



**Arbitration court of the Volga district
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**RESOLUTION
arbitration court of cassation
Ф06-62234 / 2020
Kazan Case No. A57-19378 / 2019 09 July 2020**

The operative part of the resolution was announced on July 02, 2020. The full text of the resolution was issued on July 09, 2020.

The Arbitration Court of the Volga District, composed of: presiding judge S.V. Mosunova,

judges Khakimova I.A., Savkina M.A.,

in the absence of persons participating in the case - duly notified,

considered in open court the cassation appeal of the joint-stock company of the firm "SMUR"

on the decision of the Arbitration Court of the Saratov Region dated 10.12.2019 and the ruling of the Twelfth Arbitration Court of Appeal dated 13.02.2020
in case No. A57-19378 / 2019

according to the statements of the joint-stock company of the firm "SMUR" (394019, Voronezh, Eremeeva str., 22, TIN 3662020332, OGRN 1023601610878) to declare illegal and cancel the decision of the head of the Kirovsky district department of bailiffs of the Federal Bailiffs Service in the Saratov region A .E. Basyrova dated 07/29/2019, on the recognition and cancellation of the decision of the bailiff-executor of the Kirovsky district department of bailiffs of the Office of the Federal Bailiffs Service in the Saratov Region K.S. Kurbanova dated 07/29/2019 on the end of the enforcement proceedings, interested parties: bailiff of the Kirovsky regional department of bailiffs of the Office of the Federal Bailiffs Service in the Saratov region K.S. Kurbanova (410054, Saratov, 2nd Sadovaya st., 129), bailiff of the Kirovsky district department of bailiffs of the Office of the Federal Bailiffs Service in the Saratov Region M.A. Shvab (410054, Saratov, street 2 Sadovaya, 129), head - senior bailiff of the Kirovsky district department of bailiffs of the Office of the Federal Bailiffs Service in the Saratov region A.E. Basyrova (410054, Saratov, 2nd Sadovaya St., 129), Limited Liability Company "Company" ALS and TEK "(410012, Saratov, B. Kazachya St., 8" D " , INN 6452045336, OGRN

1026402661108), Kirovsky district department of bailiffs in Saratov (410054, Saratov, 2nd Sadovaya st., 129), Office of the Federal Bailiff Service in the Saratov Region

(410600, Saratov, Teatralnaya Ploschad, d. 11), limited liability company DSPS (410002, Saratov, Chernyshevsky st., 197, TIN 6452048979, OGRN 1026402661119), limited liability company MMTS (410012, Saratov, B. Kazachya st., 6, TIN 6452913127, OGRN 1056405053352), I.I. Salimov (Saratov).

found:

Joint-stock company firm "SMUR" (hereinafter - JSC firm "SMUR", the company, the debtor, the applicant) applied to the Arbitration Court of the Saratov region with a statement to declare illegal and cancel the decision of the head of the Kirovsky district department of bailiffs of the Federal Service of Bailiffs in the Saratov Region Basyrova A.E. (hereinafter - the head of the Kirov Regional Department of the Federal Bailiff Service for the Saratov Region Basyrova A.E.) dated 07/29/2019, on the recognition and cancellation of the order of the bailiff-executor of the Kirov district department of bailiffs of the Office of the Federal Service of Bailiffs in the Saratov Region Kurbanova K.S. (hereinafter - the bailiff - executor Kurbanova K.S.) dated 07/29/2019 on the end of the enforcement proceedings.

By the decision of the Arbitration Court of the Saratov Region dated 10.12.2019, upheld by the decision of the Twelfth Arbitration Court of Appeal dated 13.02.2020, in the satisfaction of the declared JSC firm

"Smur" claims were denied.

JSC firm "SMUR" applied to the Arbitration Court of the Volga District with a cassation appeal, in which, referring to the violation by the courts of the norms of substantive and procedural law, as well as the discrepancy between the conclusions of the courts, the actual circumstances of the case and the evidence presented in the case, asks them to cancel, and a new judicial act on the satisfaction of the applicant's claims.

In the response, LLC "Company" ALS and TEK ", considering the contested judicial acts to be justified and lawful, asks to leave them unchanged, and the cassation appeal was dismissed.

Responses to the cassation appeal from other persons involved in the case were not submitted to the court.

The parties have been duly notified of the date, time and place of the court session, including publicly, by posting information about the time and place of the court session on the website of the Arbitration Court of the Volga District in the information and telecommunication network

"Internet", however, did not ensure the appearance of its representatives in court.

Taking into account the availability of proper notification of the persons participating in the case, based on the provisions of Part 3 of Article 284 of the Arbitration Procedure Code of the Russian Federation (hereinafter referred to as the APC RF), the court considered it possible to consider the cassation appeal in the absence of the parties who did not appear.

The arbitration court of the cassation instance, having studied the case materials, the arguments of the cassation appeal, having checked the legality of the contested judicial acts in accordance with Article 286 of the Arbitration Procedure Code of the Russian Federation, finds no grounds for their cancellation.

As follows from the case materials, the decision of the Arbitration Court of the Saratov Region dated 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 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 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 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 Pushkino settlement, Sovetsky district, Saratov region, before optical cross in a container on the territory of OJSC "Urbakhskiy kombinat khleboproduktov" at the address: Saratov region, Sovetsky district, Pushkino, Zavodskaya st., 1a, from the coupling main distribution 1MRM28 near Pushkino settlement, Sovetsky district, Saratov region to optical cross-country "VOSTOK" LLC "Company" ALS and TEK ", Saratov, B. Kazachya st., 6, from optical cross-link" VOSTOK "LLC" Company "ALS and TEK ", m. Saratov, B. Kazachya st., 6, before the optical crossover of LLC "Company" ALS and TEK "on the

territory of OJSC" Integral "at the address: Saratov, st. Chernyshevsky, 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 No. 3 / 12-12 for the sale of optical fibers and a share in the right of common share ownership in a fiber-optic communication line on the territory of 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.

On the basis of the decision of the Twelfth Arbitration Court of Appeal dated 12/13/2017 in case No. A57-233 / 2017, a writ of execution was issued

No. FS 016402251 dated December 29, 2017, in accordance with which the bailiff of the Kirov Regional Department of Public Administration of the city of Saratov of the Federal Bailiff Service for the Saratov Region Tumaeva K.S. On May 30, 2018, enforcement proceedings No. 29540/18/64042-IP were initiated

The bailiff-executor Tumaeva K.S. 06/22/2018 an act of enforcement actions was drawn up, according to which LLC "Company

"ALS and TPK" as a claimant for enforcement proceedings

No. 29540/18/64042-IP, received on 22.06.2018, according to the writ of execution, property (4 optical fibers in a fiber-optic communication line at the Saratov-Ershov section in the Saratov-Ozinki BOLS).

The bailiff-executor of the Kirovskiy ROSP of the city of Saratov of the Federal Bailiff Service of Russia in the Saratov region on July 19, 2018 issued a resolution on the end of enforcement proceedings No. 29540/18/64042-IP on the basis of clause 1 of part 1 of article 47 of the Federal Law of 02.10.2007

No. 229-FZ "On Enforcement Proceedings" (hereinafter - the Law on Enforcement Proceedings), in connection with the actual fulfillment of the requirements contained in the enforcement document.

Between LLC "Company" ALS and TEK "and LLC" DSPS "on 12.09.2018, a

contract of sale and purchase of property No. ALS-DSPS / OB-12092018 was concluded, according to which LLC "Company "ALS and TEK" transferred into the ownership of LLC "DSPS" according to the judicial act in case No. A57-233 / 2017 property. On the basis of the agreement dated 01.10.2018 No. 76-18, LLC DSPS transferred the above property to lease to LLC MMTS.

On November 20, 2018, the senior bailiff of the Kirov Regional Department of the Russian Industrialists' Union of Saratov issued a resolution to cancel the resolution dated July 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 the enforcement proceedings.

On December 10, 2018, the Deputy Head of the Department - Senior Bailiff of the Kirov District Department of the Department of Internal Affairs of the city of Saratov of the Federal Bailiff Service of the Russian Federation for the Saratov Region issued a resolution to cancel the act of performing enforcement actions dated June 22, 2018 on enforcement proceedings No. 29540/18/64042-IP.

Due to the fact that the decision to end the enforcement proceedings was canceled on November 20, 2018, the bailiff-executor of the Kirovskiy ROSP on January 25, 2019, in order to fully and correctly fulfill the requirements of the executive document, issued a decision on the participation of a specialist in the enforcement proceedings. According to the expert opinion of the specialists of Regional Expertise Center LLC No. 5052 dated 02/05/2019, it was concluded: To execute the decision of the Arbitration Court of the Saratov Region dated December 29, 2017 in case No. A57-233 / 2017 by transferring optical fibers in favor of LLC Company ALS and TEK ", Saratov, st. B.Kazachya, 8D from the optical cross-platform "VOSTOK" LLC "Company" ALS and TEK ", Saratov, st. B. Kazachya, 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 is currently impossible, since this court decision was executed, the property was transferred on 22.06.2018 to LLC "Company" ALS and TEK "and then sold to a third party.

By the decision of July 29, 2019, the bailiff Kurbanova K.S. completed enforcement proceedings No. 74142/18/64042-IP (previous enforcement proceedings

No. 29540/18/64042-IP) in connection with the actual performance.

By the decree of the head of the Kirov Regional Department of the Department of Social Protection of the city of Saratov Basyrova A.E. On July 29, 2019, the decree of the deputy head of the department - the senior bailiff of the Kirov Regional Department of the Russian Specialized Industrial Union of the city of Saratov, Muratova A.N. from 10.12.2019 on cancellation of the act of commission of executive actions from 22.06.2018.

Considering that the decisions of the bailiffs-executors of the Kirov District Department of the Federal Security Service of the city of Saratov of the Federal Bailiff Service of the Russian Federation for the Saratov region of July 29, 2019 are illegal, unfounded, and violate the rights of the applicant, JSC firm "SMUR" filed these claims with the court.

LLC "Company" ALS and TEK "in its response believes that the decision of the Twelfth Arbitration Court of Appeal dated 12/13/2017 in case No. A57-233 / 2017, on the basis of which the writ of execution was issued, was executed by the debtor - the property was received by the claimant, as was the basis for the termination of enforcement proceedings No. 29540/18/64042-IP in connection with the actual execution of the requirements contained in the enforcement document.

Sudami otmecheno, chto postanovleniyem Dvenadtsatogo arbitrazhnogo apellyatsionnogo suda ot 05.08.2019 po delu № A57-29166/2018 priznano nezakonnym i otmeneno postanovleniye zamestitelya nachal'nika otdela – starshego sudebnogo pristava Kirovskogo rayonnogo otdela sudebnykh pristavov UFSSP po Saratovskoy oblasti Muratovoy A.N. ot 10.12.2018 ob otmene akta soversheniya ispolnitel'nykh deystviy ot 22.06.2018 po ispolnitel'nomu proizvodstvu № 29540/18/64042-IP (novyy registratsionnyy nomer ispolnitel'nogo proizvodstva 74142/18/64042-IP).

Sudom apellyatsionnoy instantsii ustanovleno, chto v khode soversheniya ispolnitel'nykh deystviy po delu № A57-233/2017 sudebnyye pristavy 22.06.2018

polnost'yu peredali istrebuyemoye imushchestvo sobstvenniku, chto vzyaskatelem ne osparivayetsya, dolzhnik ne privel ni odnogo dokazatel'stva v podtverzhdeniye togo fakta, chto on dobrovol'no peredal istrebovannoye sudom imushchestvo posle vstupleniya sudebnogo akta v zakonnuyu silu do yego prinuditel'nogo iz'yatiya sudebnymi pristavami-ispolnitelyami, a takzhe togo, chto otmena akta soversheniya ispolnitel'nykh deystviy ot 22.06.2018, sostavlenogo bez uchastiya predstavatelya AO firma «Smur», napravlena na vosstanovleniye yego prav i zakonnykh interesov v sfere predprinimatel'skoy ili inoy ekonomicheskoy deyatel'nosti, uchityvaya fakt togo, chto imushchestvo polucheno vzyaskatelem, prodano tret'yemu litsu, i v nastoyashchiy moment ne nakhoditsya ni v pol'zovanii vzyaskatelya, ni v pol'zovanii dolzhnika. Pri rassmotrenii dela sudom apellyatsionnoy instantsii ustanovleno, chto akt soversheniya ispolnitel'nykh deystviy ot 22.06.2018 stal zaversheniyem ispolneniya postanovleniya Dvenadtsatogo arbitrazhnogo apellyatsionnogo suda po delu № A57-233/2017 ot 13.12.2017, osnovaniyem dlya okonchaniya ispolnitel'nogo proizvodstva i dal vozmozhnost' vzyaskatelyu rasporyadit'sya prinadlezhashchim yemu imushchestvom, zaklyuchit' sdelku kupli-prodazhi s OOO «DSPA» i peredat' po aktu priyema-peredachi vo vladeniye i v sobstvennost' OOO «DSPA» spornyye opticheskiye volokna. Sud apellyatsionnoy instantsii prishel k vyvodu, chto postanovleniye zamestitelya nachal'nika otdela — starshego sudebnogo pristava Kirovskogo ROSP g. Saratova UFSSP RF po Saratovskoy oblasti Muratovoy A.N. ot 10.12.2018 ob otmene akta soversheniya ispolnitel'nykh deystviy ot 22.06.2018 po ispolnitel'nomu proizvodstvu № 29540/18/64042-IP yavlyayetsya nezakonnym, narushayet prava i zakonnyye interesy zayaviteley, v svyazi s chem, podlezhit otmene.

Развернуть

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The courts noted that by the decision of the Twelfth Arbitration Court of Appeal dated 05.08.2019 in case No. A57-29166 / 2018, the decree of the deputy head of the department - senior bailiff of the Kirovsky district department of bailiffs of the UFSSP in the Saratov region Muratova A.N. dated 10.12.2018 on the cancellation of the act of performing enforcement actions dated 22.06.2018 on enforcement proceedings No. 29540/18/64042-IP (new registration number of enforcement proceedings 74142/18/64042-IP).

The court of appeal established that in the course of the enforcement actions in case No. A57-233 / 2017, the bailiffs on June 22, 2018 completely transferred the claimed property to the owner, which is not contested by the claimant, the debtor did not provide any evidence in support of the fact that he voluntarily transferred the property reclaimed by the court after the entry into force of the judicial act prior to its compulsory seizure by the bailiffs, as well as the fact that the cancellation of the act of performing enforcement actions dated 06.22.2018, drawn up without the participation of the representative of JSC "Smur", is aimed at restoring his rights legitimate interests in the field of entrepreneurial or other economic activity, given the fact that the property was received by the claimant, sold to a third party, and at the moment is neither in the use of the claimant, nor in the use of the debtor. When considering the case by the court of appeal, it was established that the act of performing enforcement actions dated June 22, 2018 became the completion of the execution of the decision of the Twelfth Arbitration Court of Appeal in case No. A57-233 / 2017 dated 12/13/2017, the basis for the end of the enforcement proceedings and made it possible for the claimant to dispose of his property, conclude a sale and purchase deal with LLC "DSPS" and transfer the disputable optical fibers to the possession and ownership of LLC "DSPS" under the acceptance certificate. The court of appeal came to the conclusion that the decision of the deputy head of the department - senior bailiff of the Kirovskiy ROSP of Saratov of the FSSP RF for the Saratov region Muratova A.N. dated 10.12.2018 on the cancellation of the act of performing enforcement actions dated 22.06.2018 on enforcement proceedings No. 29540/18/64042-IP is illegal, violates the rights and legitimate interests of the applicants, and therefore must be canceled.

The decision of the Arbitration Court of the Saratov Region dated 25.01.2019 in case No. A57-28371 / 2018, which entered into legal force, established that at the moment the disputed property received by the recoverer - LLC Company ALS and TEK under the act of implementation of enforcement actions dated 22.06.2018, is owned by OOO DSPS and is used by it for its intended purpose.

By the resolution of the Twelfth Arbitration Court of Appeal dated 13.08.2019 in case No. A57-28364 / 2018, the decision of the Arbitration Court of the Saratov Region dated 12.03.2019 was canceled and a new judicial act was adopted on recognizing as illegal and canceling the decision of the senior bailiff of the Kirovsky

ROSP of the UFSSP for the Saratov region Basyrova A. E. of 20.11.2018 on the cancellation of the decree of 19.07.2018 on the end of enforcement proceedings No. 29540/18/64042-IP.

Thus, the aforementioned judicial acts established that the judicial act in case No. A57-233 / 2017 was executed, in connection with which the act of performing enforcement actions of June 22, 2018 became the completion of the execution of the decision of the Twelfth Arbitration Court of Appeal in the case

No. A57-233 / 2017 dated 12/13/2017 and the basis for the end of enforcement proceedings.

By the decree of the head of the Kirov Regional Department of the Department of Social Protection of the city of Saratov Basyrova A.E. of 07/29/2019, the decree of the deputy head of the department - the senior bailiff of the Kirov ROSP UFSSP in the Saratov region Muratova A.N. from 10.12.2019 on cancellation of the act of commission of executive actions from 22.06.2018.

In connection with the actual fulfillment of the requirements of the executive document by the decision of July 29, 2019, the bailiff-executor Kurbanova K.S. completed enforcement proceedings No. 74142/18/64042-IP (former enforcement proceedings No. 29540/18/64042-IP).

Pointing out that in the case under consideration, the contested decisions comply with the law and do not violate the rights and legitimate interests of the applicant in the field of entrepreneurial and other economic activities, and the applicant did not provide evidence to the contrary, the courts refused to satisfy the debtor's claims.

In the cassation appeal of the JSC firm "SMUR", they dispute the conclusions of the courts of the first and appeal instances, giving their assessment of the circumstances established in the case and the evidence presented,

The arguments of the cassation appeal, on which their applicant did not agree with the contested judicial acts, were the subject of court proceedings, they were given an appropriate assessment in the contested judicial acts.

The scope of consideration of the case in the court of the cassation instance is limited to checking the correctness of the application by the courts of the norms of substantive and procedural law, as well as the compliance of the conclusions on the application of the rule of law with the circumstances established in the case and the evidence contained in it (parts 1 and 3 of Article 286 of the APC RF)

In accordance with the provisions of the Arbitration Procedure Code of the Russian Federation, the establishment of the factual circumstances of the case, the study and assessment of evidence is the prerogative of the courts of first instance and appeal.

In the contested judicial acts, the reasons for which the courts came to such conclusions are given, with an indication of the specific evidence examined and evaluated in their totality according to the rules of Article 71 of the Arbitration Procedure Code of the Russian Federation.

The arguments of the cassation appeal do not confirm the incorrect application by the courts of substantive or procedural law, but are aimed at re-evaluating the circumstances of the case investigated by the courts, the evidence presented and the conclusions drawn on their basis, which, by virtue of the provisions of Article 286 of the Arbitration Procedure Code of the Russian Federation, does not fall within the competence of the cassation court.

Violations by the courts of first and appeal instances of the norms of procedural law, which are independent grounds for canceling the adopted judicial acts by virtue of part 4 of Article 288 of the Arbitration Procedure Code of the Russian Federation, were not established during the consideration of the case in the court of cassation.

In such circumstances, the cassation court sees no grounds for canceling the contested judicial acts.

Based on the foregoing and guided by paragraph 1 of part 1 of Article 287, Articles 286, 288, 289 of the Arbitration Procedure Code of the Russian Federation, the Arbitration Court of the Volga Region

DECIDED:

the decision of the Arbitration Court of the Saratov Region dated 10.12.2019 and the resolution of the Twelfth Arbitration Court of Appeal dated 13.02.2020 in case No. A57-19378 / 2019 shall be left unchanged, the cassation appeal - dismissed.

The decision comes into legal force from the date of its adoption and can be appealed to the Judicial Collegium of the Supreme Court of the Russian Federation within two months.

Presiding judge C.The. Mosunov

Judges I.A. Khakimov

M.A. Savkina