

Judgment

JUDGMENT:

APPEAL:

CASE:

Reporter:

APPELLANT:

APPELLEE:

COURT OF JUSTICE OF THE STATE OF SERGIPE

202134374

Civil Appeal

202100733547

IOLANDA SANTOS GUIMARÃES

INSTITUTE OF HEMATOLOGY AND Lawyer: WANDERSON DOS SANTOS

HEMOTHERAPY OF SERGIPE

PARREIRAS HORTA HEALTH

FOUNDATION

Lawyer: DANIEL BAPTISTA PRUDENTE

EMENIA

APPEAL

CIVIL - MONITORING ACTION - MONITORING

EMBARGOES - VERBAL CONTRACT WITH THE

ADMINISTRATION - PERFORMANCE

OF SEROLOGICAL

EXAMS - PROOF OF

SERVICE PROVISION -

CLAIMANT WHO

COMPLIED WITH

THE REQUIREMENTS

OF ARTICLE 700

OF THE CPC - ABUNDANT

DOCUMENTATION

DEMONSTRATING THE

EXISTENCE OF

DEBT - CLAIM OF

EXCESS

CHARGE

ABSENCE

OF

EMBARGER
WHO DID NOT
DISCHARGE
THE BURDEN OF
PROOF UNDER
ART. 373, INC. II,
OF THE CPC -
SENTENCE
UPHELD.

I - Pursuant to
art. 700 of the CPC, the
p. 21

(e-STJ FI.1660)

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monitoring action
requires written evidence,
without the effectiveness of
executive title, of the
right demanded by the
plaintiff;

11 - In the case at
hand, the main
argument of the
embargant/appellant is that
there was an excess
charge, although according to
the verbal contract
signed between the
parties, "the price
of each exam
verbally agreed upon
between the litigants,
corresponds to the
wholesale market
price of said
exams, as can be
verified by the
attached copy of the
Value Table of
Serology provided

by IHENE —

Hematology Institute of
Northeast, which is
who performed at the
time, the serological exams
of the blood collected
by the appellant;

III — In this sense,
as provided for
in art. 60 of Federal Law no.
8,666/93 at the time
in force and applicable
in the case by force
of its art. 1, sole paragraph, it is
null and without
any effect the verbal contract
with the

Administration outside
the legal hypothesis

p. 22

(e-STJ Fl.1661)

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that

as

is

allowed,

seen in

the

case at hand;

IV — Nevertheless,

if on one hand the

Administration cannot

use a legal provision

that favors the

nullity of the alleged "verbal contract" to avoid making the
due payment,

it should be noted that

the debtor also cannot use 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,
even minimal, in this regard;

V – Thus, I observe
that the Foundation/creditor
attached
documentation that
evidences the origin
and evolution of the
debtor's debt.

It is also noted that the plaintiff
indicated the date of
contracting, date
of default and its claim
as well as
calculation memorandum, as seen at pages
14/20 of the
original records;

VI – Demonstrated
p. 23

(e-STJ FI.1662)

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the effective provision
of the service and
clarified its price, according to
extensive probative set
collected to
the records, becomes
mandatory the
corresponding
payment;

VII – The monitoring embargoes
do not deserve
approval when
not demonstrated by the
embargante the
effective excess
charge, reason
for which the
sentence must be

upheld in its entirety;

VIII – Appeal

known and

unfounded.

JUDGMENT

Seen, reported and discussed the present records, the members of the Group IV, of the First Civil Chamber, of the Court of Justice of the State of Sergipe, by unanimity, know the appeal, to deny it, in accordance with the report and vote contained in the records, which become an integral part of this judgment.

Aracaju/SE, November 29, 2021.

JUDGE IOLANDA SANTOS GUIMARÃES

REPORTER

REPORT

Judge Iolanda Santos Guimarães (Reporter): - This is a Civil Appeal filed by the INSTITUTE OF HEMATOLOGY AND HEMOTHERAPY OF SERGIPE LTDA against

the decision of the 3rd Civil Court of Aracaju/SE rendered in the records of the Monitoring Action

filed by the PARREIRAS HORTA FOUNDATION, which rejected the embargoes monitórios of the

defendant/appellant and constituted executive title in the amount of R\$ R\$ 178,265.86 (one hundred and seventy-eight thousand two hundred and sixty-five reais and eighty-six cents), in the following terms:

"Based on the outlined reasons, I judge the Monitory Embargoes IMPROPER and the plaintiff's claim in the Monitoring Action MERITORIOUS, to convert the executive title attached to the initial one into a judicial title, with support Art. 702 of the CPC, in the amount of R\$ R\$ 178,265.86 (one hundred and seventy-eight

thousand two hundred and sixty-five reais and eighty-six cents), to

be updated monetarily by IPCA-E, with default interest by savings account index (STJ. 1st Section. REsp 1,495,146-MG.

Rel. Min. Mauro Campbell Marques, judged on 02/22/2018).

I condemn the defendant to pay procedural costs and attorney's fees in the percentage of 10% of the debt amount, based on the provisions of art. 85, §3, I and §8, of the CPC. "(p. 471/e-STJ).

The appellant argues, essentially, the existence of an excess charge and, therefore, appeals to see the reversal of the monitory embargoes, in whole, being recognized

the claim of excess

collection in the present case. (p. 1/27).

After preliminary analysis, I understand that the appeal meets the

requirements of admissibility and, moreover, is grounded in the law and jurisprudence,

p. 24

(e-STJ Fl.1663)

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as it follows.

After the report, I ask for the summons of the members of the Group IV, First Civil Chamber, so that, later, the appeal can be put to judgment.

Aracaju/SE, November 24, 2021.

• Judge Iolanda Santos Guimarães (Reporter)