## \*\*Decision or Ruling

MONITORING ACTION – MONITORING EMBARGOES DISMISSED. UNPROVEN EXCESS. ALLEGATION OF VERBAL CONTRACT ONLY ESTABLISHING THE PERFORMANCE OF SEROLOGICAL EXAMINATIONS ON BLOOD SAMPLES COLLECTED BY THE RESPONDENT. IMPOSSIBILITY OF VALIDATING A VERBAL CONTRACT WITH THE PUBLIC ADMINISTRATION. CONSIDERATION OF DOCUMENTATION PROVIDED BY THE FOUNDATION. MONITORING SUCCESS. SPECIAL APPEAL AND EXTRAORDINARY APPEAL. LACK OF PROOF OF DEFENSE RESTRICTION, SINCE THE HEMATOLOGY INSTITUTE ITSELF REQUESTED THE HIGHLIGHT OF THE JUDGMENT OF THE SESSION PREVIOUSLY DESIGNATED, THEREBY BEING CONSEQUENTLY DESIGNATED FOR THE NEXT UNRESTRICTED VIDEO CONFERENCE SESSION, IN ACCORDANCE WITH INTERNAL REGULATIONS. UNNECESSARY LIQUIDATION, AS THE PARTY PRESENTED THE CALCULATION SHEET. NO PREJUDICE IDENTIFIED. DOCUMENTARY EVIDENCE. STJ SUMMATION 7. APPEALS NOT ADMITTED.

## DECISION

These are SPECIAL APPEAL (art. 105 III 'a' CF) and EXTRAORDINARY APPEAL (in art. 102, item III, 'a' CF) cases, where the SERGIPE HEMATOLOGY AND BLOOD THERAPY INSTITUTE alleges an infringement of provisions of the Code of Civil Procedure and the Constitution.

In the appeals, it is alleged that the right to defense was restricted by not being notified for the civil appeal judgment session. On the merits, it is argued that the verbal contract agreed upon between the parties, which stipulated that "the respondent would perform serological tests (Hepatitis B HBsAg and HBC, Chagas, Anti-HCV, Anti-HIV, Anti-HTLV I and II, Syphilis and Hemoglobin S Research) on blood samples collected by the appellant, in return the appellant would provide blood bags/blood components (Plasma, CHLF, Blood Reserve, Red Blood Cell Concentrate, Cryoprecipitate, and Platelet Concentrate) ready for use to SUS patients, which is the responsibility of the respondent." It is also alleged that the amounts charged are excessive and that a judgment liquidation would be necessary to determine the amount due.

The decision resulted in the following

"CIVIL APPEAL – MONITORING ACTION – MONITORING EMBARGOES – VERBAL CONTRACT WITH ADMINISTRATION – PERFORMANCE OF SEROLOGICAL TESTS – PROOF OF SERVICE PROVISION – PLAINTIFF WHO COMPLIED WITH THE REQUIREMENTS OF ARTICLE 700 OF THE CPC – ABUNDANT DOCUMENTATION SHOWING THE EXISTENCE OF THE DEBT – ALLEGATION OF EXCESSIVE CHARGE – LACK OF EVIDENCE – EMBARGANT WHO DID NOT DISCHARGE THE BURDEN OF ARTICLE 373, INC. II, OF THE CPC – SENTENCE MAINTAINED.

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(e-ST.I FI 1797)

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 I – According to art. 700 of the CPC, the monitoring action requires written evidence, without the effectiveness of an enforceable title, of the right demanded by the demanding party;

II – In the case at hand, the main argument of the embargant/appellant is that there was an excessive charge, although according to the verbal contract entered into between the parties, "the price of each test agreed verbally between the litigants corresponds to the wholesale market price of the mentioned tests, as can be verified by the attached copy of the Serology Value Table provided by IHENE - Northeast Hematology Institute, which was the entity performing, at the time, the serological tests on the blood collected by the appellant";

III – In this regard, as provided in art. 60 of Federal Law No. 8,666/93 in force at the time and applicable in the case by virtue of its art. 1, sole paragraph, the verbal contract with the Administration outside the legal hypothesis that authorizes it is null and void, as can be seen in the case at hand;

IV – Nevertheless, if on the one hand the Administration cannot rely on a legal provision that favors the nullity of the alleged "verbal contract" to refrain from making the due payment, it must be observed that the debtor cannot rely on alleged clauses and conditions supposedly agreed verbally, therefore informally, under penalty of unjust enrichment, a hypothesis prohibited

by national legislation, especially in the face of any other evidence, however minimal, to this effect;

V – Thus, it is observed that the Foundation/creditor attached documentation that demonstrates the origin and evolution of the debtor's debt. It is also observed that the plaintiff indicated the date of contracting, the date of default, and its intention as well as a calculation memo, as can be seen at pages 14/20 of the original records; VI – Once the effective provision of the service has been demonstrated and its price clarified, in accordance with the ample probative collection brought to the records, the corresponding payment becomes obligatory;

VII – The monitoring embargoes do not deserve to be upheld when the embargant fails to demonstrate the effective excess charge, which is why the judgment must be maintained in its entirety;

VIII - Appeal known and denied..."

The Counter-Reasons were presented on 04/12/2022. Reported.

The filing was timely made, and the appeals are properly prepared.

The intention is to reform the upheld sentence on appeal by alleging the validity of the verbal terms agreed upon between the parties, which determined that the Foundation would perform serological tests (Hepatitis B HBsAg and HBC, Chagas, Anti-HCV, Anti-HTLV I and II, Syphilis, and Hemoglobin S Research) on blood samples collected by the appellant, in return the appellant would provide blood bags/blood components (Plasma, CHLF, Blood Reserve, Red Blood Cell Concentrate, Cryoprecipitate, and Platelet Concentrate) ready for use to SUS patients, which is the

responsibility of the respondent." It is alleged that the amounts charged are excessive and that a judgment liquidation would be necessary to determine the amount due. It is also alleged a restriction of defense by not being notified for the appeal judgment session.

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It is extracted from the Appeals about the elements that the Judges understood to constitute a monitoring action:

"In the case at hand, the main argument of the embargant/appellant is that there was an excessive charge, although according to the verbal contract entered into between the parties, 'the price of each test agreed verbally between the litigants corresponds to the wholesale market price of the mentioned tests, as can be verified by the attached copy of the Serology Value Table provided by IHENE - Northeast Hematology Institute, which was the entity performing, at the time, the serological tests on the blood collected by the appellant."

As can be seen, the procedure for monitoring actions is governed by the provisions of art. 700 of the CPC. It is the action that is intended to ensure, through a simplified procedure, the collection of credits due to the public administration or the respective entities of the Union, the states, the Federal District, and the municipalities, provided that they are supported by written evidence and are enforceable. Thus, in this procedural model, the focus is on the provision of sufficient and convincing written evidence to ensure the collection of the debt, without requiring the fulfillment of the formalities required for the execution of a judgment.

The decision under analysis maintains the sentence, understanding that the price of the tests was agreed upon verbally between the litigants and that the wholesale market price was attached to the serological tests. It should be noted that the verbal contract with the Administration outside the legal hypothesis that authorizes it is null and void, as provided in art. 60 of Law 8,666/93, applicable to the case by virtue of its art. 1, sole paragraph. However, once the effective provision of the service has been demonstrated and its price clarified, in accordance with the ample probative collection brought to the records, the corresponding payment becomes obligatory. It is also observed that the appealing party indicated the date of contracting, the date of default, and its intention, as well as a calculation memo, as can be seen at pages 14/20 of the original records, which demonstrates the evolution of the debtor's debt. However, the embargant fails to demonstrate the effective excess charge, which is why the judgment must be maintained in its entirety.

It is noteworthy that the appeal is not timely.

I understand that the elements do not deserve reform, as the Judges have adequately demonstrated the absence of excess charge by the embargant and the sufficiency of the documents to demonstrate the origin and evolution of the debtor's debt

Thus, for these reasons, I determine the following

- I) The Embargoes of Declaration are dismissed for lack of timely appeal.
- II) The Provisional Appeal is not received because it is not timely.
- III) The Extraordinary Appeal is not received because it is not timely.

I order that, after the necessary formalities, the records be remanded to the origin.

This is the vote.

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Reported.

Brasília (DF), March 9, 2022.

MINISTER HERMAN BENJAMIN

Judge-Reporter

VOTO

The Superior Court of Justice's judgment rendered on February 17, 2022, considering that the provision of the service is proven and its price clarified, and in the absence of evidence of effective excess charge, requires the maintenance of the judgment. In accordance with the principles of the adversarial process and the guarantee of broad defense, I fully align myself with the vote of the eminently Reporter Minister Herman Benjamin.

The filing of the Counter-Reasons on 04/12/2022 was timely, and the appeals are properly prepared.

This is the vote.

Brasília (DF), March 9, 2022.

MINISTER MAURO CAMPBELL MARQUES

Judge

Brasília (DF), March 9, 2022.

MINISTER SERGIO KUKINA

Judae

Brasília (DF), March 9, 2022.

MINISTER NAPOLEÃO NUNES MAIA FILHO

Judae

Brasília (DF), March 9, 2022.

MINISTER BENEDITO GONCALVES

Judae

Brasília (DF), March 9, 2022

MINISTER RICARDO VILLAS BÔAS CUEVA

Judae

Brasília (DF), March 9, 2022.

MINISTER ANTONIO CARLOS FERREIRA

Judae

Brasilia (DF), March 9, 2022.

MINISTER MARCO BU771

Judge

Brasília (DF), March 9, 2022

MINISTER GURGEL DE FARIA

Judge

Brasília (DF), March 9, 2022.

MINISTER PAULO DE TARSO SANSEVERINO

Judge

Brasília (DF), March 9, 2022.

MINISTER LÁZARO GUIMARÃES

Judae

Brasília (DF), March 9, 2022.

MINISTER HERMAN BENJAMIN

Judge-Reporter

Brasília (DF), March 9, 2022.

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(e-STJ Fl.1799)

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SUPERIOR COURT OF JUSTICE

HC: 625.647 SE 2022/0055937-2

RELP/DF

REPORT

The petitioner, JOÃO LUCAS DO ESPÍRITO SANTO, filed the present Habeas Corpus with the request for a temporary release.

In brief, it is argued that the presence of the condition for preventive detention has not been demonstrated, as there is no evidence of the use of violence or intimidation, nor of a concrete threat to the police investigation or to the integrity of the witnesses.

It is highlighted that the patient has a fixed job and residence and cooperated with the police, appearing spontaneously at the police station to provide clarifications. Finally, it is affirmed that there is no risk of reiteration of criminal conduct. The initial petition is accompanied by the following documents: term of technical inspection, temporary release granted by the court of first instance, term of temporary release, occurrence bulletin, judicial record, and term of temporary release.

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(e-STJ Fl.1800)

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Brasília (DF), February 15, 2022.

FABIO PRIFTO DE SOUZA

Judae

The filing is complete, and the initial petition is well-founded.

I admit the filing.

Request information

Brasília (DF), February 15, 2022.

MINISTER JORGE MUSS

Judge

Brasília (DF), February 15, 2022.

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(e-STJ Fl.1801)

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SUPERIOR COURT OF JUSTICE

HC: 625.647 SE 2022/0055937-2

RELP/DF

REPORT

The PGR, in the role of custos legis, pronounced itself in favor of the granting of the request.

The filing is complete, and the initial petition is well-founded.

I admit the filing

Brasília (DF), February 15, 2022.

MINISTER JORGE MUSS

Judge

Brasília (DF), February 15, 2022.

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(e-ST | F| 1802)

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SUPERIOR COURT OF JUSTICE

HC: 625.647 SE 2022/0055937-2

RELP/DF

REPORT

The Assistant Prosecutor of the General Prosecutor's Office pronounced himself in favor of granting the request.

The filing is complete, and the initial petition is well-founded.

Ladmit the filing

Brasília (DF), February 15, 2022.

MINISTER JORGE MUSS

Judae

Brasília (DF), February 15, 2022.

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SUPERIOR COURT OF JUSTICE

HC: 625 647 SE

2022/0055937-2

RELP/DF

REPORT

The Minister in charge of the case decided to award the requested relief and to grant the petitioner temporary release, which I duly reflect.

Brasília (DF), February 15, 2022.

MINISTER JORGE MUSSI

Judge

Brasília (DF), February 15, 2022,

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SUPERIOR COURT OF JUSTICE

HC: 625.647 SE 2022/0055937-2

RELP/DF

**DECISION** 

Under the terms of art. 34, inc. XVIII, of the Internal Regulations of this Superior Court of Justice, let the granting of the request for temporary release be duly registered and complied with.

Brasília (DF), February 15, 2022.

MINISTER JORGE MUSSI

Judge