



ARBITRATION COURT OF THE SARATOV REGION
410002, Saratov, st. Babushkin Vzvoz, 1; tel / fax: (8452) 98-39-39;
<http://www.saratov.arbitr.ru>; e-mail: info@saratov.arbitr.ru

In the name of the Russian Federation
DECISION

Saratov city
January 22, 2020

The operative part of the decision was announced on January 15, 2020 The full text of the decision was made on January 22, 2020

Case No. A57-19376 / 2019

The Arbitration Court of the Saratov Region composed of judge A.AND. Mikhailova, while keeping the minutes of the court session by the secretary O.I. Podushkina, having examined in an open court session the case materials at the request of Kvant-Telecom JSC, Voronezh, interested persons:

LLC "Company" ALS and TEK ", Saratov, LLC" DSPTS ", Saratov,
LLC "MMTS", Saratov, JSC "SMUR", Voronezh,

Kirovskiy RO SP Saratov, Saratov, Federal Bailiff Service of the Russian Federation in Saratov region, Saratov,

bailiff of the Kirov Regional Department of Public Administration of the City of Saratov of the Federal Bailiff Service of the Russian Federation in the Saratov Region Shvab M.A., Saratov,
the bailiff of the Kirov Regional Department of the Federal Security Service of the city of Saratov of the Federal Bailiff Service of the Russian Federation in the Saratov Region A.E.Basyrova, Saratov,
bailiff of the Kirov Regional Department of Public Administration of the City of Saratov of the Federal Bailiff Service of the Russian Federation for the Saratov Region Kurbanova K.S., Saratov,

o recognition and cancellation of the decree of the head of the Kirov Regional Department of the Federal Security Service of the city of Saratov of the Federal Bailiff Service of Russia for the Saratov Region A.E.Basyrova. from 07/29/2019 on enforcement proceedings No. 74142/18/64042-IP, with the participation:

from the applicant - Tatarovich I.A., by power of attorney dated 01.01.2020, Litvinova N.N., by power of attorney dated 25.08.2015,

from JSC "SMUR" - Litvinova N.N., by power of attorney from 17.05.2018,

LLC "Company" ALS and TEK "- Demidov I.A., by power of attorney dated 01.12.2017,

from the Kirovskiy RO SP of Saratov, Saratov - Trubnikova A.A., by power of attorney dated 16.09.2019,

from the Federal Bailiff Service of Russia in the Saratov region - Zhilko A.E., by power of attorney dated 06/07/2019, other persons did not appear, they were notified.

FOUND:

JSC "Kvant-Telecom" applied to the Arbitration Court of the Saratov region with an application to declare illegal and cancellation of the resolution of the head of the Kirovskiy ROSP of the city of Saratov of the FSSP of Russia in the Saratov region Basyrova A.E. from 07/29/2019 on enforcement proceedings No. 74142/18/64042-IP.

The representatives of the applicant and the representative of JSC "SMUR" supported the stated requirements in full.

Representatives of the bailiff service, LLC "Company" ALS and TEK "disputed the claims on the grounds set out in the responses.

Other persons participating in the case did not appear at the court session, and were duly notified of the time and place of the court session.

By virtue of Part 1 of Article 123 of the Arbitration Procedural Code of the Russian Federation, the persons participating in the case and other participants in the arbitration process are considered duly notified if by the beginning of the court session, the commission of a separate procedural action, the arbitration court has information that the addressee has received a copy of the ruling on the acceptance of the statement of claim or an application for proceedings and initiation of proceedings on a case sent to him in the manner prescribed by this Code, or other evidence of the receipt by the persons participating in the case of information about the commenced trial.

Information about the place and time of the court session is posted on the official website of the Arbitration Court of the Saratov Region, which is confirmed by the report on the publication of judicial acts on the website.

The participants in the process were duly notified of the place and time of the court session, in accordance with the requirements of Article 123 of the Arbitration Procedure Code of the Russian Federation.

In accordance with Article 163 of the Arbitration Procedure Code of the Russian Federation, a break was announced in the court session until 01/15/2019 09:00. 20 minutes, after which the consideration of the case was continued.

The case is considered according to the evidence in it, according to the rules of Chapter 24 of the Arbitration Procedure Code of the Russian Federation.

As follows from the case materials, by the decision of the Twelfth Arbitration Court of Appeal dated 12/13/2017 in case No. A57-233 / 2017, the decision of the Arbitration Court of the Saratov Region dated August 31, 2017 in case No. A57-233 / 2017 was canceled.

The court ordered JSC "firm" SMUR ", Voronezh to return in favor 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" address Saratov region, Ershov, st. Meliorative, 32A to the main distribution coupling MRM28 near the settlement of Pushkino, Sovetsky district, Saratov region, from the distribution main coupling MPM28 near the settlement Pushkino, Sovetsky district, Saratov region. to the optical cross in a container on the territory of the Open Joint Stock Company "Urbakhskiy kombinat khleboproduktov" at the address Saratov region, Sovetskiy district, Pushkino, st. Zavodskaya, 1a, from the main distribution coupling MRM28 near the village of Pushkino, Sovetsky District, Saratov Region. to optical cross-country "VOSTOK" LLC "Company" ALS and TEK ", Saratov, st. B. Kazachya, 6, from optical cross-country "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 Open Joint Stock Company" Integral "at the address Saratov, st. Chernyshevskogo, 153, actually received for temporary use by the Closed Joint Stock Company "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 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.

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. On May 30, 2018, enforcement proceedings No. 29540/18/64042-IP were initiated.

07/19/2018 the bailiff-executor of the Kirov Regional Department of the Federal Bailiff

Service of the city of Saratov, the Federal Bailiff Service Directorate for the Saratov Region issued a resolution on the termination of enforcement proceedings No. actual fulfillment of the requirements contained in the executive document.

LLC "Company" ALS and TEK "confirms 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 - the property was received by the claimant, which was the basis for termination enforcement proceedings

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

09/12/2018 between LLC "Company" ALS and TEK "and LLC" DSPTS "entered into a property purchase agreement No.ALS-DSPTS / OB-12092018, according to which LLC" Company "ALS and TEK" transferred into the ownership of LLC "DSPTS" by judicial act (resolution of the Twelfth Arbitration Court of Appeal dated 12/13/2017 on the case

No. A57-233 / 2017) property.

20.11.2018 Basyrova A.E., the senior bailiff of the Kirov Regional Department of the Department of Special Operations of the city of Saratov. a resolution was issued to cancel the resolution of 07/19/2018. on the end of enforcement proceedings No. 29540/18/64042-IP, enforcement proceedings were resumed with the assignment of a registration number to the enforcement proceedings

No. 74142/18/64042-IP.

On December 10, 2018, the bailiff of the Kirov Regional Department of Internal Affairs of the city of Saratov, the Federal Bailiff Service Directorate in the Saratov Region repeatedly performed enforcement actions with the involvement of specialists within the framework of enforcement proceedings, during which it was established that the property subject to recovery was used by DSPTS LLC.

On January 25, 2019, the bailiff of the Kirov Regional Department of the Federal Security Service of the city of Saratov issued a resolution to conduct an expert study, the conduct of which was entrusted to specialists of the Regional Expertise Center LLC.

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 12/29/2017. in case A57-233 / 2017 by transferring optical fibers in favor of LLC "Company" ALS and TEK ", Saratov, st. B.Kazachya, 8D from optical distribution frame

"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 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 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 third party.

In this case, the identification of fibers is possible in several ways, described in the research section.

The experts came to the conclusion that the optical fibers indicated in the court decision in the case A57-233 / 2017 and the optical fibers examined by the experts are the same optical fibers, since the numbering and color of the fibers, the starting and ending points of the location, the intermediate points (couplings), the length of the optical fibers specified in the court decision, in the act of acceptance and transfer of property for temporary use dated 10.10.2012 and the investigated optical fibers are completely identical within the measurement error.

Experts believe that the investigated optical fibers are optical fibers actually obtained for temporary use by JSC SMUR under the act of 10.10.2012, since the initial and final points of location, intermediate points (couplings), the length specified in the act of 10.10.2012 and the investigated optical fibers are completely identical.

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 decree of the head of the Kirov Regional Department of Social Protection of the city of Saratov Basyrova A.E. from July 29, 2019 is illegal, the applicant went to court with this claim.

In support of the stated claims, Kvant Telecom JSC indicates that the contested resolution is illegal, unfounded and violating the rights and legitimate interests of the applicant in the field of entrepreneurial and other economic activities.

Having studied the positions of the parties, having examined the evidence presented, the court comes to the following conclusion.

By virtue of part 1 of article 197, chapter 24 of the Arbitration Procedure Code of the Russian Federation, cases on challenging decisions and actions (inaction) of bailiffs-executors are considered by an arbitration court according to the general rules of claim proceedings, with the specifics established by chapter 24 of the Code.

Article 329 of the Arbitration Procedure Code of the Russian Federation provides that the decisions of the chief bailiff of the Russian Federation, the chief bailiff of the constituent entity of the Russian Federation, the senior bailiff, their deputies, the bailiff-executor, their actions (inaction) may be challenged in the arbitration court in cases, provided for by the named Code and other federal laws, according to the rules established by Ch. 24 of this Code.

The specificity of this category of cases lies in the fact that only the bailiff himself, as an official of the Federal Bailiff Service of Russia, can be the proper defendant for the stated requirements for declaring illegal decisions, actions (inaction) of the bailiff-executor.

This legal position is enshrined in clause 5 of the Information Letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated June 21, 2004 No. 77 "Review of the practice of considering cases related to the execution of judicial acts of arbitration courts by bailiffs."

According to Part 1 of Art. 198 of the Arbitration Procedural Code of the Russian Federation, citizens, organizations and other persons have the right to apply to the arbitration court with an application for invalidating non-normative legal acts, illegal decisions and actions of state bodies, officials, if they believe that the contested normative act, decision and action do not comply with the law or other normative legal act and violate their rights and legitimate interests in the field of entrepreneurial and other economic activities, impose on them any obligations, create other obstacles to the implementation of entrepreneurial and other economic activities.

From the meaning of the above norm, it follows that for the recognition of a non-normative act as invalid or actions (inaction) illegal, two conditions must be present simultaneously: their non-compliance with the law or other legal act and violation of the applicant's rights and interests protected by law.

Assessing the legality of the contested decision, the court proceeds from the following.

According to Article 329 of the Arbitration Procedure Code of the Russian Federation, decisions of the bailiff-executor, his actions (inaction) can be challenged in an arbitration court in cases provided for by the named Code and other federal laws, according to the rules established by Chapter 24 of this Code. The basis for invalidating a resolution, illegal actions (inaction) of a bailiff-executor is the presence of two conditions at the same time: their inconsistency with the law or other regulatory legal act and violation of the rights and legitimate interests of the person who applied to the court with the corresponding claim in the field of business and other economic activities (Articles 198, 200 and 201 of the Code of Administrative Offenses of the Russian Federation, paragraph 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 No. 6/8 "On some issues related to the application of part one of the Civil Code of the Russian Federation") ...

In accordance with Article 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 stipulated by the legislation of the Russian Federation, the execution of other documents in order to protect the violated rights, freedoms and legitimate interests of citizens and organizations ...

Articles 12, 13 of the Federal Law of 21.07.1997 No. 118-FZ "On Bailiffs" (hereinafter referred to as the Law on Bailiffs) established that in the process of compulsory execution of judicial acts and acts of other bodies provided for by the federal law on enforcement proceedings, the bailiff - the executor takes measures for the timely, complete and correct execution of the executive documents.

The court found that, according to the ruling of the Twelfth Arbitration Court of Appeal dated October 29, 2019 in case No.A57-233 / 2017, when considering case No.A57-29166/2018, 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 the Court of Appeal in case No.A57-233 / 2017 dated 12/13/2017, as the basis for the end of enforcement proceedings and gave the recoverer the opportunity to dispose of his property, conclude a sale and purchase transaction with DSPS LLC and transfer it under the act of acceptance and transfer into possession and property of LLC DSPS disputed optical fibers.

At the moment, the disputed property received by the claimant - LLC "Company" ALS and TEK "under the act of implementation of enforcement actions dated 06/22/2018, is owned by LLC" DSPS "and is used by it for its intended purpose, which is confirmed by the decision of the Saratov Arbitration Court that came into force. region from 25.01.2019 in case No.A57-28371 / 2018.

In the ruling of the Arbitration Court of the Volga District of 03/20/2019 in the case No. A57-233 / 2017 also contains the conclusion that the property (4 optical fibers in a fiber-optic communication line on the Saratov-Ershov section in the fiber-optic communication line) awarded by the resolution of the Twelfth Arbitration Court of Appeal dated 12/13/2017 in case No. Saratov-Ozinki ") was alienated by the company" Company "ALS and TEK" in favor of a third party - LLC "DSPS" under the sale and purchase agreement dated 12.09.2018 No. ALS-DSPS / OB-12092018.

According to the ruling of the court of appeal dated 15.07.2019 in case No.A57-16161/2019, upheld by the court of cassation, the decision of the Arbitration Court of the Saratov Region of 27.02.2019 was changed, conclusions about 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", as well as on the illegality of the act of performing executive actions from 22.06.2018, in connection with which, the bailiff service issued a resolution dated July 29, 2019 to cancel the resolution of the deputy head of the department - senior bailiff of the Kirov Regional Department of the Russian Socialist Republic of Saratov, Muratova A.N. from 10.12.2019 on cancellation of the act of commission of executive actions from 22.06.2018.

Taking into account the foregoing, the court considers that the applicant's arguments about the illegality of the decision of the head of the Kirovskiy Regional Department of the Department of Social Protection of the city of Saratov Basyrova A.E. from 29.07.2019 on the cancellation of the decree of the deputy head of the department - the senior bailiff of the Kirov Regional Department of the Department of Public Administration of the City of Saratov A.N. from 10.12.2018 on the abolition of the act of commission of executive actions from 22.06.2018, set out in the application, are insolvent, not consistent with the case materials.

Based on the foregoing, the stated requirements are not subject to satisfaction.

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

DECIDED:

Refuse to satisfy the stated requirements.

The decision can be appealed in the manner and terms established by Articles 257-260, 273-277 of the Arbitration Procedure Code of the Russian Federation by filing a complaint through the Arbitration Court of the Saratov Region.

Arbitration Court Judge
Saratov region A.I. Mikhailova

The electronic signature is valid.
Electronic signature data: Verification Center of
FGBU IAC of the Judicial Department
Date 22.08.2019 11:18:50
To whom was Mikhailova Arina Ishkhanovna