



**TWELFTH ARBITRAL APPEAL COURT**  
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**RESOLUTION**  
**arbitration court of appeal**

Saratov Case No. A57-14818 / 2018

August 19, 2019

The operative part of the resolution was announced on August 12, 2019. The full text of the resolution was issued on August 19, 2019.

The twelfth Arbitration Court of Appeal composed of: Presiding Judge E.V. Puzina, judges Kuzmicheva S.A., Stepura S.M., when keeping the minutes of the court session by the secretary of the court session Polovnikova V.A.,

Having examined in open court appeals

Limited Liability Company "Company" ALS and TEK ", Office of the Federal Service of Bailiffs in the Saratov Region and the head of the department - senior bailiff of the Soviet District Department of Bailiffs of the Office of the Federal Service of Bailiffs in the Saratov Region Alexei Nikolaevich Sechin

against the decision of the Arbitration Court of the Saratov Region dated February 22, 2019 in case No.A57-14818 / 2018 (judge Viklenko T.I.)

at the request of the joint-stock company firm "SMUR" (394019, Voronezh, Eremeeva st., 22, OGRN 1023601610878, INN 3662020332)

interested persons: head of the department - senior bailiff of the Soviet district department of bailiffs of the Office of the Federal Service of Bailiffs in the Saratov Region Sechin Alexey Nikolaevich (413210, Saratov Region, Stepnoye, Oktyabrskaya St., 25), Office of the Federal Service of Bailiffs in the Saratov Region (410000, Saratov, Teatralnaya square, 11, OGRN 1056405504650, TIN 6455039443),

limited liability "Company" ALS and TEK "(410012, Saratov, Bolshaya Kazachya st., 8 D, OGRN 1026402661108, INN 6452045336)

third parties who do not declare independent claims regarding the subject of the dispute: Kvant-Telecom Joint Stock Company (394019, Voronezh, 22 Eremeeva St.,

OGRN 1073667031030, TIN 3662124236), Limited Liability Company Directorate of Communications Companies Under Construction (410002, Saratov, Chernyshevsky st., 197, OGRN 1026402661119, TIN 6452048979), Limited Liability Company "Intercity International Telephone Station" (410012, Saratov, Bolshaya Kazachya St., 6, OGRN 1056405053352, TIN 6452913127)

o recognition of illegal inaction of the bailiff of the Soviet ROSP of the Federal Bailiff Service of Russia in the Saratov Region A.N. Sechin, expressed in the failure to notify the debtor about the enforcement proceedings initiated against him and the commission of actions to enforce the requirements contained in the writ of execution, on the recognition of illegal actions of the bailiff of the Soviet ROSP of the Federal Bailiff Service of Russia in the Saratov Region Sechina A.N., expressed in the implementation of enforcement actions in violation of the requirements of the Federal Law dated 02.10.2007 No. 229-FZ "On Enforcement Proceedings", on the abolition of the act on the commission of enforcement actions dated 28.05.2018 and the resolution on the end and return of a writ of execution to the claimant, on amending the resolution on the end of the enforcement proceeding,

with participation in the court session:

representative of the limited liability company "Company" ALS and TEK "- Demidova I.A., acting on the basis of a power of attorney dated 21.12.2017

No. 27,

representative of the limited liability company "Directorate of Communications Enterprises under Construction" - V.N. Vekozin, acting on the basis of a power of attorney dated 25.12.2018,

representative of the joint-stock company of the firm "SMUR" - Tatarovich I.A., acting on the basis of a power of attorney dated 01.01.2019 No. 17,

the representative of the Office of the Federal Bailiff Service in the Saratov Region - Baybak A.V., acting on the basis of a power of attorney dated April 19, 2019 No. 64,

in the presence of representatives of the media: from the business news agency "Business Vector" Laikask S.A. (certificate No. 44083), A.A. Laikask (certificate No. 1), other persons participating in the case did not appear at the court session, were duly notified of the time and place of the court session by posting information about the time and place of the court session on the website of the Twelfth Arbitration Court of Appeal,

### **found:**

The Firm "SMUR" JSC applied to the Arbitration Court of the Saratov Region with a statement, clarified in accordance with Article 49 of the APC RF, on recognizing the inaction of the bailiff of the Soviet ROSP of the Federal Bailiff Service of Russia in the Saratov Region A.N. Sechin, which was expressed in the failure to notify the debtor: him in enforcement proceedings; on the commission of actions for the compulsory execution of the requirements contained in the writ of execution, on the recognition of illegal actions of the bailiff of the Soviet ROSP FSSP of Russia in the Saratov region A.N. Sechin, expressed: in the initiation of enforcement proceedings in violation of the provisions of Art. Art. 30, 31,

33 Federal Law "On Enforcement Proceedings"; in the implementation of actions for the execution of a court order in violation of Art. 2, item 1 of Art. 12, clause 1 of Art. 13 Federal Law "On Enforcement Proceedings"; in violation of the procedure for fulfilling the requirements of the writ of execution, under Art. 105 FZ "On enforcement proceedings"; in the application of measures of compulsory execution before the expiration of the period established in the decree on the initiation of enforcement proceedings for voluntary fulfillment of requirements in violation of the provisions of Art 68 FZ "On enforcement

proceedings"; in not involving attesting witnesses in enforcement proceedings in violation of the provisions of Art. 59 FZ "On Enforcement Proceedings"; in not involving a specialist in enforcement proceedings in violation of the provisions of Art. 61 FZ "On Enforcement Proceedings"; in violation of the rights of the debtor in enforcement proceedings - JSC firm "SMUR", provided for by Art. 50 FZ "On Enforcement Proceedings"; in the issuance of the Decree of 05/29/2018 on amending the previously issued Decree of 05/28/2018 on the end of enforcement proceedings, on recognition of illegal: Decree on the initiation of enforcement proceedings N b / n of 05/24/2018, as issued from violation of the requirements of Art. Art. 30, 31, 33 FZ "On enforcement proceedings"; The act on the performance of enforcement actions dated May 28, 2018 to I / p N 7727/18/64034-IP, as issued in violation of Art. Art. 61, 68, 105 APC RF; Resolution on the end of enforcement proceedings N 64034/18/46262 dated May 28, 2018; Resolution of May 29, 2018 on amendments to the previously issued Resolution of May 28, 2018 on the end of enforcement proceedings.

In the course of the consideration of the case, the court attracted the Federal Bailiff Service for the Saratov Region, LLC "Company" ALS and TEK "as third parties, LLC" Intercity International Telephone Station ", JSC" Kvant-Telecom ", LLC" DSPS " ...

By the decision of the Arbitration Court of the Saratov Region dated February 22, 2019, the claims declared by the joint-stock company firm "SMUR" were partially satisfied. The inaction of the bailiff-executor of the Soviet district department of bailiffs of the Office of the Federal Service of Bailiffs in the Saratov Region A.N. Sechin was recognized as illegal, expressed in

failure to notify the applicant on the initiation of enforcement proceedings N 7727/18/64034-IP, on the performance of enforcement actions for the enforcement of the requirements contained in the writ of execution, as not complying with the Federal Law of 02.10.2007 N 229-FZ "On Enforcement Proceedings." The actions of the bailiff-executor of the Sovetsky district department of bailiffs of the Office of the Federal Service of Bailiffs in the Saratov Region Sechin A.N., drawn up by an act of performing actions dated 05.28.2018, were recognized as illegal, as not complying with Federal Law of 02.10.2007 N 229-FZ

"On enforcement proceedings". The proceedings on the request to invalidate the act of performing enforcement actions on May 28, 2018 were terminated. The rest of the stated requirements were denied.

Disagreeing with the judicial act in terms of satisfying the stated requirements, the limited liability company "Company" ALS and TEK ", the Office of the Federal Bailiff Service in the Saratov Region and the head of the department - the senior bailiff of the Sovetsky district department of bailiffs of the Federal Bailiff Service in Saratov Oblast Sechin Aleksey Nikolaevich appealed to the Twelfth Arbitration Court of Appeal with complaints in which they ask to cancel the decision of the first instance court in the contested part, to adopt a new judicial act on the case, which to refuse to satisfy the stated requirements.

The appeal of LLC "Company" ALS and TEK "is motivated by the fact that the rights of LLC firm" SMUR "as a debtor in enforcement proceedings are not affected by the contested actions (inaction) of the bailiffs, the set of conditions for recognizing illegal actions (inaction) is absent. Enforcement proceedings ended with the actual execution. Requirements for the recognition of the illegal transfer of optical fibers and the return of the fibers to the debtor have not been declared, evidence that the claimant has received other property has not been presented.

The appeal of the Office of the Federal Bailiffs Service for the Saratov Region, the head of the department - the senior bailiff of the Soviet district department of bailiffs of the Office of the Federal Service of Bailiffs for the Saratov Region A.N. motivated by the fact that the obligation of the bailiff-executor to send the debtor a copy of the order to initiate enforcement proceedings is aimed at ensuring the debtor's right to voluntarily fulfill the

requirements of the enforcement document. The writ of execution was previously presented by the claimant for execution at the location of the debtor in Voronezh. Upon subsequent submissions of the writ of execution, the time limit for voluntary performance was not set to the debtor, and therefore, the need to notify the debtor by sending registered mail did not violate the rights of the debtor, the performance fee was not collected. Failure to notify the debtor about the upcoming enforcement action is not an unconditional basis for recognizing the actions (inaction) of the bailiff-executor illegal, since as a result of the enforcement actions, the bailiff-executor executed the judicial act and the recoverer returned the property. The applicant did not provide evidence that other fibers were transferred to the claimant. The court session was attended by representatives of LLC Company "ALS and TEK", LLC "Directorate of communications enterprises under construction", JSC firm "SMUR", the Office of the Federal Bailiff Service in the Saratov region.

Other persons participating in the case did not appear at the court session, they were duly notified of the time and place of the court session, in the order of Articles 121-123 of the Arbitration Procedure Code of the Russian Federation, Information about the place and time of the court session is posted on the official website of the arbitration court in the information and telecommunications network "Internet" (kad.arbitr.ru), which is confirmed by the report on the publication of judicial acts on the website.

According to paragraph 3 of Article 156 of the Arbitration Procedure Code of the Russian Federation, if the persons participating in the case, duly notified of the time and place of the consideration of the case, fail to appear at the court session, the court shall consider the case in their absence.

In accordance with paragraph 2 of part 3 of Article 18 of the Arbitration Procedure Code of the Russian Federation, by a ruling dated August 12, 2019, judge M.A. Akimova against Judge Puzina E.V., for consideration of appeals of a limited liability company

"Company" ALS and TEK ", the Office of the Federal Bailiffs Service in the Saratov Region and the head of the department - the senior bailiff of the Soviet District Department of Bailiffs of the Office of the Federal Bailiffs Service in the Saratov Region Sechin Alexey Nikolaevich against the decision of the Arbitration Court of the Saratov Region dated February 22, 2019 in case No. A57-14818 / 2018, the following composition of the court was formed: presiding judge E.V. Puzina, judges Kuzmichev S.A., Stepura S.M.

After the replacement of the judge in the course of the trial, the trial is carried out from the very beginning.

At the hearing, the representative of LLC "Company" ALS and TEK "supported the arguments of the appeal in full.

The representative of the Office of the Federal Bailiff Service for the Saratov Region supported the arguments of the appeal in full.

The representative of LLC DSPS, in accordance with Article 262 of the Arbitration Procedure Code of the Russian Federation, provided explanations, from the content of which it follows that LLC DSPS supports the arguments of the appeal of LLC Company ALS and TEK, asks for a decision of the first instance court in the contested part cancel, in the stated requirements of JSC firm "SMUR" to refuse.

The representative of JSC firm "SMUR" objects to the arguments of the appeals, asks to leave the decision of the court unchanged, the appeals were dismissed.

The Office of the Federal Bailiff Service for the Saratov Region, LLC "Company" ALS and TEK ", LLC" DSPS "filed a petition to attach a copy of the register dated 05.24.18 to the case file.

LLC "SMUR" filed a petition to attach to the case materials a copy of the acts on the execution of enforcement actions dated 05/23/18, 06/22/18, a copy of the counterclaim in case No. A57-1008 / 2019.

LLC "DSPS" filed a petition to attach to the case file a copy of a statement prohibiting

enforcement actions.

In accordance with Part 1 of Article 268 of the Arbitration Procedure Code of the Russian Federation, when considering a case by way of appeal, the arbitration court, based on the evidence available in the case and additionally presented evidence, re-considers the case.

Thus, the law imposes on the courts of appeal the obligation to re-examine the case, having checked and clarified all the factual circumstances.

Additional evidence is accepted by the arbitration court of the appellate instance if the person participating in the case has substantiated the impossibility of submitting them to the court of first instance for reasons beyond its control, including if the court of first instance was the petition to demand evidence was rejected, and the court recognizes these reasons as valid (part 2).

When considering a case in an arbitration court of the appellate instance, the persons participating in the case have the right to file petitions for the attachment of written and material evidence to the case, the study or request of which they were denied by the court of first instance (part 3).

Clause 26 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated May 28, 2009 N 36 "On the Application of the Arbitration Procedure Code of the Russian Federation when considering cases in an arbitration court of appeal" states that when deciding on the possibility of accepting new evidence, including those attached to an appeal or a withdrawal to an appeal, the arbitration court of the appellate instance determines whether the person who presented the evidence had the opportunity to present it to the court of first instance or whether the applicant did not submit it for valid reasons beyond his control. Among the valid reasons, in particular, is the unjustified rejection by the court of first instance of the petitions of the persons participating in the case to request additional evidence. The recognition of evidence as relevant and admissible does not in itself constitute a basis for its acceptance by the arbitration court of the appellate instance.

According to the legal position expressed in clause 2.2 of the reasoning part of the Determination of the Constitutional Court of the Russian Federation of March 16, 2006 N 71-O, Article 268 of the Arbitration Procedure Code of the Russian Federation ensures the equality of the rights of the participants in the proceedings to submit additional evidence to the arbitration court of the appellate instance and thereby is aimed at implementation of this constitutional principle in civil proceedings. This provision does not prohibit the presentation by persons participating in the case to the court of appeal of new evidence that has not been investigated by the court of first instance - such evidence may be provided by a person if the court of appeal recognizes good reasons for not submitting it to the court of first instance.

The Court of Appeal refuses to satisfy the petitions for attaching a copy of the postal register dated 05.24.18 to the case file, since no valid reason has been specified for the impossibility of submitting the said postal register to the court of first instance, in connection with which, these documents must be returned.

The Court of Appeal refuses to satisfy the petitions for attaching to the case materials copies of the statement prohibiting the performance of enforcement actions, a counterclaim statement, copies of acts on the performance of enforcement actions dated 23.05.18, dated 22.06.18, t. these documents are not related to the dispute under consideration, in connection with which, these documents must be returned.

Since only a part of the decision is appealed in the order of appeal, the parties did not raise objections to the verification of only part of the judicial act, the arbitration court of the appellate instance, by virtue of the requirements of Part 5 of Article 268 of the Arbitration Procedure Code of the Russian Federation, verifies the legality and validity of the determination only in the part complained of.

Having examined the materials of the case, having studied the arguments of the appeal, having checked the correctness of the application by the court of first instance of the norms of substantive and procedural law, the court of appeal came to the following conclusions. As follows from the materials of the case, the decision of the Arbitration Court of the Saratov Region of August 31, 2017 in case No. A57-233 / 2017 refused to satisfy the claims of LLC Company ALS and TEK against JSC Firm Smur on the obligation to return the property under the second stage of the contract No. 3 / 12-12 of 04.09.2012.

By the resolution of the Twelfth Arbitration Court of Appeal dated 13.12.2017, the decision of the Arbitration Court of the Saratov Region dated 31.08.2017 in the case No. A57-233 / 2017 canceled, the claims of LLC "Company" ALS and TEK "on the obligation of JSC firm" SMUR "to return the property under the second stage of contract No. 3 / 12-12 dated 04.09.2012 were satisfied in full.

The court of appeal ordered the JSC firm "SMUR" to return to the benefit of LLC "Company" ALS and TEK "four optical fibers in the fiber-optic communication line" Saratov-Ozinki "in part of the second stage - optical fibers in the section from Ershov to Saratov: from the optical crossbar in a container on the territory of the RTRS "Saratov ORTPTs" at the address Saratov region, Ershov, Meliorativnaya st., 32A to the main distribution coupling MRM28 near the village of Pushkino, Sovetsky district, Saratov region, from the distribution coupling backbone MRM28 near the settlement of Pushkino, Sovetskiy district, Saratov region, before optical crossbar in a container on the territory of JSC

"Urbakhskiy kombinat khleboproduktov" at the address: Saratov region, Sovetskiy district, Pushkino, st. Zavodskaya, 1a, from the main distribution coupling 1MRM28 near the village of Pushkino, Sovetsky district, Saratov region. to optical distribution frame "VOSTOK" LLC "Company" ALS and TEK ", Saratov, B. Kazachya st., 6, from the optical cross" VOSTOK "LLC" Company "ALS and TEK", Saratov, B. Kazachya st., 6 , to the optical crossover of LLC "Company" ALS and TEK "on the territory of JSC" Integral "at the address: Saratov, st. Chernyshevskogo, 153, actually received for temporary use by CJSC firm "SMUR", Voronezh under the act of acceptance and transfer of property for temporary use dated 10.10.2012 in accordance with the terms of contract N 3 / 12-12 for the sale of optical fibers and share in the right of common share ownership in a fiber-optic communication line in the Voronezh and Saratov regions, concluded on 04.09.2012 between LLC "Company" ALS and TEK "and CJSC firm SMUR".

This ruling of the Twelfth Arbitration Court of Appeal was left unchanged by the courts of higher instances.

Based on the ruling of the Twelfth Arbitration Court of Appeal dated 12/13/2017 in case No. A57-233 / 2017, a writ of execution No. FS 016402251 dated December 29, 2017 was issued.

The specified writ of execution was sent to the location of the debtor in the city of Voronezh, where the bailiff-executor of the Kominternovskiy ROSP of Voronezh, I.A. initiated enforcement proceedings from 01.02.2018 No. 3978/18/36035-IP.

The debtor was notified of the initiation of the said enforcement proceedings, which JSC "SMUR" does not deny.

By the decree of the Kominternovsky ROSP of the Federal Bailiff Service of Russia in the Voronezh Region of 03/30/2018, the enforcement proceedings ended, an act was drawn up, the writ of execution was returned to the claimant.

Subsequently, the writ of execution No. FS 016402251 of December 29, 2017 was presented to the Ershov ROSP of the Federal Bailiff Service of Russia in the Saratov Region, a resolution was issued to initiate enforcement proceedings No. 15022/18/64014-IP dated 05/17/2018. By the decree of the bailiff-executor of the Ershov ROSP from 23.05.18.

enforcement proceedings No. 15022/18/64014-IP ended with actual execution.

Subsequently, the writ of execution No. FS 016402251 dated December 29, 2017 was presented to the Soviet ROSP of the FSSP of Russia in the Saratov region.

By the order of the bailiff-executor of the Soviet ROSP of the Federal Bailiff Service of Russia for the Saratov Region, A.N. Sechin. of May 24, 2018, enforcement proceedings were initiated No. 7727/18/64032-IP.

Clause 2 of the decree set a 5-day period for the debtor for voluntary fulfillment of the requirements contained in the enforcement document from the moment the debtor receives a copy of this decree.

In accordance with clause 9 of the decree, it is determined to send a copy of this decree, including to JSC firm "SMUR" at the address: 394019, Voronezh, st. Eremeeva, 22. 05/28/2018 Bailiff of the Soviet ROSP of the Federal Bailiff Service of Russia in the Saratov Region A.N. Sechin an act was drawn up on the commission of enforcement actions, in which the bailiff indicated that the enforcement actions contained in the enforcement document, in part of the property located on the territory of the Soviet region, were carried out in full. The property was returned by disconnecting the patchcord from the optical fibers to be returned on the optical crossbar, in a container on the territory of the Urbakhskiy kombinat khleboproduktov LLC at the address of the Saratov region, Sovetsky district, Pushkino st. Factory 1a.

By the order of the bailiff-executor of the Soviet ROSP of the Federal Bailiff Service of Russia for the Saratov Region, A.N. Sechin. of May 28, 2018, enforcement proceedings No. 7727/18/64032-IP ended, due to the fact that the requirements of the executive document were met in full.

By the Decree of 05/29/2018 in the resolution of the bailiff-executor of the Soviet ROSP of the Federal Bailiff Service of Russia for the Saratov Region A.N. Sechin. of 05/28/2018, corrections were made in terms of the requirements of the executive document were fulfilled in connection with the withdrawal of the executive document.

Considering that the enforcement actions within the framework of enforcement proceedings No. 7727/18/64032-IP were committed by the bailiff-executor in violation of the requirements of Law No. 229-FZ, as well as a significant violation of the rights and legitimate interests of the debtor in the said enforcement proceedings - JSC firm SMUR "Went to court with these requirements. In support of the stated requirements of the JSC firm

"SMUR" indicates that the company was not notified of the initiation of enforcement proceedings against it, was not notified of the implementation of enforcement actions and the preparation of an act, respectively, was deprived of the rights provided for by Law No. 229-FZ.

Partially satisfying the requirements stated by the company "SMUR" JSC, the court of first instance came to the conclusion that the bailiff-executor of the Sovetskiy ROSP UFSSP in the Saratov region A.V. Sechin did not act on the grounds that he did not notify the applicant about the initiation of enforcement proceedings No. 7727/18/64032 -IP, on the performance of enforcement actions for the enforcement of the requirements contained in the writ of execution, on the illegal actions of the bailiff-executor of the Soviet district department of bailiffs of the Office of the Federal Bailiffs Service in the Saratov Region A.N. Sechina, formalized by the act of performing executive actions dated 28.05 .2018, as not complying with the Federal Law of 02.10.2007 No. 229-FZ "On Enforcement Proceedings", which in turn violates the applicant's right to timely receive information about the enforcement proceedings initiated against him and the enforcement actions performed.

The appellate court came to the following conclusions.

In accordance with Part 1 of Art. 198 of the Arbitration Procedure Code of the Russian Federation, citizens, organizations and other persons have the right to apply to an arbitration court with an application for invalidating non-normative legal acts, illegal

decisions and actions (inaction) of bodies exercising public powers, officials, if they believe that the contested non-normative legal act, decision and the action (inaction) does not comply with the law or other normative legal act and violates their rights and legitimate interests in the field of entrepreneurial and other economic activity, illegally imposes any duties on them, creates other obstacles to the implementation of entrepreneurial and other economic activities.

The absence (lack of evidence) of at least one of the above conditions serves as the basis for abandoning the declared claim.

In accordance with Part 4 of Art. 200 of the Arbitration Procedure Code of the Russian Federation, when considering cases on challenging non-normative legal acts, decisions and actions (inaction) of bodies exercising public powers, officials, the arbitration court in a court session checks the contested act or its individual provisions, contested decisions and actions (inaction) and establishes their compliance with the law or other regulatory legal act, establishes the authority or authority of the body or person who adopted the contested act, decision or committed the contested actions (inaction), and also establishes whether the contested act, decision and actions (inaction) violate the rights and legitimate interests of the applicant in the field of entrepreneurial and other economic activities.

At the same time, in accordance with part 5 of Article 200 of the APC RF, the obligation to prove the compliance of the contested non-normative legal act with the law or other normative legal act, the legality of making the contested decision, committing the contested actions (inaction) is imposed on the body or person who adopted the act, decision or performed actions (inaction).

In turn, the obligation to prove the violated right in accordance with Article 65 of the Arbitration Procedure Code of the Russian Federation lies with the applicant.

According to part 1 of Article 16 of the Arbitration Procedure Code of the Russian Federation, judicial acts of an arbitration court that have entered into legal force are binding on public authorities, local authorities, other bodies, organizations,

officials and citizens and are subject to enforcement throughout the territory of the Russian Federation.

According to Article 329 of the Arbitration Procedure Code of the Russian Federation, decisions and actions (inaction) of the bailiff-executor can be challenged in the arbitration court in the cases provided for by this Code and other federal laws, according to the rules established by Chapter 24 of the named Code.

Challenging in court the decision of an official of the bailiff service, actions (inaction) of bailiffs-executors is also provided for by Article 128 of the Federal Law of 02.10.2007 N 229-FZ "On Enforcement Proceedings" (hereinafter - Law N 229-FZ).

The provisions of Article 1 of the Federal Law of 21.07.1997 N 118-FZ "On Bailiffs" (hereinafter - Law N 118-FZ, the Law on Bailiffs), Article 5 of the Federal Law of 02.10.2007 N 229-FZ "On Enforcement Proceedings" (hereinafter referred to as Law No. 229-FZ, the Law on Enforcement Proceedings), it is established that the bailiff service is charged with the obligation to enforce judicial acts and acts of other bodies and officials.

Article 12 of the Federal Law of 21.07.1998 N 118-FZ "On bailiffs" provides for the obligation of the bailiff-executor in the process of compulsory execution of judicial acts to take measures for the timely, complete and correct execution of executive documents.

Taking measures for the timely, complete and correct execution of executive documents means that the bailiff must initiate enforcement proceedings and carry out the entire range of enforcement actions provided for by the Federal Law of 02.10.2007 N 229-FZ "On enforcement proceedings" (hereinafter - the Federal Law 229-FZ), in order to execute the executive document in full.

According to Article 30 of the Law on Enforcement Proceedings, the bailiff initiates enforcement proceedings on the basis of a writ of execution at the request of the claimant,



unless otherwise provided by this law. The bailiff-executor, within three days from the date of receipt of the executive document to him, makes a decision to initiate enforcement proceedings or to refuse to initiate enforcement proceedings.

If the enforcement document first entered the bailiff service, then the bailiff in the decision on the initiation of enforcement proceedings sets the time limit for the debtor to voluntarily fulfill the requirements contained in the enforcement document and warns the debtor about the compulsory execution of these requirements after the expiration of the time period for voluntary execution with recovery from him performance fee and expenses for the performance of enforcement actions provided for by Articles 112 and 116 of this Federal Law (Part 11).

In accordance with paragraph 2 of Part 1 of Art. 30 FZ No. 229-FZ, the bailiff does not set a deadline for voluntary execution of an enforcement document in cases of initiation of enforcement proceedings upon subsequent presentation of an enforcement document.

A copy of the order of the bailiff-executor on the initiation of enforcement proceedings no later than the day following the day of the issuance of the specified order, is sent to the recoverer, the debtor, as well as to the court, another body or official that issued the enforcement document (part 17 of article 30 of the Law on enforcement production).

Appealing to the court with a statement, the applicant refers to the inaction of the bailiff of the Soviet ROSP of the Federal Bailiff Service of Russia in the Saratov Region A.N. Sechin, which was expressed in not sending the order to the debtor to initiate enforcement proceedings.

As follows from the materials of the case, on May 24, 2018 by the bailiff-executor of the Soviet ROSP of the Federal Bailiff Service of Russia in the Saratov Region A.N. Sechin. issued a resolution to initiate enforcement proceedings No. 7727/18/64034-IP.

In accordance with clause 9 of the decree, it was determined to send a copy of this decree, including JSC "Smur" to the address: 394019, Voronezh, st. Eremeeva, 22.

Consequently, a copy of the order to initiate enforcement proceedings was to be sent to the debtor, taking into account the procedure for calculating the deadlines no later than 05/25/2018.

Clause 2 of the decree set a 5-day period for the debtor for voluntary fulfillment of the requirements contained in the enforcement document from the moment the debtor receives a copy of this decree.

Meanwhile, paragraph 2 of part 14 of Article 30 of Law N 229-FZ established that the bailiff-executor does not establish a time limit for the voluntary execution of an enforcement document in cases of initiation of enforcement proceedings upon subsequent presentation of an enforcement document.

In support of the proof of the sending of a copy of the decision to initiate enforcement proceedings dated 05.24.2018, the SSP was provided with a copy of the list of domestic mailings dated 05.24.2018, an annex to the register of ordinary postal correspondence dated 05.24.2018.

Subsequently, the above documents were excluded by the court of first instance from the evidence in the case at the request of the head of the department - senior bailiff of the Soviet ROSP of the Federal Bailiff Service of Russia for the Saratov Region, Sechin Alexey Nikolaevich.

Under these circumstances, the evidence of the direction to the debtor of the decision on the initiation of enforcement proceedings by the bailiff-executor of the Soviet ROSP of the Federal Bailiff Service of Russia in the Saratov Region was not presented in the case file.

Link of LLC "DSPTS" in its explanations to the response of the post office with the attachment of a photocopy of the postal register dated 05.24.2018. the court of appeal rejects as evidence of the direction of the decision to initiate enforcement proceedings against the debtor, since the judicial collegium refused to attach the said mail register to the case file, due to the fact that a valid reason for the impossibility of submitting the mail register to the court of first instance was not indicated. In addition, the court of first instance excluded this postal register from the evidence in the case at the request of the head of the department - the senior judicial bailiff of the Soviet ROSP UFSSP of Russia in the Saratov region Sechin Alexey Nikolaevich, in connection with the debtor's statement of falsification.

In connection with the foregoing, given the lack of evidence of the direction to the debtor of the order on initiation of enforcement proceedings No. 7727/18/64034-IP dated 05.24.2018, the court of first instance recognized the inaction of the bailiff-executor, which was expressed in the failure to notify the debtor about the initiation of enforcement proceedings, illegal No. 7727/18/64034-IP.

The bailiff was obliged to send an order to initiate enforcement proceedings to the debtor no later than the day following the day of the issuance of the said order, which was not duly executed by the bailiff service.

The court of first instance also came to the conclusion about the illegal inaction of the bailiff-executor of the Sovetskiy ROSP of the UFSSP for the Saratov region A.N. Sechin, expressed in the failure to notify the applicant about the execution of enforcement actions to enforce the requirements contained in the writ of execution, and the actions of the bailiff - the executor of the Soviet ROSP UFSSP in the Saratov region A.V. Sechina, drawn up by an act of performing actions of 05/28/2018. The bailiff-executor did not notify the debtor about the execution of compulsory enforcement measures against him, thereby violating the applicant's rights to participate in the performance of enforcement actions.

In accordance with subparagraph 2 of Article 4 of Law N 229-FZ, enforcement proceedings are carried out on the principles of the timeliness of enforcement actions and the application of enforcement measures

By virtue of Article 64 of Law No. 229-FZ, in the process of fulfilling the requirements of executive documents, the bailiff is entitled to perform enforcement actions aimed at creating conditions for the application of enforcement measures, as well as forcing the debtor to full, correct and timely fulfillment of the requirements contained in executive document. This article contains a list of enforcement actions that a bailiff-executor has the right to carry out in the process of fulfilling the requirements of enforcement documents.

In accordance with part 1 of Article 24 of the Law on Enforcement Proceedings, the persons participating in the enforcement proceedings are notified of the time and place of the enforcement actions or the application of enforcement measures, or are summoned to the bailiff-executor by a summons with a receipt acknowledgment, a telephone message, a telegram, using electronic, other types of communication and delivery or by a person to whom, with his consent, the bailiff-executor instructs to deliver them.

Part 2 of Article 24 of the Law on Enforcement Proceedings provides that in cases where a writ of execution is subject to immediate execution, as well as when the property is seized and other interim measures are taken, the bailiff is entitled to perform enforcement actions and apply enforcement measures without prior notification of this persons involved in enforcement proceedings. In this case, the bailiff is obliged to notify the specified persons about the execution of enforcement actions or the application of enforcement measures no later than the next working day after the day of their commission or application.

According to part 1 of Article 88 of the Law on Enforcement Proceedings, in the event that the property specified in the enforcement document is awarded to the recoverer, the bailiff shall withdraw it from the debtor and transfer it to the recoverer under the act of acceptance and transfer.

By virtue of Article 50 of the Federal Law of 02.10.2007 N 229-FZ "On Enforcement Proceedings", the parties to the enforcement proceedings are entitled to participate in the performance of enforcement actions.

Thus, the parties to the enforcement proceedings are given the opportunity by law to exercise their right to participate in enforcement actions, including the seizure of property from the debtor for transfer to the recoverer pursuant to the enforcement document.

As established by the court of first instance and confirmed by the case materials, the enforcement actions were committed by the bailiff-executor on May 28, 2018 in the absence of the debtor's representative, which, according to the applicant's arguments, does not comply with the provisions of the Federal Law of October 2, 2007 N 229-FZ "On Enforcement Proceedings."

However, from the content of Articles 50, 88 of the Federal Law of 02.10.2007 N 229-ФЗ "On Enforcement Proceedings" does not follow the obligation of the bailiff-

executor to seize property exclusively in the presence of the debtor.

According to the act on the performance of enforcement actions dated 05/28/2018, the bailiff-executor of the Soviet ROSP of the Federal Bailiff Service of Russia in the Saratov Region Sechin A.N. drew up an act stating that the enforcement actions contained in the executive document, in terms of the property located on the territory of the Sovetsky district, were carried out in full. The property was returned by disconnecting the patchcord from the optical fibers to be returned on the optical crossbar, in a container on the territory of the Urbakhskiy kombinat khleboproduktov LLC at the address Saratov region, Sovetskiy district, Pushkino st. Factory 1a.

The specified act was drawn up in the presence of a representative of the claimant, who reflected in the act that the property specified in the act was accepted, there are no comments and statements.

The claimant in the court session confirmed that the property was received on May 28, 2018 in pursuance of the executive document within the framework of enforcement proceedings No. 7727/18/64034-IP.

The court of first instance came to the conclusion that, by virtue of Article 59 of Law No. 229-FZ, the participation of attesting witnesses is mandatory in the performance of enforcement actions and the application of enforcement measures related, inter alia, to the seizure and transfer of property.

Any capable citizens who have reached the age of eighteen, who are not interested in the outcome of the enforcement proceedings, who are not related to the persons participating in the enforcement proceedings, are not related or are not subordinate or controlled by these persons, may be invited as attesting witnesses. The number of attesting witnesses cannot be less than two.

In this case, the bailiff in violation of Art. 59 of Law No. 229-FZ made the seizure of the subject of execution in the presence of a representative of the claimant, without the participation of attesting witnesses.

However, the indicated violations cannot serve as a basis for satisfying the applicant's claims in the contested part, in connection with the following.

In accordance with Part 4 of Art. 200 of the Arbitration Procedure Code of the Russian Federation, when considering cases on challenging non-normative legal acts, decisions and actions (inaction) of bodies exercising public powers, officials, the arbitration court in a court session checks the contested act or its individual provisions, contested decisions and actions (inaction) and establishes their compliance with the law or other regulatory legal act, establishes the authority or authority of the body or person who adopted the contested act, decision or committed the contested actions (inaction), and also establishes whether the contested act, decision and actions (inaction) violate the rights and legitimate interests of the applicant in the field of entrepreneurial and other economic activities.

In Art. 13 of the Civil Code of the Russian Federation, clause 6 of the Resolution of the Plenum of the Supreme Court of the Russian Federation and the Plenum of the Supreme Arbitration Court of the Russian Federation dated 01.07.1996 N 6/8 "On some issues related to the application of part one of the Civil Code of the Russian Federation" it is stated that the basis for making a court decision on the recognition of a non-normative act, and in cases provided for by law, also a normative act of a state body or local self-government body is invalid, is, at the same time, both its inconsistency with the law or other normative legal act, and the violation by the specified act of civil rights and legally protected interests of citizens or legal entities who have filed a lawsuit with a corresponding claim.

Thus, the range of circumstances to be established when considering cases on challenging non-normative acts, actions (inaction) of state bodies include checking the

compliance of the contested act with the law or other regulatory legal act, checking the fact of violation by the contested act by the action (inaction) of the rights and legitimate interests of the applicant, and also compliance with the deadline for filing an application to the court.

The absence of at least one of these conditions is the basis for refusal to recognize a non-normative legal act as invalid, an action (inaction) illegal.

According to Part 3 of Art. 201 of the Arbitration Procedure Code of the Russian Federation in the event that the arbitration court finds that the contested non-normative legal act, decisions and actions (inaction) of state bodies, local self-government bodies, other bodies, officials comply with the law or other regulatory legal act and do not violate the rights and legitimate interests of the applicant, the court decides to refuse to satisfy the stated claim.

At the same time, the court of appeal does not agree with the conclusion of the first instance court on the violation of the rights of the applicant (debtor) and legitimate interests in the field of entrepreneurial and other economic activity.

As follows from the case materials, the subject of execution within the framework of enforcement proceedings No. 7727/18/64034-IP is the obligation of the Joint Stock Company "firm" SMUR "to return to the benefit of the Company from

limited liability "Company" ALS and TEK "four optical fibers in the fiber-optic communication line" Saratov-Ozinki "in the second stage - optical fibers in the section from the city of Ershov to the city of Saratov: from an optical crossbar in a container on the territory of RTRS" Saratov Regional TV and Radio Broadcasting Center "at the address Saratov region, Ershov, st. Meliorative, 32A to the main distribution coupling MRM28 near the settlement of Pushkino, Sovetsky district, Saratov region, from the distribution main coupling MPM28 near the settlement Pushkino, Sovetsky district, Saratov region. to the optical crossover in a container on the territory of the Urbakhskiy Kombinat Khleboproduktov Open Joint Stock Company at the address Saratov Region, Sovetskiy District, Pushkino, Zavodskaya Street, 1a, from the main distribution coupling MRM28 near Pushkino, Sovetsky District Saratov Region. to the optical crossover "VOSTOK" of the Limited Liability Company "Company" ALS and TEK ", Saratov, B. Kazachya st., 6, from the optical crossover" VOSTOK "of the Limited Liability Company

"Company" ALS and TEK ", Saratov, B. Kazachya st., 6 to the optical cross of the Limited Liability Company" Company "ALS and TEK" on the territory of Open Joint Stock Company "Integral" at the address Saratov, st. Chernyshevsky, 153.

This judicial act was issued within the framework of case No.A57-233 / 2017, and the court proceeded from the following: according to the terms of the sale and purchase agreement, the company (seller) transfers the property to the company (buyer) for temporary use until it is paid in accordance with the stages established by the agreement; the firm has not denied the fact of acceptance of the disputed property and its use; since, in violation of the terms of this agreement, the buyer did not fulfill the obligation to make a second payment for the acquired property, the seller, by letter dated 05/27/2014 N 841, terminated the specified agreement unilaterally; the firm did not provide evidence of the return to the seller of the property transferred to it for temporary use; the argument of the company about the discrepancy between the identification data of the claimed property and the actually used is untenable, since, taking into account the specific characteristics of this property, the discrepancy of the cable brand does not indicate the absence of the disputed property and the arisen legal relations under the purchase and sale agreement; the materials of the case confirmed the absence of disagreements and uncertainties between the parties regarding the subject of the sale and purchase agreement during the period of its execution; after the termination of the sale-purchase agreement, the defendant must return to the

plaintiff the received possession and use of the fibers.

According to the act on the execution of enforcement actions dated May 28, 2018 within the framework of enforcement proceedings No. 7727/18/64034-IP dated May 24, 2018, the requirements of the executive document in terms of the property located on the territory of the Sovetsky district are fully met. The property was returned by disconnecting the patchcord from the optical fibers to be returned on the optical crossbar, in a container on the territory of the Urbakhskiy kombinat khleboproduktov LLC at the address of the Saratov region, Sovetsky district, Pushkino st. Factory 1a.

The claimant in the court session confirmed that the property pursuant to a writ of execution within the framework of enforcement proceedings No. 7727/18/64034-IP he received on May 28, 2018.

In addition, on 12.09.2018. Between LLC Directorate of Communication Enterprises under Construction (buyer) and LLC Company ALS and TEK (the owner of the property), an agreement No.ALS-DSPS / OV-12092018 was concluded for the purchase and sale of property (4 optical fibers in a fiber-optic communication line for plot

"Saratov-Ershov" in FOCL "Saratov-Ozinki"), under the terms of which and in accordance with the act of acceptance and transfer of 09/12/2018. LLC "Company" ALS and TEK "transferred to the ownership of LLC" Directorate of communications enterprises under construction ", awarded and received by the effective resolution of the Twelfth Arbitration Court of Appeal dated 13.12.2017. in case No. A57-233/2017 property (4 optical fibers in a fiber-optic communication line at the Saratov-Ershov section in the Saratov-Ozinki fiber-optic communication line).

01.10.18 between LLC "DSPS" and LLC "MMTS" concluded a lease agreement for the specified property No. 76-18.

According to paragraph 1 of Article 6 of the Federal Constitutional Law of December 31, 1996 N 1-FKZ "On the Judicial System", part 1 of Article 16 of the Arbitration Procedure Code of the Russian Federation, judicial acts of arbitration courts that have entered into legal force are binding on all state authorities without exception, local authorities, public associations, officials, citizens, organizations and are subject to strict execution throughout the territory of the Russian Federation. The binding nature of acts adopted by an arbitration court or a court of general jurisdiction is manifested in the fact that the named bodies and officials do not have the right in their actions to proceed from the assumption that the act that has entered into legal force is incorrect, does not have the right to change or cancel decisions made in cases, considered by the court. The decision, ruling and rulings of commercial courts may be canceled or changed only by a higher court and in the manner prescribed by procedural law.

The debtor's argument that, in the absence of a representative of the debtor during the enforcement actions, the bailiff-executor could have taken actions in relation to the property of third parties who are not a party to the enforcement proceedings, is subject to rejection, in view of the fact that the fact of action against the property of third parties is right and does not violate the legitimate interests of the debtor. In addition, these persons are not deprived of the opportunity to independently challenge the actions of the bailiff-executor in accordance with the current legislation.

However, other persons did not apply with an independent statement.

The debtor's representative points out that the bailiff transferred the property to the recoverer in the manner not provided for by the Federal Law of 02.10.2007 N 229-FZ "On Enforcement Proceedings", not under the act of transfer and acceptance and therefore, in his opinion, the requirements of the enforcement the document has not yet been executed. In support of these requirements, the company refers to the fact that the executive document

contained requirements of a non-property nature, in connection with which, it was subject to execution directly by the debtor himself.

The court of appeal rejects the said argument of the Company on the following grounds.

From the materials of the enforcement proceedings, it follows that the debtor knew about the existence of the writ of execution of the Arbitration Court of the Saratov Region,

obliging JSC "SMUR" is obliged to return in favor of the Limited Liability Company "Company" ALS and TEK "four optical fibers in the fiber-optic communication line" Saratov-Ozinki "in the part of the second stage - optical fibers in a section in a container on the territory of the Open Joint Stock society "Urbakh Combine of Bread Products" at the address Saratov region., Sovetsky district, p. Pushkino, street Zavodskaya, 1a.

However, the company has not taken any steps to voluntarily fulfill the requirements of the executive document. The claimant confirmed that the property pursuant to an enforcement document within the framework of enforcement proceedings

No. 7727/18/64034-IP he received on May 28, 2018.

The debtor's argument that the claimant refers to the act of performing enforcement actions as evidence in other arbitration disputes, thereby violating his rights, is untenable.

By virtue of Art. 71 of the Arbitration Procedure Code of the Russian Federation, the arbitration court evaluates the evidence according to its inner conviction, based on a comprehensive, complete, objective and direct study of the evidence available in the case. The arbitral tribunal assesses the relevance, admissibility, reliability of each piece of evidence separately, as well as the sufficiency and interconnection of evidence in their entirety.

By itself, the link of the claimant in substantiating his arguments and objections in the framework of other property cases to the contested act on the commission of enforcement actions cannot violate the rights and legitimate interests of the debtor, since the evidence is subject to assessment by the court in the framework of the disputes under consideration.

LLC firm "SMUR" refers to the impossibility of transferring property (optical fibers) that does not contain identifying signs.

Based on the specific situation, the characteristics of the equipment listed in the writ of execution, the absence of identifying signs on the equipment itself cannot indicate the illegality of the actions.

This argument is aimed at re-evaluating the conclusions of the judicial act on the basis of which the enforcement proceedings were initiated.

Within the framework of the disputable enforcement proceedings, the debtor was not brought to administrative responsibility, the enforcement fee was not collected from him, which indicates the absence of violation of rights by the contested actions (inaction).

In addition, the board considers it necessary to note that according to the rules of part

1 of Article 4 of the Arbitration Procedure Code of the Russian Federation, an interested person has the right to apply to an arbitration court for the protection of his violated or contested rights and legitimate interests in the manner established by this Code.

According to clause 1 of Article 6 of the Federal Constitutional Law of December 31, 1996 N 1-FKZ "On the Judicial System", part 1 of Article 16 of the Arbitration Procedure Code of the Russian Federation, judicial acts of arbitration courts that have entered into legal force are binding on all public authorities, bodies local government, public associations, officials, citizens, organizations and are subject to strict implementation throughout the territory of the Russian Federation.

The binding nature of acts adopted by an arbitration court or a court of general jurisdiction is manifested in the fact that the named bodies and officials do not have the right in their actions to proceed from the assumption that the act that has entered into legal force is incorrect, does

not have the right to change or cancel decisions made in cases, considered by the court. The decision, ruling and rulings of commercial courts may be canceled or changed only by a higher court and in the manner prescribed by procedural law.

At the same time, being a debtor in enforcement proceedings and appealing to the court with this application, the Company did not prove the violation by the contested actions of its rights and legitimate interests in the field of entrepreneurial or other economic activity, did not indicate which of its rights could be restored within the framework of this dispute, given the fact the fact that the property received by the claimant was sold to a third party.

The arguments of the applicant (the debtor in enforcement proceedings), set out in statements, responses to appeals, explanations, etc. actually aimed at re-evaluating the conclusions of the judicial act in case No. A57-233/2017, which established the actual use and ownership of the JSC by the company

"SMUR" with disputed property and served as the basis for satisfying the requirements for the obligation to return the property to the claimant, on the basis of which enforcement proceedings were initiated, and also aimed at non-execution of a judicial act that has entered into legal force, which is unacceptable, these arguments cannot be taken into account when considering this spore.

By virtue of Part 1 of Article 10 of the Civil Code of the Russian Federation, the exercise of civil rights solely with the intention of causing harm to another person, actions bypassing the law with an unlawful purpose, as well as other knowingly unfair exercise of civil rights (abuse of law) are not allowed.

In the course of the enforcement actions, the bailiff-executor on 28.05.2018. transferred the claimed property to the legal owner, which is not disputed by the claimant. The debtor did not provide evidence in support of the fact that he voluntarily transferred the property requested by the court after the entry of the judicial act into legal force prior to its compulsory seizure by the bailiffs, as well as the fact that the recognition of the unlawful act of the execution of enforcement actions dated May 28, 2018, drawn up without participation of the representative of JSC firm "Smur" is aimed at restoring his rights and legitimate interests in the field of entrepreneurial or other economic activity, given that the property was received by the claimant, sold to a third party, and is currently neither in the use of the claimant nor in the use of the debtor ...

Thus, in this case, there is no set of conditions under Art. 201 of the Arbitration Procedure Code of the Russian Federation necessary to satisfy the requirements stated in the order of Ch 24 APC RF.

Based on the foregoing, evaluating all the available evidence in the case, the court of appeal comes to the conclusion that it is necessary to cancel the decision of the Arbitration Court of the Saratov Region dated February 22, 2019 in the contested part, adopt a new judicial act on the refusal to satisfy the requirements of the Joint Stock Company of the firm "SMUR" parts of recognition

illegal inaction of the bailiff-executor of the Soviet district department of bailiffs of the Office of the Federal Service of Bailiffs in the Saratov Region A.N. Sechin, expressed in the failure to notify the applicant about the initiation of enforcement proceedings N 7727/18/64034-IP, about the execution of enforcement actions to enforce the requirements, contained in the writ of execution and in terms of recognizing the actions of the bailiff-executor of the Sovetskiy district department of bailiffs of the Office of the Federal Bailiffs Service in the Saratov Region A.N. Sechin as illegal, drawn up by an act of performing performance actions dated 05/28/2018.

Guided by Articles 268-271 of the Arbitration Procedure Code of the Russian Federation, the Arbitration Court of Appeal ruled

**ruled:**



the decision of the Arbitration Court of the Saratov Region of February 22, 2019 in case No.A57-14818 / 2018 in the contested part to cancel, to adopt a new judicial act in the canceled part.

In meeting the requirements of the Joint Stock Company of the firm "SMUR" in terms of recognizing illegal the inaction of the bailiff-executor of the Soviet district department of bailiffs of the Office of the Federal Service of Bailiffs in the Saratov Region A.N. Sechin, expressed in the failure to notify the applicant about the initiation of enforcement proceedings N 7727/18 / 64034-IP, on the performance of enforcement actions for the enforcement of the requirements contained in the writ of execution and in terms of recognizing the actions of the bailiff-executor of the Sovetsky district department of bailiffs of the Office of the Federal Bailiffs Service in the Saratov Region A.N. Sechina, issued by an act of enforcement actions from 05/28/2018 - refuse.

The ruling of the arbitration court of the appellate instance comes into legal force from the date of its adoption and can be appealed to the arbitration court of the Volga region within two months from the date of making the ruling in full through the arbitration court of first instance.

Presiding E.The. Puzina

Judges S.A. Kuzmichev

CM. Stepura