



ARBITRATION COURT OF THE SARATOV REGION
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In the name of the Russian Federation R E S H E N I E

Saratov city
09 September 2019

The operative part of the decision was announced on September 02, 2019. The full text of the decision was made on September 09, 2019.

Case No. A57-3463 / 2019

The Arbitration Court of the Saratov Region, composed of Judge Yu.P. Ognischeva, while keeping the minutes of the court session by the assistant judge R.R. Shirokova, having considered the materials of the case in court at the request of JSC firm "SMUR"

Interested persons:

The bailiff - the executor of the Kirov Regional Department of Public Administration of the City of Saratov Tumaeva K.S. FSSP of Russia in the Saratov region

LLC "Company" ALS and TEK "

LLC "Regional Center of Expertise" LLC "DSPS"

LLC "MMTS"

Kirovsky ROSP, Saratov

The bailiff-executor of the Kirov Regional Department of the Industrial Defense Industry of the city of Saratov Shvab M.A.

o recognition of the illegal decision of the bailiff - the executor of the Kirov Regional Department of Public Administration of the city of Saratov Tumaeva K.S. on the participation of specialists in enforcement proceedings dated 25.01.2019.

with the participation of representatives:

from the applicant - Litvinova N.N. by power of attorney dated 05/17/2018

LLC "Company" ALS and TEK "- Demidov I.A. by power of attorney dated 21.12.2017 from the UFSSP across the Saratov region - Zhilko E.V. by power of attorney dated 09.07.2018 from LLC DSPS - V.N. Vekozin by power of attorney dated 03.12.2018

from Kirovskiy ROSP of Saratov - Shvab M.A. by power of attorney dated 01.07.2018

SPI Kirovskiy ROSP Saratov Shvab M.A. personally, the passport was surveyed
found:

JSC firm "SMUR" applied to the Arbitration Court of the Saratov Region with the updated 03/04/2019. in the order of art. 49 of the Arbitration Procedure Code of the Russian Federation with a statement (volume 1 Id 69), according to which the applicant asked the court to accept the following requirements for consideration:

1. To recognize as illegal the decision of the bailiff-executor of the Kirov Regional Department of Public Administration of the City of Saratov Tumaeva K.S. according to SP of 30.05.2018 No. 74142/18/64042-IP on participation in the enforcement proceedings of a specialist, to cancel the order of the bailiff-executor of the Kirov Regional Department of the Russian Specialist Service of the city of Saratov Tumaeva K.S. on the participation of specialists in enforcement proceedings dated January 25, 2019

2. To recognize as illegal the inaction of the bailiff of the Kirov Regional Department of the Russian Specialist Service of the city of Saratov, K.S. Tumaeva. by not sending a copy of the order of the bailiff, executor of the Kirov Regional Department of the Russian Specialist Service of the city of Saratov, K.S. according to IP dated 05/30/2018 No.

74142/18/64042-IP on participation in the enforcement proceedings of a specialist before the transfer of the specified order for execution to specialists and not notifying the debtor about the expert study.

3. To recognize as unreliable and unsuitable for use in the course of enforcement proceedings dated May 30, 2018 No. 74142/18/64042-IP Conclusions of LLC specialists

"Regional center of expertise" Kokareva S. V., Pozhidaeva R. B., called by them "expertise No. 5052" dated 05.02.2019

According to the protocol of the court session dated 06.03.2019. (volume 3 case sheet 183), taking into account the views of the parties, the following clarifications were adopted:

1) on the recognition of illegal the decision of the bailiff-executor of the Kirov Regional Department of Public Administration of the city of Saratov Tumaeva K.S. according to SP of 30.05.2018 No. 74142/18/64042-IP on participation in the enforcement proceedings of a specialist, to cancel the order of the bailiff-executor of the Kirov Regional Department of the Russian Specialist Service of the city of Saratov Tumaeva K.S. on the participation of specialists in enforcement proceedings dated 25.01.2019;

2) on the recognition of illegal inaction of the bailiff-executor of the Kirov Regional Department of Public Administration of the city of Saratov Tumaeva K.S. by not sending us a copy of the order of the bailiff-executor of the Kirov Regional Department of Public Administration of the city of Saratov Tumaeva K.S. by IP from 05/30/2018

No. 74142/18/64042-IP on participation in the enforcement proceedings of a specialist before the transfer of the specified order for execution to specialists and not notifying the debtor about the expert study.

Clarified requirement No. 3 on recognition as unreliable and inappropriate in the course of enforcement proceedings dated 05/30/2018 No. 74142/18/64042-IP conclusions of specialists of LLC Regional Center of Expertise S.V. Kokareva, R. Pozhidaeva, named by them "Expertise No. 5052" dated 05.02.2019, - the court did not accept it for consideration, since it does not comply with Art. 49 of the Arbitration Procedure Code of the Russian Federation, according to which the simultaneous change of the basis and subject of the claim is not allowed

The applicant upheld the claim. The claims were contested by the interested parties.

As follows from the case materials, by the decision of the Twelfth Arbitration Court of Appeal dated 13.12.2017. in case No.A57-233 / 2017, which came into legal force, the court ordered the JSC firm "SMUR" to return the property to LLC "Company" ALS and TEK "(4 optical fibers in a fiber-optic communication line at the" Saratov-Ershov " in FOCL "Saratov-Ozinki).

On the basis of a writ of execution issued by the Arbitration Court of the Saratov Region on the basis of the resolution of the Twelfth Arbitration Court of Appeal dated 12/13/2017. in case No. A57-233 / 2017, bailiff of the Kirov Regional Department of the Federal Security Service of the city of Saratov, UFSSP for the Saratov region on 30.05.2018. enforcement proceedings No. 29540/18/64042-IP were initiated.

According to the position of the bailiff, LLC "Company" ALS and TEK ", as a claimant, received on 22.06.2018. according to the writ of execution, property (4 optical fibers in a fiber-optic communication line on the "Saratov-Ershov" section in the "Saratov-Ozinki" fiber-optic communication line) about which the bailiff of the Kirov Regional Department of Internal Affairs of the city of Saratov of the Federal Bailiff Service for the Saratov Region drew up an act of enforcement actions from 22.06.2018

07/19/2018 the bailiff of the Kirov ROSP of Saratov, the Federal Bailiff Service for the Saratov Region, issued a resolution to terminate enforcement proceedings No. 29540/18 / 64042-IP on the basis of clause 1 of part 1 of article 47 of the Federal Law "On enforcement proceedings" contained in the executive document.

LLC "Company" ALS and TEK "during the trial explained that the decision of the Twelfth Arbitration Court of Appeal dated 12/13/2017. on business

No. A57-233 / 2017, on the basis of which the writ of execution was issued, it was executed -

the property was received by the claimant, which was the basis for the end of the executive order

production No. 29540/18/64042-IP in connection with the actual fulfillment of the requirements contained in the executive document.

Also, LLC "Company" ALS and TEK "and LLC" DSPS "explained that 09/12/2018. Between LLC "Company ALS and TEK" and LLC DSPS, 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 at the Saratov-Ershov section in the Saratov fiber-optic link -Ozinki "), according to which LLC" Company "ALS and TEK" transferred to the ownership of LLC "DSPS" received under a judicial act (resolution of the Twelfth Arbitration Court of Appeal dated 13.12.2017 in case No. A57-233 / 2017) property, the value of which amounted to 9,440,001 rubles. 41 kopecks, including VAT (18%).

01.10.2018 LLC DSPS entered into an agreement on interconnection with LLC MMTS, which determined the conditions for the use of this property.

At the same time, on 20.11.2018. Basyrova A.E., senior bailiff of the Kirov Regional Department of the Department of Social Protection of the city of Saratov a decree was issued to cancel the decree of 07/19/2018. on the end of enforcement proceedings No. 29540/18/64042-IP with the assignment of registration number No. 74142/18/64042-IP to enforcement proceedings.

10.12.2018 Muratova A.N., deputy head of the department - senior bailiff of the Kirov Regional Department of the Federal Security Service of the city of Saratov; a resolution was issued on the cancellation of the act of commission of executive actions from 22.06.2018. for enforcement proceedings No. 29540/18/64042-IP.

LLC "Company" ALS and TEK "and LLC" DSPS "in support of their position indicated that by the determination of the Twelfth Arbitration Court of Appeal dated 12.12.2018. Refused to satisfy the application of JSC firm "SMUR" to clarify the resolution of the Twelfth Arbitration Court of Appeal in case No.A57-233 / 2017 dated 13.12.2017. By the definition of the Arbitration Court of the Saratov Region dated 21.12.2018. the application of JSC firm "SMUR" to clarify the method and procedure for the execution of the executive document issued on December 29, 2017 by the Arbitration Court of the Saratov Region in case No. A57-233 / 2017 was refused. By the definition of the Arbitration Court of the Saratov Region dated 21.12.2018. the application of JSC firm "SMUR" to suspend enforcement proceedings No. 74142/18/64042-IP was denied.

Due to the fact that the decision to end the enforcement proceedings was canceled on 20.11.18. (judicial acts concerning the dispute on the legality of the cancellation of the termination of the enforcement proceedings did not come into legal force: A57-28364 / 2018) - by the bailiff of the Kirovsky District Department of the Department of Public Administration of the City of Saratov, Tumaeva K.S. a resolution was issued on January 25, 2019 on the participation of a specialist in enforcement proceedings.

Disagreeing with the decree of 01/25/2019 The applicant applied to the Arbitration Court about the participation of a specialist in enforcement proceedings with the above statement.

The applicant's arguments boil down to the following:

1. Illegal actions of the bailiff-executor of the Kirov Regional Department of the Russian Specialized Industrial Union of the city of Saratov Tumaeva K.S. on attracting specialists to participate in enforcement proceedings dated May 30, 2008 No. 74142/18/64042-IP and issuing a resolution dated January 25, 2019. on participation in enforcement proceedings of a specialist, as well as failure to act on the failure to send a copy of the said resolution to the Company prior to the transfer of the said resolution to the specialists for execution:

- the grounds for attracting a specialist, provided for in Art. 61 of the Federal Law "On enforcement proceedings were absent, while the bailiff-executor Tumaeva KS actually referred to the specialists for permission the issue related to her exclusive competence.

2. The issued resolution on participation in the enforcement proceedings of a specialist dated 25.01.2019. does not comply with the Federal Law "On Enforcement Proceedings" and violates the rights of JSC firm "SMUR", provided for by Art. 50, 63 FZ "On Enforcement Proceedings", in

in particular, the right to challenge specialists, the right to propose their own candidates for specialists, the right to put their questions to the specialists for permission.

Thus, in the applicant's opinion, when making the decision, the bailiff - the executor,

substantially violated the requirements of the legislation, in particular, the descriptive part does not indicate the questions that have arisen, the area of special knowledge, the need to attract specialists, the operative part does not indicate the passport data of the specialists involved, the place of their registration, both specialists were not warned about responsibility for refusal or giving a deliberately false conclusion, the expert institution specified in the decree was not registered in the Unified State Register of Legal Entities.

3. The inaction of the bailiff-executor Tumaeva K. S. on not sending a copy of the order dated 25.01.2019 before the transfer of the said order for execution to specialists and not notifying the debtor about the expert study does not meet the requirements of the Federal Law of the Russian Federation "On Enforcement Proceedings" and violates the rights of JSC firm "SMUR", provided for by Art. 50, 63 of the Federal Law "On Enforcement Proceedings", in particular, the right to challenge specialists, the right to propose their candidates for specialists, the right to put their questions to specialists for permission.

4. Conclusion of specialists of LLC "Regional Center of Expertise" Kokarev S.V., Pozhidaeva R.B., which they called "Expertise No. 5052" dated 05.02.2019, obtained on the basis of the decision of the bailiff of the Kirov Regional Department of the Russian Industrialists' Office of Saratov, Tumaeva K. FROM. from 25.01.2019, manufactured with gross violations of the requirements of the Federal Law of the Russian Federation "On enforcement proceedings".

Having examined the materials of the case, having heard the opinions of the persons participating in the case, having studied the current legislation, the court proceeds from the following.

In this case, the court concluded that the applicant's rights would not be restored within the framework of the present case, since the fact that the enforcement proceedings were lawfully ended on July 19, 2018 in connection with the actual execution of the court's decision, is confirmed by judicial act 12 of the AAC in case No. A57-28364 / 2018.

The main point of the dispute is that the applicant does not agree with the conclusions made in the expert's opinion.

In accordance with the decree of the bailiff-executor of the Kirov Regional Department of the Industrial Inspectorate of Saratov, a specialist was involved in the enforcement proceedings, who submitted an expert opinion to LLC Regional Expertise Center No. 5052 dated 05.02.2019, in the conclusions of which the following was established:

"... the court decision was executed, the property was transferred on 22.06.2018. in LLC "Company" ALS and TEK "and then sold to a third party."

Having considered all the arguments and objections, the court concludes that the applicant did not confirm the violation of his rights by the contested decision.

Research of specialists (examination) No. 5052 dated 05.02.2019. not contested.

According to Art. 121 of the Federal Law of 02.10.2007 N 229-FZ "On Enforcement Proceedings" decisions of the bailiff and other officials of the bailiff service, their actions (inaction) on the execution of the enforcement document may be appealed by the parties to the enforcement proceedings, other persons whose rights and interests are violated by such actions (inaction), in the order of subordination and challenged in court.

In accordance with 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 action (inaction) does not comply with the law or other regulatory legal act and violate their rights and legitimate interests in the field of entrepreneurial and other economic activity, illegally impose on them any

or obligations create other obstacles to the implementation of entrepreneurial and other economic activities.

By virtue of 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.

Thus, for the decision, actions (inaction) of a state body, an official to be recognized as illegal, it is necessary to simultaneously have two mandatory conditions: inconsistency of these decisions, actions (inaction) with the law and the presence of violation by them of the rights and legally protected interests of the applicant.

When considering this case, the totality of these circumstances was not established.

In accordance with paragraph 1 of Article 61 of the Federal Law dated 02.10.2007 No. 229-FZ

"On enforcement proceedings": as a specialist (specialists) to participate in enforcement proceedings on the initiative of the bailiff-executor or at the request of the parties to the enforcement proceedings, a person who is not interested in the outcome of the enforcement proceedings may be involved, having special knowledge, about which the bailiff-executor a decision is made.

Thus, in the presence of a valid enforcement proceeding (the end of the proceedings was canceled by the senior bailiff), an existing act of enforcement actions dated 06/22/18, arguments about finding the disputed property from LLC

"DSPS" after its receipt by the recoverer in the course of enforcement proceedings, the bailiff-executor issued an order on the participation of a specialist in enforcement proceedings on the basis of Art. 61 of the Federal Law of 02.10.2007 No. 229-FZ "On Enforcement Proceedings" to clarify the issue of the possibility of further execution of the court decision, and this decision does not violate anyone's rights and interests.

A specialist was involved in the contested resolution, the resolution contains a warning about responsibility for evading giving an opinion and for giving a false opinion.

The contested decision is aimed at clarifying the issue of the possibility of further execution of the court decision, does not impose any obligations on the debtor and does not violate his rights and interests, the procedure for involving a specialist by the bailiff has not been violated.

By itself, the decision to involve a specialist did not entail any violation of the rights and legitimate interests of either the claimant or the debtor.

The position of the debtor - JSC firm "SMUR" in the course of enforcement proceedings is reduced to disagreement with the judicial act in case No. A57-233 / 2017.

In accordance with Art. 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 governments, other bodies, organizations, officials and citizens and are subject to execution throughout the territory of the Russian Federation.

The applicant did not confirm the arguments about the violation of his rights.

The applicant did not explain in the course of the proceedings how this dispute would restore the applicant's rights if the claims were satisfied.

In addition, in the initial statement of JSC "SMUR" company only asked to declare the decision illegal.

Additional requirements for recognizing as illegal the inaction of the bailiff, executor of the Kirov Regional Department of Public Administration of the city of Saratov, Tumaeva K.S. by not sending a copy of the order of the bailiff-executor of the Kirov Regional Department of Public Administration of the city of Saratov, Tumaeva K.S. on SP of 05/30/2018 No. 74142/18/64042-IP on participation in the enforcement proceedings of a specialist before the transfer of the specified order for execution to specialists and not notifying the debtor of the expert study, - were declared at the court session on March 6, 2019, that is , with the omission of the ten-day deadline for challenging, under Art. 122 FZ "On enforcement proceedings".

The contested resolution of 01/25/2019 was sent to the debtor on the next business day - 01/28/2019. (ShK 41005431012216).

In this case, there is no illegal omission.

As indicated by the applicant himself, the contested decision of 25.01.2019 was received by him on 01.02.2019. in. No. 164/19 dated 01.02.2019 The demand to challenge the inaction was declared on 03/06/2019.

In this regard, the argument of LLC "Company" ALS and TEK "about the passage of JSC by the company

"SMUR" 10-day period to appeal the inaction of the bailiff-executor on the failure to send a copy of the decision, which is an independent basis for refusing the claim.

From the systemic interpretation of the norms of Ch. 24 of the Arbitration Procedure Code of the Russian Federation, it follows that in order to recognize decisions (actions) as invalid (illegal), it is necessary to simultaneously have two conditions: inconsistency of decisions (actions) with the law or other regulatory legal act and violation of the rights and legitimate interests of the applicant in the field of entrepreneurial and other economic activities. In the absence of at least one of the specified conditions, there are no grounds for satisfying the stated requirements.

As of the date of consideration of this dispute, the contested decision did not violate the rights and legitimate interests of the applicant in the field of entrepreneurial and other economic activities. No evidence to the contrary was presented to the court. Such arguments of JSC firm "SMUR", which is the debtor, were not presented. The applicant did not indicate as a decision of the bailiff of the Kirovskiy ROSP g. Saratov Tumayeva K.S. from 25.01.2019 on the participation of specialists in enforcement proceedings or her actions led to a violation of his rights and legitimate interests in the field of entrepreneurial and other economic activities of the applicant. The experts' opinion is not disputed.

Part 1 of Article 4 of the Arbitration Procedural Code of the Russian Federation establishes that 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 established by this Code.

The choice of the method of protection of the violated right is carried out by the applicant and should really lead to the restoration of the violated material right or real protection of the legitimate interest.

Thus, an appeal to the court should have as its purpose the restoration of the violated or disputed rights and legitimate interests of the person who applied to the court.

Guided by Articles 167 - 170, 176, 201 of the Arbitration Procedure Code of the Russian Federation, the court

decided:

The requirements stated by Firm "Smur" JSC must be refused.

The decision of the arbitration court may be appealed to the appeal, cassation instance in the manner and within the time limits provided for in Art. 257-260, 273-277 of the Arbitration Procedure Code of the Russian Federation through the Arbitration Court of the Saratov Region.

Arbitration Court Judge
Saratov region Yu.P. Ognischeva