition, the court indicated that representatives Aytach Erkai and Uchdogan M.Z, supported the stated claims, referring to the fact that the principals did not conclude the contested transactions.

On the basis of the foregoing and in this regard, having established that the disputed transactions were signed by unidentified persons, in connection with which the execution of the transactions did not start and could not begin, the court of first instance refused to satisfy the banks' application for the application of the consequences of missing the limitation period to the stated requirements.

At the same time, the court of first instance refused the plaintiff Zaps Kh.D. satisfying his claims, indicating, by the definition of the Arbitration Court, the plaintiff was denied the application for the inclusion of his claims in the register of creditors of Art Aztek Limited LLC.

The panel of judges agrees with the conclusion of the court of first instance that the contested transactions are recognized as invalid, and therefore does not see any grounds for canceling the contested decision on the basis of the appeal.

So, in the appeals of banks and the Company "Minkar Limited" it is indicated that the plaintiff LLC does not have

nine

materially legal interest in challenging transactions, creditor status in a bankruptcy case, as well as arguments •:

Taking into account new evidence, the party of borrowers on pravptg confirmed the validity of the contested agreements.

rejects on the following grounds.

Referring to the adoption by the arbitration court of the ruling on the inclusion of the plaintiff's claims in the register of creditors' claims of DO.KEGZ2,

The appellants indicate that the plaintiff does not have the right to file this claim on the basis of the loss of the creditor status by the plaintiff in the framework of the bankruptcy case.

The norms of clause 1 of Art. 11 of the Civil Code of the Russian Federation and Art. Art. 2, 3 of the Civil Procedure Code of the Russian Federation the principle of judicial protection of the violated right has been established.

In accordance with Part 1 of Art. 3 of the Civil Procedure Code of the Russian Federation, the interested person has the right, in the manner established by the legislation on civil proceedings, apply to the court for the protection of violated or disputed rights and freedoms or legitimate interests.

The methods of protecting civil rights are understood as the substantive legal measures of a coercive nature enshrined in the law, through which the restoration (recognition) of the violated (disputed) rights,

Clause 1 of Art. 11 of the Civil Code of the Russian Federation it is determined that disputed or violated rights are subject to judicial protection.

The choice of the method of protection of the violated right is carried out by the plaintiff and should really lead to the restoration of the violated material right or to the real protection of a legitimate interest.

Otherwise, the plaintiff has no right to the claimed claim within the framework of this particular case.

It is confirmed that in the proceedings of the Moscow Arbitration Court there is a case N2 A40-98386 / 15-24Q12 on insolvency (bankruptcy) of "Art Aztek Limited" LLC.

By the definition of the Moscow Arbitration Court dated April 3, 2017, (operative part read out on March 3, 2017) in case A40-98386 / 15-24-212B the LLC's claim was found justified and included in

the third stage of the register of creditors' claims of "Art Aztek Limited" LLC in the amount of 156 396 781.41 rubles. principal, 24 403 291.08 rubles. - percent, RUB 111,041,715.22 penalties for late loan repayment, 17,539,624.16 rubles. - penalties for late return of the amount of interest.

By the ruling of the Moscow Arbitration Court dated July 20, 2018, this ruling was canceled due to new circumstances in part recognition of LLC claims

their claims register LTD "Oh insertions in

a court hearing was scheduled to consider the issue of the validity of the claims of ZhilinvestKhM LLC.

By the ruling of the Moscow Arbitration Court dated March 4, 2020 (the operative part was announced on February 17, 2020) ZhilinvestHZh LLC refused to include claims in the re-list of creditors' claims of Art Aztek Limited LLC in the amount of 309,681,815.42 rubles. debt.

By the ruling of the Ninth Arbitration Court of Appeal dated July 3, 2020, the ruling of the Moscow Arbitration Court dated March 4, 2020 was left unchanged.

It follows from the above that at the time of consideration of the present case on the merits the plaintiff was the creditor of Art Aztek Limited, the claimant was refused to include the claims in the register of creditors' claims after the court made the appealed decision at the stage of appeal.

According to the fourth paragraph of clause 1 of Article 34 of the Federal Law of 26.10.2002 N2 127-FZ "On Insolvency. (bankruptcy) "(hereinafter the Law" On insolvency (bankruptcy) ") of the person? / - and participating in the bankruptcy case are bankruptcy creditors.

Article 2 of the Law "On Insolvency (Bankruptcy)" connects the concept of a leather creditor with the debtor's cash obligation.

On the basis of clause 3 of Art. 4 Law "On insolvency (bankruptcy)" the amount of monetary obligations is considered established if it is determined by the court in the manner prescribed by this Law.

In accordance with paragraph 6 of Article 16 of the Bankruptcy Law, creditors 'claims are included in the register of creditors' claims and are excluded from it by the arbitration manager or registrar solely on the basis of judicial acts that have entered into force, establishing the composition and amount of claims, unless otherwise specified by the aforementioned paragraph.

By virtue of the above provisions of the law, the bankruptcy creditor acquires this status and becomes the person involved in the bankruptcy case, from the moment the court adopts a ruling on its inclusion in the register of creditors' claims.

At the same time, according to par. the fourth paragraph 30 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation of 23.07.2009 N2 60 "On some issues related to the adoption of the Federal Law of 30.12.2008 N2 296-FZ" On Amending the Federal Law "On Insolvency (Bankruptcy)" status of the person participating in the bankruptcy case and the corresponding rights necessary for the exercise of the right to file objections arise for the creditor from the moment his claim is accepted for consideration by the court.

Consequently, from the moment the creditor's claim is accepted for consideration by the court, this creditor has the rights to file objections in relation to the claims of other creditors declared to the debtor.

As seen from the file of case N2 A40-98386 / 15-24-212 on the insolvency (bankruptcy) of Aztek Limited LLC, on October 1, 2015 (ZhilinvestXM LLC) applied to the Moscow Arbitration Court with an application for recognition as insolvent (bankrupt) ".

By the ruling of the Moscow Arbitration Court dated November 11, 2015 in case N2 A 40-98386 / 15, the LLC's application for recognizing as insolvent (bankrupt) Art Aztek Limited LLC, which was received by the Moscow Arbitration Court on 01.10.2015, as an application for joining in the bankruptcy case N2 A40-98386 / 15 (24-212 B). The court session to verify the validity of the LLC's application is scheduled for consideration after considering the validity of the application of Europe Bank JSC on declaring Art Aztek Limited LLC insolvent (bankrupt).

As stated above, Of the Moscow Arbitration Court from April 3, 2017, the decree was announced on March 3, 2017) the claims of the LLC were recognized as reasonable, included in the third stage of the register of creditors' claims of Art Aztek Limited LLC.

According to clause 3 of Art. 166 of the Civil Code of the Russian Federation, the requirement on the application of the consequences of the invalidity of a void transaction may be presented by a party to the transaction, and in cases provided for by law also otherwise.

Moreover, in the second paragraph of the specified paragraph of Art. 166 of the Civil Code of the Russian Federation, it is stipulated that the requirement to declare a null and void lot can be declared by a third person who has a legally protected interest in declaring it invalid.

According to the legal position set forth in clause 78 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of June 23, 2015 N2 25 "On the application by the courts of certain provisions of section 1 of part one of the Civil Code of the Russian Federation" based on the systemic interpretation of clause 1 of Article 1, clause 3 of Article 166 and paragraph 2 of Article 168 of the Civil Code of the Russian Federation, a claim of a person who is not a party to a void transaction on the application of the consequences of its invalidity may also be satisfied, unless civil legislation establishes another way of protecting the rights of this person and his protection is possible by means of applying the consequences invalidity of the insignificant sentence.

By virtue of the aforementioned legal provisions, at the time of the appealed decision, the court on the basis of the evidence collected in the case established the validity of the claims of the Company, which is the creditor, regarding the nullity of the contested contracts.

The fact that, at the time of the appeal, the Company lost its creditor status in the bankruptcy tax cannot lead to the cancellation of the essentially correct decision, since, according to the general rules of the Bankruptcy Law, release must:

go

rom on

re

ind

from [n about

h on his

lata

ec. TI has proved that upon the occurrence or performance of the obligation on which the bankruptcy creditor or the authorized body based its claim in the debtor's bankruptcy case, "the latter acted unlawfully.

Thus, the refusal to release from obligations should be due to the unlawful behavior of the debtor, aimed at deliberately evading the fulfillment of his obligations to creditors (concealing his property, obstructing the activities of the financial manager, etc.).

In the considered separate dispute, as confirmed by the case materials, the debtors under the contested contracts, along with the Company, supported the position on the nullity of the contracts on the same grounds set forth in the statement of claim.

According to paragraph 5 of Art. 166 of the Civil Code of the Russian Federation and the explanations given in clause 70 of the resolution of the Plenum of the Supreme Court of the Russian Federation of June 23, 2015 N2 25, a statement made in any form on the invalidity (nothing: validity, voidability) of the transaction and on the application of the consequences of the invalidity of the transaction (a claim filed in court, opposing the defendant against the claim, etc.) has no legal value if the person invoking the invalidity acts in bad faith, in particular if his behavior after the conclusion of the transaction gave rise to other persons to rely on the validity of the transaction.

Thus, according to the meaning of the above-mentioned norms of substantive law and explanations of their application, it follows that the question of the validity and invalidity of the transaction is resolved by the court not only at the claim of the interested person, but also in the presence of: participating in the case, whose rights

and legitimate interests are affected by this transaction, that is, without exercising the procedural right to file a claim.

As noted above, according to the position of representatives from Uchdogan M.Z. and Aytai Erkaya, they did not sign the contested contracts, and they did not receive money.

Thus, since the validity of the claim of the Society and the rights of the position of Uchdogan M.Z. Aytai Erka, I established the nullity of the contracts on the basis of the evidence collected in the case, assessed by the court according to the rules of Art. 67 of the Civil Procedure Code of the Russian Federation, the constantly contested contracts in accordance with paragraph 1 of Art. 16t of the Civil Code of the Russian Federation do not entail legal consequences, since such contracts are invalid from the moment of execution.

Thus, in support of the validity of the disputed credit

§ 3.

agreements concluded between banks and borrowers, appeals refer to the presence in the materials of the registry file corporate = approvals of mortgage agreements, ensuring the use of disputes, in order to verify the indicated arguments of the submitters of the appeals as well as the execution of the instructions of the Supreme Court of the Russian Federation%

in

but

in accordance with article 327.1 of the Civil Procedure Code of the Russian Federation, paragraphs 28, 29 of the Resolution of the Plenum of the Supreme Courts of the Russian Federation from 19.06.2012 N2 13 application of norms by courts

rb

that

civil procedural legislation governing the proceedings in the court of appeal ", the judicial board

th

determined to accept materials as additional evidence

registry file (case volumes from 27 to 43), requested by the court of the first

Xia

instances, however, entered the court after the acceptance of the contested

Em

solutions.

The materials of the register file include the decisions of the only participant of Art Aztek Limited LLC - the Minkarlo Limited company on the pledge of real estate objects - premises located on

Yes

address: Moscow, st. Smolenskaya, 7

me

credit agreements (ld 111-127 volume 369 ld 29-33 volume 37, ld 106-109, 128131 volume 38).

ue,

However, presented. corporate endorsements unrecognized meeting the requirements of the reliability and admissibility of evidence, since in the submitted registration cases, some of the decisions do not have a signature and an indication of the signatory and, likewise, the dates of drawing up such documents.

eats

wow

Arguments that the borrowed funds were transferred to bank accounts opened in the name of the borrowers, the documents of which were submitted by the court appeal institution on the basis of Part 2 of Art. 56 of the Civil Procedure Code of the Russian Federation tayuke sasha on their own cannot be classified as evidence of will

sko

ohm,

borrowers to obtain credit funds under void contracts,
since in sovokugnsnost with expert conclusions that
administrative documents from borrowers on cash flow

the latter also did not sign, there is no reason to believe that the money was at the
disposal of the defendants.

By virtue of the requirement of Art. Art. 67, 71, 195 198 of the Civil Procedure
Code of the Russian Federation and the explanations set out in the resolution of the
Plenum of the Supreme Court of the Russian Federation of December 19, 2003 N2
23 "On the court decision", the court's findings on the facts,
having legal significance for the case should not be general and abstract. The
conclusions of the court must be indicated in the judgment in a convincing manner
with references to regulatory legal acts and evidence that meet the requirements of
relevance and admissibility.

In view of the foregoing, the judicial board also considers that the evidence
presented in the present case, each separately and in aggregate, does not give grounds
to conclude that the statement made by the representatives of the defendants
Uchdogan M.Z. Aytaya Erkaya on the nullity of contracts, has no legal significance,
since there is no doubt that the defendants acted in bad faith, or directly performed
actions aimed at confirming the will to receive

fourteen

money on void transactions and the direct receipt and disposal of money, the case
materials do not contain.

Arguments about the violation of the norms of substantive and procedural law
about the refusal to apply the consequences of the limitation period, the judicial board
rejects.

The issue of the limitation period in this case in relation to a void transaction
should be resolved using a special rule - clause 1 of Art. 181 of the Civil Code of the
Russian Federation, and the clarifications contained in the Resolution of the Plenum
of the Supreme Court of the Russian Federation of June 23, 2015 N2 25 "On the
application by the courts of certain provisions of Section I of Part One of the Code of
the Russian Federation".

According to paragraph 1 of Art. 181 of the Civil Code of the Russian
Federation, the limitation period for claims on the application of the consequences of
the invalidity of a void transaction and on the recognition of such a transaction as
invalid (paragraph 3 of Article 166) is three years. The course of the limitation period
for these requirements begins from the day when the execution of the void transaction
began, and in the case of a claim by a person who is not a party to the transaction,
from the day when this person knew or should have learned about the beginning of
its execution.

At the same time, as follows from the explanations set out in para. Z cl. 101 of
the Resolution of the Plenum of the Supreme Court of the Russian Federation of June
23, 2015 N2 25 "On the application by courts of certain provisions of the section of
part one of the Civil Code of the Russian Federation", within the meaning of
paragraph 1 of Article 181 of the Civil Code, if a void transaction was not used, the
limitation period on demand to invalidate it does not flow.

The course of the limitation period for the named requirements is determined not by a subjective factor (the stakeholder's awareness of the violation of his rights), but by objective circumstances that characterize the beginning of the execution of the transaction. Such legal regulation is due to the nature of the relevant ones as void, which are invalid from the moment of their commission, regardless of their recognition as such by the court (clause 1 of article 166 of the Civil Code of the Russian Federation), which means that they have no legal force, do not create any rights and obligations as for parties to the transaction and for third parties.

Since the right to bring a claim in this case is associated with the onset of the consequences of the execution of an insignificant sentence and has as its purpose to eliminate them, it is precisely the moment of the beginning of the enforcement of such a transaction, when a derivative of this or that unlawful result arises, in the current civil legislation was chosen as determining for and calculating the statute of limitations.

Within the framework of this dispute, as it was established and not refuted, there was no evidence of the execution of the contested agreements, the receipt and disposal of credit funds (part of them) directly by the defendants (specified in the agreements by the borrowers). investigated by the court in accordance with the rules of article 256 and 67 of the Civil Procedure Code of the Russian Federation

The rights of the parties and the law subject to prshmenenzhch-t: determined by the court correctly. Circumstances that are • important for the case were established on the basis of evidence obtained in the case, the assessment of which was given by the court in compliance with the requirements of procedural law, in connection with which the legal grounds provided for in Art. 330 ГГЖ RF, to the cancellation or amendment of the court decision, is not available.

Guided by Art. 328 of the Civil Procedure Code
Russian Federation

defined:

the decision of the Soshechnogorsk City Court of the Moscow Region dated January 20, 2020 to leave unchanged, the appeals of the Joint Stock Company Credit Europe Banyu), Credit Europe Bank N.V., the Company Minkarlo Limited - without satisfaction ,,

Presiding

Judges

secretary s., z.

FROM

IR " si - 2dW

just about, not one

our

fi

ft

e

e

n

The foregoing allows you to come to the limits
of the limitation period, evidence

- - declared dv

Other arguments of the appeal are not mg - yl

GT Between

or

amended the decision of the court of first instance,

on the

reassessment of evidence about the circumstances,

and

Первый кассационный суд
общей юрисдикции
пронумеровано и скреплено
печатью _____ листы:
подпись _____

