Judgment
JUDGMENT:
APPEAL:
PROCESS:
Reporter:
APPLICANT:
DEFENDANT:
COURT OF JUSTICE OF THE STATE OF SERGIPE
20223614
Civil Declaration Appeals
202100738386
IOLANDA SANTOS GUIMARÃES
HEMATOLOGY AND Hemotherapy Institute of Sergipe
HEALTH FOUNDATION PARREIRAS HORTA
BIRTH
Attorney: WANDERSON DOS SANTOS
Attorney: DANIEL BAPTISTA PRUDENTE
EMEN1A
Civil and Process
Civil — Declaration Appeals in
Civil Appeal
— Omission/Nullity
— Inexistence —
of
Nullity
judgment in light
of the lack of
notification of the
Applicant for the
session
through
in-person
videoconference —
Not configured —
Observance,
Secretary
by the
Judging Body,
of the procedure
provided for in art.
180-D of the
Internal Rules

of this Court —
Absence of
dilatory character
Appeals
of
—
from
—
Insufficiency
Request
application of a fine
formulated by the
Defendant party —
Recusal
Fees
Increase
resulting from the
denial of the
Appeals
Declaration
of
—
Inappropriateness —

Precedents
Superior Court.
of the
/ — In the case,
after inclusion of the
virtual Appeal
on the agenda
of the day
11/19/2021, the
Appellant
requested, in a
petition filed
in the case on
11/14/2021,
"highlighting the
process in question

from the session of
virtual judgment
scheduled for
11/19/2021,
in accordance with the provision
of article 180-D, III,
RITJ/SE";
II — Considering the
the
request
Appellant,
records were
withdrawn from the virtual session of
11/19/2021 and
included in the session
in-person via
subsequent videoconference, or
day
in the
not
to be, on
11/29/2021,
exact terms
art. 180-D,
therefore,
any
talk,
about
nullity
due to lack of
notification of the
appellant;
single paragraph of
Internal Rules
of this Court;
III— On the other hand,
I do not currently see
the alleged character
dilatory of the
present appeals.
These are the first appeals
offered by the

V — In the absence of
contradiction,
omission,
obscurity or material error
to be
filled in the judgment
chastised, for having
the decision adequately addressed
matter, the pretension
prequestioning

VI – Appeal
known and
denied.
JUDGMENT
Seen, reported and discussed these records, agree the members of Group IV, of the First
Civil Chamber of the Court of Justice of the State of Sergipe, unanimously, to know the appeal, for
deny it, in accordance with the report and vote contained in the records, which are an integral part of this judgment.
Aracaju/SE, February 18, 2022.
DESA. IOLANDA SANTOS GUIMARÃES
REPORTER
REPORT
Desa. Iolanda Santos Guimarães (Reporter):- THE INSTITUTE OF HEMATOLOGY AND HEMOTERAPIA DE SERGIPE LTD filed the present Declaration Appeals against the Judgment 34374/2021, rendered in the records of the Civil Appeal No. 202100733547, which was thus
excerpted:
"CIVIL APPEAL – MONITORIAL ACTION – MONITORIAL EMBARGOES – VERBAL CONTRACT
WITH THE ADMINISTRATION – PERFORMANCE OF SEROLOGICAL TESTS – PROOF OF
SERVICE PROVISION – PLAINTIFF WHO COMPLIED WITH THE REQUIREMENTS OF ARTICLE 700

OF THE CPC – ABUNDANT DOCUMENTATION DEMONSTRATING THE EXISTENCE OF DEBT –
ALLEGATION OF EXCESSIVE CHARGING – LACK OF PROOF – PLAINTIFF WHO DID NOT
DISCHARGE THE BURDEN OF ARTICLE 373, INC. II, OF THE CPC – JUDGMENT MAINTAINED.

I – Pursuant to article 700 of the CPC, the monitory action requires written proof, without the effectiveness of an executive title, of the right demanded by the demanding party;
II – In the case at hand, the main argument of the appellant/appellant is that there was excessive charging, although according to the verbal contract entered into between the parties, "the price of each exam agreed verbally between the litigants, corresponds to the market price, wholesale, of mentioned exams, as can be seen from the attached copy of the Sorology Value Table provided by IHENE – Hematology Institute of the Northeast, which was the one that performed the serological exams on the blood collected by the appellant;
III – In this vein, as provided for in article 60 of Federal Law No. 8,666/93 in force at the time and applicable in the case by force of its article 1, single paragraph, a verbal contract with the Administration is null and void without any effect outside the legal hypothesis that authorizes it, as seen in the case at hand;
IV – Nevertheless, if on the one hand the Administration cannot use 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 also cannot use supposed 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 noted that the Foundation/creditor attached documentation that evidences the origin of the debt, whose values and amounts claimed by the plaintiff do not have a counter-proof in the same proportion, thus having the Judge with the discretion to, by legal device, grant the remedy in the best way to avoid prejudice, which is what happened in the case at hand.

In the Embargoes, the appellant argued that the excessiveness of the claim would be evident, considering that there was a double charge, already paid once by the Sergipe State Secretary of Health, according to the verbal contract signed, being that, besides that, there would have been an undervaluation of the SUS table, verified with the admission by the Foundation itself, on the occasion of the answer presented in the process; however, he did not provide any proof to this effect, what it is enough to maintain the judgment that rejected the Embargoes as unfounded.
Considering that the Embargoes are a remedy filed against the Monitory Judgment

and that, in them, the appellant has the burden of evidence, it is not enough to state that the Sergipe State Secretary of Health has already paid for the services rendered, in view of a verbal contract, not proven, and, worse still, to affirm that there would have been an undervaluation of the SUS table, without, however, presenting any evidence to support such affirmation, it is not possible to grant the pleito renovando the judgment, which, thus, must be maintained.
Applying the provisions of art. 1.021, paragraph 4, of the CPC, I, on the merits, DO NOT KNOW THE DECLARATION EMBARGOS, maintaining the decision attacked by its own foundations.
Sentenced to the payment of the attorney's fees in the amount of R$ 1,500.00, with a suspension of enforceability, as required by the appellant." (pages 262/265 of the records)
The appealing party now alleges the violation of articles 373, inc. II, and 700, of the CPC, as well as articles 60, and 1, single paragraph, of Federal Law No. 8,666/93, arguing, in summary, that the Embargoes of Declaration were based on a coherent and competent foundation, so they should be welcomed.
They argue, in particular, that the evidence filed in the records would demonstrate the undervaluation of the SUS table, since the Hematology Institute of Northeast and the Foundation itself informed the values of the tests in a higher amount.
At the end, they argue for the full acceptance of the Embargoes of Declaration, with the consequent full cancellation of the Monitory Judgment.
On the other hand, the respondent/opponent p. 37 (e-STJ Fl.1676) Document received electronically from the source of the appeals argues, in the preliminary matter, the non-comprehension of the declaration of the contravention of article 373, inc. II, of the CPC, since, in the claim, there is no reference to the precise norms or articles that would have been violated.
Subsequently, on the merits, they argue that the verbal contract celebrated between the parties, based only on the testimony of the appellant, was deemed nonexistent and, therefore, the services rendered are due to be paid by the Administration.
They further argue that, in fact, the debt was effectively demonstrated by the Foundation/creditor, and that the Embargoes presented were generic and without demonstrating any illegality in the judgment handed down.
Therefore, they advocate for the rejection of the appeal.
By examining the judgments in the records, I agree with the respondent/opponent party.
Indeed, the appellant did not demonstrate the excessiveness of the claim nor the application of the values below the SUS table.
Also, the court declared the alleged verbal contract null and void, a decision the appealing party has not effectively challenged.
Therefore, no elements in the records would justify the amendment of the judgment in the Embargoes of Declaration.

I also observed that the initial claim was properly served, and the documents provided adequately demonstrated the existence of the debt.

Therefore, I propose to reject the Embargoes of Declaration presented by the appealing party. This is the report.
DESA. IOLANDA SANTOS GUIMARÃES (Reporter)

VOTE
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