

IMPORTANT CASE AT THE COMMERCIAL COURT OF THE RUSSIAN FEDERATION

Rental payments fixed in USD

1 Introduction

While the case¹ results from a dispute between lessor and lessee on rental payments for office premises, it is important for any contract party as it deals very broadly with the competence of a court to review and amend an agreement, which did not meet the expectations of a party to the contract (the claimant), without the consent of the other contract party (the defendant).

2 Facts

On 7 May 2015, the lessee filed a claim against the lessor on termination of the agreement of 25 October 2006 for the lease of office premises located in Moscow for a term of 10 years from its registration with the competent authority on 2 October 2009. Alternatively, the lessee asked the court to amend the lease agreement as described below.

The lease agreement fixed the rental payment in USD. However, as both the lessor and the lessee are Russian companies, Russian law did not allow a payment of the rent in USD. Therefore, the lease agreement stipulated that the payment shall be made in roubles at the exchange rate applicable on the day of payment.

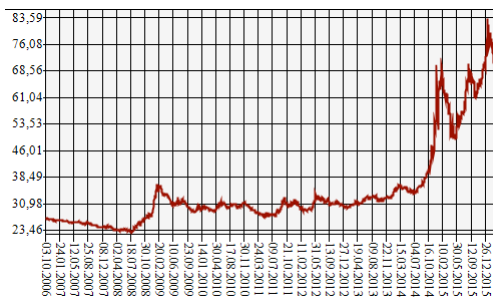
The amendment of the lease agreement proposed by the lessee provided that the conversion of USD into roubles should be made at the exchange rate applicable on the day of payment, however, within a collar of a minimum of 30 roubles and a maximum of 42 roubles.

3 Claim of the lessee

The lessee argued that the volatility of the exchange rate had been low for a long time until 11 November 2014 when the Russian Central Bank changed its policy.

¹ Case no. A40-83845/2015

Exchange rate USD/RUR from October 2006 to March 2016



The parties to the lease agreement couldn't foresee such policy change, argued the claimant. A material and unforeseeable change of the circumstance based on which the parties entered into the agreement entitles a party to claim the termination of amendment of the agreement.²

4 Judgment of the Commercial court of the city of Moscow

On 29 December 2015, the Commercial court of the city of Moscow decided as follows:

The court found that the material change of circumstances claimed by the lessee is exclusively related with the change of the exchange rate and policy of the Central Bank of Russia and concluded that the claimant could and should have foreseen the possibility of a devaluation of the rouble and change of policy by the Central Bank of Russia. Therefore, the claimant was not entitled to terminate the lease agreement.

The court recognized the freedom of the parties to enter into a contract.³

However, the court stated that the rental payments should not exceed the usual rental payment for similar premises at the same location and that a significantly higher or lower rental payment could result in unjustified benefits for a party. The court appears to base its conclusion on the rule that the enforcement of rights in bad faith should not be protected.⁴ The court found that the rental payment exceeded the market rate for similar premises. With the express purpose to maintain the balance of interest between the parties the court amended the lease agreement as requested by the lessee (see above). The court also noted that the lessor had failed to propose any other solution.

5 Court of appeal

The lessor appealed against the judgment.

On 28 March 2016, the Court of appeal concluded that the judgment of the Commercial court of the city of Moscow was not correctly founded on the facts and the law.

Like the Commercial court of the city of Moscow, the Court of appeal found that even a significant and sudden change of the exchange rate does not constitute a material

² Art. 451 Civil Code RF

³ Art. 421 Civil Code RF

⁴ Art. 1 Civil Code RF and Art. 10 Civil Code RF

change of circumstances which would entitle a party to claim the termination or amendment of the agreement. The Court of appeal noted that the lease agreement did not allow a change of the rental payments other than by agreement of the parties. The Court of appeal also held that the lessor, by merely insisting on the performance by the lessee of its obligations and refusing to accept a proposal by the lessee to change the amount of rental payments, does not act in bad faith. Finally, the Court of appeal stated that a rental payment (as a contractual obligation), which exceeds the market rent, cannot constitute an unjustified benefit.

The Court of appeal annulled the judgment of the Commercial court of the city of Moscow and rejected the claim of the lessee.

The lessee may appeal against the decision of the Court of appeal to the Court of Cassation within 2 months from the 29 March 2016. Due to the large amount of rental payment at stake it is expected that the lessee will appeal.

6 Comments

Not only lessors of office premises were concerned from 29 December 2015 until 28 March 2016. Many were of the opinion that the principles (balance of benefits; unfair benefit if contract price is above or below market price at the time of dispute) stated in the judgment of the Commercial court of the city of Moscow of 29 December 2015 would permit the unbridled review (with unpredictable results) by the courts of any contract which did not meet the expectation of a contract party.

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This note provides a general overview only of the case. Therefore, it should not be relied upon to make any decision.