

Sky Mall investors in ‘classic stalemate’

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The corporate conflict around Kyiv's Sky Mall brings serious reputational losses to its owners, though the shopping center's net profit has kept growing over the past three years. (Kostyantyn Chernichkin)

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Kyivans purchasing fancy Tommy Hilfiger shirts or casual Carlo Pazolini shoes at Kyiv's third largest shopping center Sky Mall may not be aware of the deep-seated conflict between its two owners. Majority shareholder Andrey Adamovskiy – a Russian born in Odesa – and Estonian Hillar Teder, who holds a minority stake, haven't found common ground since 2010.

Teder has not received his 49.97 percent share of the mall's yearly \$25 million turnover since Feb 2012. In turn, Adamovskiy contends that Teder locked him out of a Cyprus company that both had used to finish construction of the mall.

At the heart of the dispute is a shareholder agreement to which the two are bound that was concluded when Teder had trouble finding enough money to build the mall after the financial crisis hit in 2009. Adamovsky agreed to help in exchange for a majority stake in the mall. Teder saw this as a temporary arrangement since the agreement contained a call option that allowed him to buy back Adamovsky's stake once the mall was finished.

French supermarket chain Auchan anchors Sky Mall. Overall it boasts 260 shops occupying an area of 90,000 square meters with such tenants as shoe retailer Intertop, and clothing chains Inditex and Warehouse. The mall's net cash flow in 2013 reached \$25 million, while its net profit has been constantly growing over the past three years, Adamovskiy and his junior partner Oleksandr Granovskiy told the Kyiv Post, adding that the mall is worth \$140 million.

Teder, however, assesses Sky Mall's value at \$200 million. Market analysts emphasize Sky Mall's successful concept and location, while Sergiy Kostetskiy of SV Development real estate consultancy said, "The movie theater and entertainment (aspects) are the weakest points of Sky Mall."

Teder started building the shopping center in 2006, but had to stop in 2009 due to lack of funding. Adamovskiy agreed to provide enough financial resources to finish the project in exchange for a majority stake. In February 2010, the two businessmen signed an agreement introducing the following ownership structure: Adamovskiy received a 50.03 percent stake, and Teder got 49.97 percent. Moreover, sides agreed to call option implying Teder's right to acquire Adamovskiy's shares before March of 2011 for \$51-\$56 million depending on the precise date of the acquisition.

"I warned Hillar (Teder) that I was not going to let this call option be realized and would keep an eye on the execution of all the details of the agreement," said Adamovskiy.

Things were going well until Teder sold 35 percent of Arricano, the company that owned 49.97 percent of Sky Mall. The shareholder agreement prohibited the sale of a controlling interest in entities which owned Sky Mall – Arricano in Cyprus on Teder's side, and Stockman in the British Virgin Islands on Adamovskiy's – without the other's written permission.

The Estonian thought that a 35 percent stake was not a controlling interest. A panel of three judges in a London arbitration court later ruled that it was. Moreover, the agreement regarding Sky Mall's ownership was confidential. Yet after Teder informed Dragon-Ukrainian Property Development Plc of his call option – the company to which he sold part of Arricano – Adamovskiy accused him of breaking confidentiality clause of their agreement.

Adamovskiy subsequently refused to execute the call option and sell the majority stake of Sky Mall back to Teder.

London and Kyiv courts took Adamovskiy's side in the conflict, though one case in the British capital is still ongoing. Teder did not stop there. He sued his partner in a Cypriot court, claiming that his minority shareholder rights were violated.

"If a minority shareholder can prove that his rights are violated and a Cypriot court decides to liquidate the holding company, its property may be sold to anyone at a fair market price," said Leonid Antonenko, a counsel at Sayenko Kharenko law firm. "As far as I understand, each side has their own solid arguments. That is why during the court hearings these arguments balance each other, leaving the arguing sides in the current status quo which is not comfortable for either of them."

He sees negotiations between the two as the most effective way to settle the conflict given that they still communicate with each other.

Adamovskiy said he is ready to negotiate. Teder replied: negotiations have reached a deadlock. When asked if they would consider selling the mall to a third party, Adamovskiy agreed to do so at a fair market price, while the latter said he was not going to accept such an offer.

“Sky Mall is currently at the peak of its development, so it would be a smart decision to sell it right now,” mentioned SV Development’s Kostetskyi.

Andrey Adamovskiy and Hillar Teder are far from burying the hatchet. They still exchange text messages and sent each other season’s greetings. Nobody knows how long their conflict will last though.

“This is a classical stalemate situation,” summarized Antonenko of Sayenko Kharenko law firm.

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