



TWELFTH ARBITRAL APPEAL COURT
410002, Saratov, st. Lermontov, 30, bldg. 2 tel: (8452) 74-90-90, 8-800-200-12-77; fax:
(8452) 74-90-91, <http://12aas.arbitr.ru>; e-mail: info@12aas.arbitr.ru

RESOLUTION
arbitration court of appeal

Saratov Case No. A57-16161 / 2018

July 15, 2019

The operative part of the resolution was announced on July 10, 2019 The full text of the resolution was made on July 15, 2019

Twelfth Arbitration Court of Appeal composed of: presiding judge Stepura S.M.,
judges Puzina E.V., Samokhvalova A.Yu.,

while keeping the minutes by the secretary of the court session Arzumanyan A.A., having
examined in an open court session the appeal of the limited liability company "Company"
ALS and TEK "against the decision of the Arbitration Court of the Saratov Region dated
February 27, 2019 in case No. A57-16161/2018 (judge Mamyasheva D.R.)

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

interested persons:

bailiff of the Kirov ROSP of the UFSSP for the Saratov region Tumaeva K.S. (410054,
Saratov, 2-ya Sadovaya st., 129), Office of the Federal Bailiff Service in the Saratov Region
(410000, Saratov, Teatralnaya Square, 11, OGRN 1056405504650, TIN 6455039443),
Kirovskiy ROSP UFSSP on Saratov Region (410054, Saratov, 2nd Sadovaya St., 129), LLC
ALS and TEK Company (410012, Saratov, B. Kazachya St., 8D, OGRN 1026402661108,
INN 6452045336), senior bailiff of the Kirovskiy ROSP UFSSP in the Saratov region
Basyrova A.E. (410054, Saratov, 2nd Sadovaya str., 129), JSC "QUANT-TELECOM"
(394019,

Voronezh region, Voronezh city, Ereemeeva street, 22, OGRN 1073667031030, TIN
3662124236), Prosecutor's Office of the Saratov region (410002, Saratov region, city of
Saratov, street Im E.F. Grigorieva, 33/39, OGRN 1026402204619,

TIN 6450014678), Prosecutor's Office of the Ershovsky district (Ershovsky district, Ershov,
Vokzalnaya street, 17, building 27), Kominternovskiy ROSP of Voronezh, UFSSP of Russia
in the Voronezh region (394006, Voronezh, Krasnoznamenaya street, 2, OGRN:
1043600196221, TIN : 3664062377), LLC Directorate of Construction

communication enterprises "(410002, Saratov, Chernyshevsky st., 197, OGRN 1026402661119, TIN 6452048979), LLC MMTS (410012, Saratov, Bolshaya Kazachya st., 6, OGRN 1056405053352, TIN 6452913127)

o recognition of illegal inaction, recognition of illegal actions, recognition of illegal the resolution on the initiation of enforcement proceedings No. 29540/18/64042-IP dated 05/30/2018, the act on the execution of enforcement actions from 06/22/2018, the resolution on the end of enforcement proceedings No. 29540/18/64042 -IP and the return of the ID to the claimant dated 07.19.2018),

with participation in the court session: representatives of the company

“SMUR” - N.N. Litvinova, acting under a power of attorney dated 05/17/2018; Tatarovich I.A., acting on the basis of a power of attorney dated 01.01.2019 No. 17; Office of the Federal Bailiff Service for the Saratov Region - Zhilko E.V., acting under the power of attorney dated 09.07.2018 No. 123; Joint Stock Company Kvant-Telecom - Litvinova N.N., acting under the power of attorney dated 25.08.2015; limited liability company "Company" ALS and TEK "- Demidova I.A., acting under the power of attorney dated December 21, 2017 No. 27; Limited Liability Company "DSPS" - Vekozin V.N., acting under a power of attorney from 25.12.2018,

with the participation of the representative of mass media Laikas S.A. (certificate No. 44083)

found:

the joint-stock company firm "SMUR" applied to the Arbitration Court of the Saratov region with a statement on: recognition of illegal inaction of the bailiff of the Kirov ROSP of the Federal Bailiff Service of Russia in the Saratov region KS Tumaeva, expressed in the failure to notify the debtor: about the enforcement proceedings initiated against him; on the time and place of the enforcement actions and the application of measures of enforcement of the requirements contained in the executive document; the recognition of the illegal actions of the bailiff of the Kirov Regional Department of the Federal Bailiff Service of the Federal Bailiff Service of Russia in the Saratov region Tumaeva K.S., expressed:

- to initiate enforcement proceedings in violation of the provisions of Articles 30, 31, 33 of the Federal Law of 02.10.2007 N 229-FZ "On Enforcement Proceedings" (hereinafter - Law No. 229-FZ);

- in the implementation of actions for the execution of the executive document in violation of Article 2, paragraph 1 of Article 12, paragraph 1 of Article 13 of Law No. 229-FZ;

- in violation of the procedure for fulfilling the requirements of the writ of execution, provided for in Article 105 of Law No. 229-FZ;

- in the application of measures of compulsory execution before the expiration of the established in the resolution on the initiation of enforcement proceedings

the term for voluntary fulfillment of requirements in violation of the provisions of Article 68 of Law No. 229-FZ;

- failure to involve two independent attesting witnesses in the enforcement proceedings in violation of the provisions of Article 59 of Law No. 229-FZ;

- failure to involve a specialist in enforcement proceedings in violation of the provisions of Article 61 of Law No. 229-FZ;

- in violation of the rights of the debtor in enforcement proceedings - JSC firm "SMUR" provided for in Article 50 of Law No. 229-FZ;

- on the recognition of illegal the resolution on the initiation of enforcement proceedings No. 29540/18/64042-IP dated 05/30/2018, the act on the commission of enforcement actions dated 06/22/2018, the resolution on the end of enforcement proceedings No. 29540/18/64042-IP and the return of the ID to the claimant from 07/19/2018.

By the decision of the Arbitration Court of the Saratov Region dated February 27, 2019, the claims declared by JSC firm "SMUR" were denied.

Disagreeing with this judicial act in terms of the court's conclusions contained in the motivation part about the illegality of the inaction and actions of the bailiff, a limited liability company

"The company" ALS and TEK " appealed to the Twelfth Arbitration Court of Appeal with a complaint, in which it asks to exclude the following conclusions from the reasoning part: " In such circumstances, the court comes to the conclusion that the bailiff of the Kirovskiy ROSP of the Federal Bailiff Service for the Saratov Region Tumaeva K. S., expressed in the failure of the applicant to notify the applicant about the initiation of enforcement proceedings No. 29540/18/64042-IP, about the performance of enforcement actions to enforce the requirements contained in the writ of execution, as not complying with the Federal Law of 02.10.2007 No. 229-FZ "On enforcement production "; "In the absence of evidence of proper notification of the debtor about the initiation of enforcement proceedings against him and the application of enforcement measures, the inaction of the bailiff is illegal and violates the applicant's right to timely receive information about the enforcement proceedings initiated against him and the enforcement actions being taken"; "Taking into account the foregoing, the actions of the bailiff-executor of the Kirov Regional Department of the Federal Bailiff Service of the Federal Bailiff Service for the Saratov Region Tumaeva K.S., formalized by an act of performing acts of 22.06.2018, the court also recognizes illegal as not complying with Law No. 229-FZ." "At the same time, the court established the illegality of the actions of the bailiff-executor formalized by the act of performing performing actions dated June 22, 2018, as not complying with Law No. 229-FZ, which includes all the actions on the basis of which the specified act was drawn up."

JSC SMUR, in accordance with Article 262 of the Arbitration Procedure Code of the Russian Federation, submitted a response to the appeal, refutation of objections, in which it asks to leave the decision of the court of first instance in the contested part unchanged, and the appeal - dismissed.

LLC "Company ALS and TEK" presented objections to the withdrawal, objections to additional withdrawal, in which it supports the arguments.

set out in the appeal, asks the court's decision in terms of the conclusions on the illegality of the inaction and actions of the bailiff-executor to change, excluding the indicated conclusions.

The Prosecutor's Office of the Saratov Region, the Prosecutor's Office of the Ershovsky District, the Kominternovskiy District Department of Bailiffs of the city of Voronezh of the Office of the Federal Bailiffs Service in the Voronezh Region, the MMTS limited liability company did not appear at the court session, were notified of the time and place of the court session, properly, in the procedure of Article 186 of the Arbitration Procedure Code of the Russian Federation, by sending a determination made in the form of an electronic document, by posting it on the official website of the arbitration court in the information and telecommunications network "Internet" in a limited access mode.

Information about the place and time of the court session was posted on the official website of the arbitration court in the information and telecommunications network "Internet" (kad.arbitr.ru) on April 30, 2019, 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 clause 2 of part 3 of article 18 of the Arbitration Procedure Code of the Russian Federation, by a ruling dated July 2, 2019, judges were replaced by S.G. Veryaskina. and Grabko O.The. on judges Puzinu E.The. and Samokhvalov A.Yu., for consideration of the appeal of JSC firm

"SMUR" against the decision of the Arbitration Court of the Saratov Region dated February 27, 2019 in case No. A57-16161 / 2018, the following composition of the court was formed: presiding judge Stepura S.M., judges Puzina E.V., Samokhvalova A.Yu.

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

In accordance with Article 163 of the Arbitration Procedural Code of the Russian Federation, the court announced a break in the court session until July 10, 2019 until 15 hours 45 minutes local time (MSK + 1), about which a protocol ruling was issued. The announcement of the break was posted in accordance with the recommendations given in paragraphs 11-13 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated December 25, 2013 No. 99 "On procedural time limits", on the website of the Twelfth Arbitration Court of Appeal. After the break, the court session continued.

LLC DSPS filed a petition to attach to the case materials a copy of a statement prohibiting enforcement actions (out. No. 33 dated 05.07.2019), LLC Kvant Telecom filed a petition to attach to the case materials a counterclaim filed under another arbitration cases (out. No. 327 of 25.04.2019).

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 rejected the request for the demand for evidence, 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 copies of the application prohibiting the execution of enforcement actions (out. No. 33 dated 05.07.2019), the counterclaim (out. No. 327 dated 25.04.2019) to the case materials, because 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 conclusion that the appeal must be satisfied.

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 "Smur" on the obligation to return the Property under the Second stage Agreement No. 3 / 12-12 dated 04.09.2012.

By the decision of the Twelfth Arbitration Court of Appeal dated 13.12.2017 in case No. A57-233 / 2016, the decision of the Arbitration Court of the Saratov Region dated 31.08.2017 in case No. A57-233 / 2017 was 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 the Agreement No. 3 / 12-12 dated 04.09.2012 were satisfied in full.

The appellate court ruled to oblige the joint-stock company

"Firm" SMUR "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 part of the second stage - optical fibers in the section from the city of Ershov to the city of Saratov: from the optical crossbar in a container on the territory of the RTRS" Saratov ORTPTS »At the address Saratov region, Ershov, Meliorativnaya str., 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 an optical crossbar in a container on the territory of the Open Joint Stock Company

"Urbakhskiy kombinat khleboproduktov" at the address Saratov region, Sovetskiy

district, Pushkino, Zavodskaya str., 1a, from the main distribution coupling MRM28 near Pushkino, Sovetsky district, Saratov region. to optical distribution frame

"VOSTOK" Limited Liability Company "Company" ALS and TEK ", Saratov, B. Kazachya st., 6, from optical cross" VOSTOK "Limited Liability Company" Company "ALS and TEK", Saratov, st. .B.Kazachya, 6 to the optical cross of the Limited Liability Company

"Company" ALS and TEK "on the territory of the Open Joint Stock Company

"Integral" at the address Saratov, Chernyshevskogo st., 153, actually received for temporary use by the Closed Joint Stock Company "Firm" SMUR "under the act of acceptance and transfer of property for temporary use dated 10.10.2012 in accordance with the terms of contract No. 3/12 -12 purchase and sale of optical fibers and a 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 the ALS and TEK Company Limited Liability Company and the Firm SMUR Closed Joint Stock Company ...

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

On the basis of the Resolution of the Twelfth Arbitration Court of Appeal dated 12/13/2017, in case No. A57-233 / 2016, a writ of execution No. FS 016402251 dated December 29, 2017 was issued.

The text of the writ of execution issued in the present case actually fully reproduces the operative part of the named judicial act, the requirements of the writ of execution in the case are formulated clearly and clearly, and therefore do not cause difficulties in execution.

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 Orlova I.A. enforcement proceedings were initiated 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 resolution of the Kominternovskiy ROSP of the Federal Bailiff Service of Russia for the Voronezh Region of 03/30/2018, the enforcement proceedings were completed with the drawing up of an act and the writ of execution was returned to the claimant.

Subsequently, the writ of execution No. FS 016402251 dated December 29, 2017 was presented to the UFSSP in the Saratov region, by which the said executive document was sent to the Kirov ROSP of the UFSSP of Russia in the Saratov region.

By the decree of the bailiff-executor of the Kirov ROSP of the Federal Bailiff Service of Russia in the Saratov region Tumaeva K.S. of May 30, 2018, enforcement proceedings were initiated No. 29540/18/64042-IP.

Clause 2 of the resolution establishes that the requirement for a court order is subject to immediate execution - within 24 hours from the moment the debtor receives a copy of this resolution.

In accordance with clause 10 of the decree, it was determined to send a copy of this decree, including JSC "Smur" to the address: 394019, Voronezh, st. Eremeeva, 22.

06/22/2018 Bailiff of the Kirov Regional Department of the Federal Bailiff Service of Russia in the Saratov Region Tumaeva K.S. an act on the execution of enforcement actions was drawn up.

Considering that the enforcement actions within the framework of enforcement proceedings No. 29540/18/64042-IP were committed by the bailiff-executor in gross 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 company " SMUR ", the company 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, respectively, was deprived of the rights provided for by Law No. 229-FZ.

The court of first instance concluded that the enforcement actions within the framework of enforcement proceedings No. 29540/18/64042-IP were committed by the bailiff-executor in gross violation of the requirements of Law No. 229-FZ, which is a significant violation of the rights and legitimate interests of the debtor under the specified enforcement proceedings - JSC firm "SMUR". At the same time, taking into account that by the order of the bailiff-executor of the Kirov ROSP of the Federal Bailiff Service of Russia in the Saratov region Tumaeva K.S. of 07/19/2018 enforcement proceedings No. 29540/18/64042-IP ended, and by the order of the senior bailiff of the Kirov ROSP of the Federal Bailiff Service of Russia for the Saratov Region Basyrova A.E. of November 20, 2018, the said resolution was canceled, the enforcement proceedings were resumed under No. 74142/18/64042-IP, by the resolution of the deputy head of the department - senior bailiff of the Kirov ROSP of the Federal Bailiff Service of Russia for the Saratov Region Muratova A.N. measures were canceled, namely the act of performing enforcement actions dated 06/22/2018, adopted against the debtor in enforcement proceedings No. 29540/18/64042-IP (new No. 74142/18/64042-IP), the court of first instance indicated that the established facts of violation by a bailiff, the provisions of the Law on Enforcement Proceedings in the case under consideration are in themselves insufficient to satisfy the stated requirements, since in fact the disputed acts were canceled, the enforcement proceedings were resumed.

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 the arbitration court that have entered into legal force are binding on state authorities, local authorities, other bodies, organizations, officials and citizens and are subject to execution throughout 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 said Code.

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.

Challenging in court the decision of an official of the bailiff service, actions (inaction) of bailiffs-executors are provided for by Article 128 of the Federal Law of 02.10.2007 N 229-ФЗ "On Enforcement Proceedings" (hereinafter referred to as the Law on Enforcement Proceedings) and Article 329 of the Arbitration Procedure Code of the Russian Federation ...

By virtue of Art. 2 of the Law on Enforcement Proceedings, the tasks of enforcement proceedings are the correct and timely execution of judicial acts, acts of other bodies and officials, and in cases provided for by the legislation of the Russian Federation, the execution of other documents in order to protect violated rights, freedoms and legitimate interests of citizens and organizations.

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 Federal Law No. 229-FZ dated 02.10.2007 "On Enforcement Proceedings" (hereinafter referred to as 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 the executive document in cases of initiation of enforcement proceedings upon subsequent presentation of the executive 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).

The procedure for establishing and calculating time limits in enforcement proceedings is determined by Article 15 of the Federal Law "On Enforcement Proceedings", according to which the deadlines in enforcement proceedings are determined by a calendar date, an indication of an event that must occur, or the period during which an action can be performed. Terms are calculated in years, months and days. Days calculated in days do not include non-working days. Unless otherwise established by this Federal Law, the course of a period calculated in years, months or days begins on the next day after the calendar date or the day of the occurrence of the event, which determined the beginning of the period.

In this case, appealing to the court with a statement, the applicant refers to the inaction of the bailiff of the Kirov ROSP of the Federal Bailiff Service of Russia in the Saratov Region Tumayeva K.S. 2 of Article 24 of the Federal Law of 02.10.2007 N 229-FZ "On Enforcement Proceedings" (hereinafter referred to as the Law on Enforcement Proceedings) on the time and place of the execution of enforcement actions, which entailed a violation of his rights under Article 50 of the Law on Enforcement Proceedings.

As follows from the materials of the case, by the order of the bailiff-executor of the Kirov ROSP of the Federal Bailiff Service of Russia in the Saratov region Tumaeva K.S. of May 30, 2018, enforcement proceedings were initiated No. 29540/18/64042-IP.

In accordance with clause 10 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 decree on the initiation of enforcement proceedings was to be sent to the persons listed above, taking into account the procedure for calculating the deadlines no later than 31.05.2018.

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 confirming the proof of sending a copy of the order on the initiation of enforcement proceedings dated 05/30/2018 and the notification on the commission of enforcement actions by the MSC, the following evidence was presented:

- the list of domestic postal items dated May 31, 2018 was sent by means of ordinary postal correspondence (case sheet 149-150 vol. 2);
- notification of the debtor about the enforcement measures (to the place of enforcement actions) (ld 143 t. 2);
- the list of domestic postal items dated June 15, 2018 was sent by means of ordinary postal correspondence (ld 140-142 vol. 2).

The decision of the Arbitration Court of the Saratov Region of 25.01.2019 in case No.A57-28371 / 2018 which entered into force established that the JSC firm

"Smur" was not properly notified about the execution of enforcement actions, as well as the initiation of enforcement proceedings within the framework of enforcement proceedings No. 29540/18/64042-IP.

In accordance with part 3 of Article 69 of the Arbitration Procedure Code of the Russian Federation, a final decision of a court of general jurisdiction on a previously considered civil case is mandatory for the arbitration court considering the case on the circumstances established by the decision of the court of general jurisdiction and related to the persons participating in the case.

In this connection, these circumstances are not subject to proof when considering this dispute.

The court was the first to also come to the conclusion about the illegal inaction of the bailiff-executor of the Kirov Regional Department of the Federal Security Service of the Federal Bailiff Service for the Saratov Region Tumayeva K.S. the writ of execution, and the actions of the bailiff of the Kirov Regional Department of the Federal Bailiff Service of the Federal Bailiff Service for the Saratov Region, K.S. Tumaeva, drawn up by an act of performing acts of 06/22/2018. 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, persons participating in enforcement proceedings are notified of the time and place of the execution of enforcement actions or the application of compulsory enforcement measures, or are summoned to the bailiff-executor with a summons with acknowledgment of receipt, telephone message, telegram, using electronic, other types of communication and delivery or

the 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-executor 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 have the right 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 June 22, 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-FZ "On Enforcement Proceedings" does not follow the obligation of the bailiff-executor to seize property exclusively in the presence of the debtor.

By virtue of Article 59 of Law N 229-FZ, the participation of attesting witnesses is mandatory when performing enforcement actions and applying 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-executor seized the subject of execution in the presence of a representative of the claimant and two attesting witnesses.

Since the actions of the bailiff-executor Tumaeva K.S. on the application of measures of compulsory execution against the debtor were committed in the presence of attesting witnesses and a representative of the claimant, aimed at the prompt execution of the requirements of the executive document, the appeal board concludes that the absence of the applicant in itself when committing

enforcement actions does not denigrate the actions of the bailiff-executor on the transfer of the disputed property and is not an unconditional basis for declaring them illegal.

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 paragraph 1 of Art. 65 of the APC RF, each person participating in the case must prove the circumstances to which he refers as the basis for his claims and objections. 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 by the contested actions.

As mentioned above, the subject of execution within the framework of enforcement proceedings No. 29540/18/64042-IP is the obligation of the Joint Stock Company

"Firm" SMUR "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 part of the second stage - optical fibers in the section from the city of Ershov to the city of Saratov: from the optical crossbar in a container on the territory of the RTRS" Saratov ORTPS »At the address Saratov region, Ershov, Meliorativnaya str., 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 an optical crossbar in a container on the territory of the Open Joint Stock Company

"Urbakhskiy kombinat khleboproduktov" at the address Saratov region, Sovetskiy district, Pushkino, Zavodskaya str., 1a, from the main distribution coupling MRM28 near Pushkino, Sovetsky district, Saratov region. to optical distribution frame

"VOSTOK" Limited Liability Company "Company" ALS and TEK ", Saratov, B. Kazachya st., 6, from optical cross" VOSTOK "Limited Liability Company" Company "ALS and TEK", Saratov, st. .B.Kazachya, 6 to the optical cross of the Limited Liability Company

"Company" ALS and TEK "on the territory of the 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 06/22/2018 within the framework of enforcement proceedings dated 05/30/2018 No. 29540/18/64042-IP, the bailiff drew up an act stating that the enforcement actions contained in the enforcement document in part of the property located in the city Saratov, st. B. Kazachya, d, 6, completed in full. The return of property was made by disconnecting the patchcords from the optical fibers to be returned on the optical distribution frame.

The representative of the claimant in the specified act reflected his following

remarks: during the enforcement actions, six optical fibers (patchcords) were found coming out of the operating equipment of QuantTelecom JSC and 4 optical fibers connected to optical fibers in the direction of Ershov and 2 optical fibers in the direction Kalininsk. The property was returned by disconnecting the patchcords from the AO equipment

QuantTelecom. After disconnection, measurements of the optical fibers were taken through the patchcords. Fibers in good technical condition.

The claimant in the court session confirmed that the property pursuant to a writ of execution within the framework of enforcement proceedings

No. 29540/18/64042-IP he received on 22.06.2018. In addition, 12.09.2018 between LLC

"Directorate of communications enterprises under construction" (by the buyer) and LLC "Company

ALS and TEK (the owner of the property) signed an agreement No. ALS-DSPS / OV-12092018 for the sale and purchase of property (4 optical fibers in a fiber-optic communication line on the Saratov-Ershov section in FOCL

"Saratov-Ozinki"), under the terms of which and in accordance with the act of acceptance and transfer of 12.09.2018. 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 on the Saratov-Ershov section in the Saratov-Ozinki fiber-optic communication line).

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.

According to Article 2 of the Federal Law of 02.10.2007 N 229-FZ "On Enforcement Proceedings", the tasks of enforcement proceedings are the correct and timely execution, including acts of bodies and officials.

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, including Kvant-Telecom JSC (mentioned in the act on the execution of executive actions dated June 22, 2018), did not submit an independent statement.

The debtor's argument 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 acceptance and transfer and therefore, in his opinion, the requirements of the enforcement document until now has not 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.

This argument is subject to rejection on the following grounds.

From the materials of the enforcement proceedings, it follows that the debtor knew about the existence of a writ of execution of the Arbitration Court of the Saratov Region, obliging JSC SMUR to return four optical fibers in the Saratov fiber-optic communication line to the ALS and TEK Company Limited Liability Company -Ozinki "in the second stage - optical fibers in the section from Ershov to Saratov.

At the same time, no actions were taken by the company to voluntarily fulfill the requirements of the executive document. The claimant confirmed that the property was received on 22.06.2018 in pursuance of the executive document within the framework of enforcement proceedings No. 29540/18/64042-IP.

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 not sound.

According to Art. Art. 65, 66 of the Arbitration Procedure Code of the Russian Federation, each person participating in the case must prove the circumstances to which he refers on the basis of his claims, and submit evidence to the court.

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 recoverer's reference in substantiating his arguments and objections in the framework of other property cases to the contested act on the performance of enforcement actions cannot violate the rights and legitimate interests of the debtor.

The applicant's reference to the impossibility of transferring property (optical fibers) that does not contain identifying signs is unfounded. 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. In addition, this argument is aimed at re-evaluating the conclusions of the judicial act, on the basis of which the enforcement proceedings were initiated.

The applicant's argument that the writ of execution has not been fully executed, optical fibers from the VOSTOK optical junction of the Company

"ALS and TEK" Saratov, st. B. Kazachya, 6, before optical crossover

"ALS and TEK" on the territory of OJSC "Integral" at the address: Saratov, st. Chernyshevsky, 153, within the framework of the executed proceedings were not transferred, not

may be the basis for the recognition of illegal actions (inaction) within the framework of a specific enforcement proceeding.

Within the framework of the disputed enforcement proceedings, the debtor was not brought to administrative responsibility, the enforcement fee was not collected, which indicates the absence of a violation of the right by the contested actions (omissions).

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 disputed rights and legitimate interests in the manner prescribed 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 that the property received by the claimant was sold to a third party, the disputed property for the present claim is not in the use of the debtor.

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.

The arguments of the applicant (the debtor in enforcement proceedings), set out in statements, responses to appeals, explanations, etc. in fact, aimed at re-evaluating the conclusions of the judicial act, which established the actual use and possession of the disputed property by JSC SMUR and served as the basis for satisfying the claims for the obligation to return, on the basis of which enforcement proceedings were initiated and which cannot be taken into account when considering this dispute.

Thus, there is no set of conditions provided for by 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 and evaluating all the available evidence in the case, the court of appeal comes to the conclusion that it is necessary to change the decision of the Arbitration Court of the Saratov Region of February 27, 2019, excluding the following conclusions of the court from its reasoning part:

1. Paragraph 7 of page 10 - "In such circumstances, the court comes to the conclusion about the illegal inaction of the bailiff of the Kirov Regional Department of the Federal Security Service of the Federal Bailiff Service for the Saratov Region Tumayeva KS, expressed in the failure to notify the applicant about the initiation of enforcement proceedings No. 29540/18/64042-IP, on the execution of enforcement actions to enforce the requirements contained in the writ of execution, as not complying with the Federal Law of 02.10.2007 No. 229-FZ "On Enforcement Proceedings";

2. Paragraph 8 of page 10 - "In the absence of evidence of proper notification of the debtor about the initiation of enforcement proceedings against him and the application of enforcement measures, the inaction of the bailiff is illegal and violates the applicant's right to timely receive information about the enforcement proceedings initiated against him and performed executive actions";

3. Paragraph 9 of page 10 and paragraph 1 of page 11 - "In view of the above, the actions of the bailiff-executor of the Kirov ROSP of the Federal Bailiff Service for the Saratov Region Tumayeva K.S. Law No. 229-FZ";

4. Paragraph 4 of page 13 - "At the same time, the court established the illegality of the actions of the bailiff-executor drawn up by the act of performing performing actions

dated June 22, 2018, as not complying with Law No. 229-FZ, which includes all the actions on the basis of which the specified Act".

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

DECIDED:

the decision of the Arbitration Court of the Saratov Region of February 27, 2019 in case No. A57-16161 / 2018 in the contested part to change, excluding the following conclusions from the reasoning part:

1. Paragraph 7 of page 10 - "In such circumstances, the court comes to the conclusion about the illegal inaction of the bailiff of the Kirov Regional Department of the Federal Security Service of the Federal Bailiff Service for the Saratov Region Tumayeva KS, expressed in the failure to notify the applicant about the initiation of enforcement proceedings No. 29540/18/64042-IP, on the execution of enforcement actions to enforce the requirements contained in the writ of execution, as not complying with the Federal Law of 02.10.2007 No. 229-FZ "On Enforcement Proceedings";

2. Paragraph 8 of page 10 - "In the absence of evidence of proper notification of the debtor about the initiation of enforcement proceedings against him and the application of enforcement measures, the inaction of the bailiff is illegal and violates the applicant's right

to receive timely information about the enforcement proceedings initiated against him and the enforcement actions being carried out";

3. Paragraph 9 of page 10 and paragraph 1 of page 11 - "In view of the above, the actions of the bailiff-executor of the Kirov ROSP of the Federal Bailiff Service for the Saratov Region Tumayeva K.S. Law No. 229-FZ ";

4. Paragraph 4 of page 13 - "At the same time, the court established the illegality of the actions of the bailiff-executor drawn up by the act of performing performing actions dated June 22, 2018, as not complying with Law No. 229-FZ, which includes all the actions on the basis of which the specified Act".

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 S.M. Stepura

Judges E.V. Puzina

A.Yu. Samokhvalova