



298/2020-25538(2)



TWELFTH ARBITRAL APPEAL COURT
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RESOLUTION
arbitration court of appeal

Saratov Case No. A57-19374 / 2019

02 June 2020

The operative part of the resolution was announced on June 01, 2020. The full text of the resolution was issued on June 02, 2020.

The twelfth Arbitration Court of Appeal composed of: presiding judge E.V. Puzina, judges S.G. Veryaskina, S.M. Stepura, when keeping the minutes of the court session using the means of audio recording by the secretary of the court session V.K. Glebova, having examined in open court in the premises of the Twelfth Arbitration Court of Appeal: Saratov, Lermontov M.Yu. street, 30, building 2, appeal of the joint-stock company "Quant-Telecom" (394019, Voronezh, Eremeeva st., 22, INN 3662124236, OGRN 1073667031030) on the decision of the Arbitration Court of the Saratov Region dated February 27, 2020 in case No.A57-19374 / 2019 at the request of the joint-stock company Kvant-Telecom (394019, Voronezh, Eremeeva st., 22, TIN 3662124236, OGRN 1073667031030) interested persons: bailiff of the Kirovsky district department of bailiffs of the Office of the Federal Service of Bailiffs in the Saratov Region K.S. Kurbanova (410054, Saratov, 2nd Sadovaya str., 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, street 2 Sadovaya, 129), Limited Liability Company "Company" ALS and TEK "(410012, Saratov, st. B. Kazachya, 8" D " , INN 6452045336, OGRN 1026402661108), Kirovsky district department of bailiffs in Saratov (410054, Saratov, street 2 Sadovaya, 129), bailiff of the Kirovsky district department of bailiffs of the Office of the Federal Service of Bailiffs

in the Saratov region M.A. Shvab (410054, Saratov, 2nd Sadovaya str., 129), Office of the Federal Bailiffs Service for the Saratov Region (410600, Saratov, Teatralnaya Ploschad,

11), Limited Liability Company DSPS (410002, Saratov, Chernyshevsky st., 197, INN 6452048979, OGRN 1026402661119), limited liability company

"MMTS" (410012, Saratov, B. Kazachya st., 6, TIN 6452913127, OGRN

1056405053352), joint-stock company firm "SMUR" (394019, Voronezh, Eremeeva st., 22, TIN 3662020332, OGRN 1023601610878), deputy head of the department - deputy senior bailiff of the Kirovsky district department of bailiffs of the Federal Service of Bailiffs Saratov region A.N. Muratova (410054, Saratov, 2nd Sadovaya st., 129)

o recognition of illegal and cancellation of the order,
with the participation:

representative of the limited liability company "Company" ALS and TEK "- I.A. Demidov, by power of attorney dated 16.12.2019 No. 27, for a period of one year,

other persons - did not appear, were notified of the time and place of the court session, properly, in accordance with 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 telecommunication network

"Internet" in limited access mode.

FOUND:

The Joint-Stock Company applied to the Arbitration Court of the Saratov Region

"Kvant-Telecom" (hereinafter the Company, OA "Kvant-Telecom") with a statement of recognition as illegal and cancellation of the order of the bailiff - the executor of the Kirov Regional Department of Public Administration of the City of Saratov of the Office of the Federal Service of Bailiffs of Russia for the Saratov Region Kurbanova K.S. from 07/29/2019 on the end of enforcement proceedings.

By the decision of the Arbitration Court of the Saratov Region dated February 27, 2020, the claims were refused.

Disagreeing with the judicial act, Kvant-Telecom JSC appealed to the Twelfth Arbitration Court of Appeal with a complaint, in which it asks the decision of the first instance court to cancel, to adopt a new judicial act on the case, which satisfy the stated requirements.

The appeal is motivated by the fact that in the framework of case No. A57-28371/218 the fact of violation of the debtor's rights was established. There are no grounds for the transfer of enforcement proceedings from the bailiff-executor Shvab M.A. bailiff Kurbanova K.S. The bailiff-executor Kurbanova KS did not have the authority to issue an order on the end of the enforcement proceedings. The requirements of the executive document in the framework of case No. A57-233 / 2017 were not fulfilled, and therefore, the enforcement proceedings were not subject to completion. According to the appellant, the violation of rights is evidenced by the fact that LLC Company "ALS and TEK" uses the fact of the execution of a judicial act for illegal recovery of unjust enrichment.

A representative of LLC Company ALS and TEK appeared at the hearing.

Other persons participating in the case did not appear at the court session, they were duly notified of the time and place of the court session, in the order of Articles 121-123 of the Arbitration Procedure Code of the Russian Federation,

Information about the place and time of the court session is posted on the official website of the arbitration court in the information and telecommunications network "Internet" (kad.arbitr.ru), which is confirmed by the report on the publication of judicial acts on the website.

According to paragraph 3 of Article 156 of the Arbitration Procedure Code of the Russian Federation, if the persons participating in the case, duly notified of the time and

place of the consideration of the case, fail to appear at the court session, the court shall consider the case in their absence.

The representative of LLC Company ALS and TEK at the court hearing objected to the arguments set out in the appeal, asks the decision of the Arbitration Court of the Saratov Region of February 27, 2020 in case No. set out in the submitted response to the appeal.

Having examined the materials of the case, having studied the arguments of the appeal, having checked the correctness of the application by the court of first instance of the norms of substantive and procedural law, the court of appeal came to the following conclusions.

As follows from the materials of the case, the decision of the Arbitration Court of the Saratov Region of August 31, 2017 in case No. A57-233 / 2017 refused to satisfy the claims of LLC Company ALS and TEK against JSC Firm Smur on the obligation to return the property under the second stage of the contract No. 3 / 12-12 of 04.09.2012.

By the resolution of the Twelfth Arbitration Court of Appeal dated 13.12.2017, the decision of the Arbitration Court of the Saratov Region dated 31.08.2017 in the case

No. A57-233 / 2017 canceled, the claims of LLC "Company" ALS and TEK "on the obligation of JSC firm" SMUR "to return the property under the second stage of contract No. 3 / 12-12 dated 04.09.2012 were satisfied in full.

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

"Urbakshskiy kombinat khleboproduktov" at the address: Saratov region, Sovetskiy district, Pushkino, st. Zavodskaya, 1a, from the main distribution coupling 1MRM28 near the village of Pushkino, Sovetsky district, Saratov region. to optical distribution frame

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

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

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

On the basis of the writ of execution No. FS 016402251 dated December 29, 2017, issued by the Arbitration Court of the Saratov Region by order of the Twelfth Arbitration Court of Appeal dated December 13, 2017 in case No. A57- 233/2017, by the bailiff of the Kirovsky ROSP of Saratov, the Federal Bailiff Service Directorate for the Saratov Region, Tumaeva K.S. On May 30, 2018, enforcement proceedings No. 29540/18/64042-IP were initiated

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 enforcement actions was drawn up,

according to which LLC "Company" ALS and TEK ", as a claimant for enforcement proceedings No. 29540/18/64042-IP, received on 22.06.2018, according to a writ of execution, property (4 optical fibers in a fiber-optic communication line on the section "Saratov-Ershov" in the FOCL "Saratov-Ozinki").

07/19/2018 the bailiff-executor of the Kirov Regional Department of Internal Affairs of the city of Saratov of the Federal Bailiff Service of Russia in the Saratov Region issued a resolution on the end of enforcement proceedings No. 29540/18/64042-IP on the basis of paragraph 1 of part 1 of Article 47 of the Federal Law of 02.10.2007 No. On Enforcement Proceedings "(hereinafter referred to as 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 N ALS-DSPS / OB-12092018 was concluded, according to which LLC" Company "ALS and TEK" transferred into the ownership of LLC "DSPS" according to a judicial act (resolution of the Twelfth Arbitration Court of Appeal of 12/13/2017 in case N A57-233 / 2017) property. On the basis of the agreement dated 01.10.2018 N 76-18, LLC DSPS transferred the above property to the lease of LLC MMTS.

20.11.2018 the senior bailiff of the Kirov Regional Department of the Department of Public Administration of the city of Saratov issued a resolution to cancel the resolution of 19.07.2018. 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 the deputy head of the department - the senior bailiff of the Kirov Regional 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. for enforcement proceedings No. 29540/18/64042-IP.

Due to the fact that the decision on the end of the enforcement proceedings was canceled on November 20, 2018, the bailiff of the Kirov Regional Department of the Russian Specialist Union on 01/25/2019. in order to fully and correctly fulfill the requirements of the enforcement document, a resolution was issued on the participation of a specialist in enforcement proceedings. According to the expert opinion of specialists

LLC "Regional Center of Expertise" N 5052 of 02/05/2019 made the conclusion: To execute the decision of the arbitration court of the Saratov region of 12/29/2017 in case N 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. Chernyshevskogo, 153, actually received for temporary use by CJSC "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 decree of July 29, 2019, the bailiff of the Kirov Regional Department of Public Administration of the City of Saratov of the Federal Bailiff Service of Russia for the Saratov Region Kurbanova K.S. a resolution was issued to terminate enforcement proceedings N 74142/18/64042-IP (former enforcement proceedings N 29540/18/64042-IP) in connection with the actual execution.

Considering that the decision of the bailiff-executor 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 Kurbanova K.S. of July 29, 2019 on the end of enforcement proceedings N 74142/18/64042-IP (the previous enforcement proceedings N 29540/18/64042-IP) is illegal, unreasonable and violates the rights of the applicant, JSC Kvant-Telecom went to court with these requirements.

LLC "Company" ALS and TEK "believes that the resolution 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, which was the basis for the end of enforcement proceedings No. 29540/18/64042-IP in connection with the actual fulfillment of the requirements contained in the enforcement document. 12.09.2018 between LLC "Company" ALS and TEK "and LLC" DSPS "concluded an agreement No. ALS-DSPS / OV-12092018 for the purchase and sale of property (4 optical fibers in a fiber-optic communication line on the Saratov-Ershov section in FOCL

"Saratov-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 of 13.12.2017 in case No. A57-233/2017), the cost 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. Under these circumstances, the decision of the bailiff-executor 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. of July 29, 2019 on the end of the enforcement proceedings complies with the law and does not violate the applicant's rights. By refusing to satisfy the requirements stated by Kvant-Telecom JSC,

the court of first instance rightfully proceeded from the following.

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 named Code.

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

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

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

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

According to clause 1 of part 1 of article 47 of Law N 229-FZ, enforcement proceedings are ended by a bailiff-executor in cases of actual fulfillment of the requirements contained in the enforcement document.

Actual performance may be recognized as the fulfillment of the obligation to transfer directly to the recoverer of funds in a specific amount or other specific property, or the commission of specific actions in favor of the recoverer or refraining from performing these actions (paragraph 2 of clause 35 of the resolution of the Plenum of the Supreme Court of the Russian Federation of 11/17/2015 N 50 " On the application of legislation by courts when considering some issues arising in the course of enforcement proceedings ").

On the end of the enforcement proceedings, a resolution is issued indicating the fulfillment of the requirements contained in the enforcement document, in whole or in part, or their non-fulfillment (part 3 of Article 47 of Law N 229-FZ).

By the Resolution of the Twelfth Arbitration Court of Appeal dated 05.08. in case No. A57-29166 / 2018, it was declared illegal and the resolution of the deputy head of the department - senior bailiff of the Kirovsky district department of bailiffs of the city of Saratov of the Office of the Federal Bailiffs Service 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 22.06.2018. fully 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 requested 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 executive actions dated June 22, 2018, drawn up without the participation of a representative of JSC Firm "Smur", is aimed at restoring his rights and 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 it 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 commission of executive actions of 06/22/2018. became the completion of the execution of the resolution of the Twelfth Arbitration Court of Appeal in case No. A57-233 / 2017 dated 12/13/2017, the basis for the end of enforcement proceedings and made it possible for the recoverer to dispose of his property, conclude a sale and purchase transaction with DSPS LLC and transfer under an act acceptance and transfer of disputable optical fibers into the possession and ownership of LLC DSPS. 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. from 10.12.2018 on the cancellation of the act of commission of executive actions from 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 claimant - 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.

The ruling of the Arbitration Court of the Volga Region dated 20.03.2019 in case No. A57-233 / 2017 also concludes that the property (4 optical fibers in fiber-optic equipment, awarded by the resolution of the Twelfth Arbitration Court of Appeal dated 13.12.2017 in case No. communication lines on the Saratov-Ershov section in the Saratov-Ozinki fiber-optic communication line) was alienated by the ALS and TEK Company in favor of a third party - DSPS LLC under a sale and purchase agreement No. ALS-DSPS / OV dated 12.09.2018 -12092018.

By the resolution of the Twelfth Arbitration Court of Appeal of 13.08.2019 in case No. A57-28364 / 2018, the decision of the Arbitration Court of the Saratov Region of 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 Kirovskiy ROSP of Saratov of the Federal Bailiff Service of Russia for 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 this connection, the act of performing enforcement actions dated 22.06.2018. became the completion of the execution of the ruling of the Twelfth Arbitration Court of Appeal in case No. A57-233/2017 of 13.12.2017. and the basis for the termination 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 July 29, 2019, the decree of the deputy head of the department - the senior bailiff of the Kirov Regional Department of Public Administration 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.

In connection with the actual fulfillment of the requirements of the executive document by the decision of 07/29/2019 by the bailiff of the Kirovskiy ROSP of the city of Saratov, the FSSP of Russia in the Saratov region Kurbanova K.S. completed enforcement proceedings N 74142/18/64042-IP (previous enforcement proceedings No. 29540/18/64042-IP).

The arguments of the appeal that there were no grounds for the transfer of enforcement proceedings from SPI Shvab M.A. SPI Kurbanova K.S., as well as the absence of SPI Kurbanova K.S. the powers to issue an order to terminate the enforcement proceedings are rejected by the court of appeal.

The materials of the case established that, according to the act of acceptance and

transfer of 07/19/2019 on the transfer of enforcement proceedings, enforcement proceedings N 74142/18/64042-IP were transferred from the SPI Shvab M.A. - SPI Kurbanova K.S. - 07/19/2019. At the same time, in the period from 07.22.2019 to 08.10.2019 Shvab M.A. in fact, she was on another vacation, which is confirmed by an extract from the order for granting vacation from 03.07.2019 N 1192-ko. The fact of issuing an order on the end of the enforcement proceedings from 07/29/2019 and actually finding the materials of enforcement proceedings at this bailiff is also confirmed by the electronic digital signature of Kurbanova K.S. in this resolution, which corresponds to the date - 07/29/2019. Under these circumstances, the fact of finding the materials of the enforcement proceedings at the bailiff-executor Kurbanova K.S. and the transfer of enforcement proceedings to her on 07/19/2019. prior to the delivery of the contested decision, the court of appeal does not summon

doubts.

By the ruling of the court dated January 17, 2020, the petition for falsification of the document of the act of acceptance and transfer of enforcement proceedings dated July 19, 2019 and the appointment of a forensic examination to determine the limitation of this document was denied, since, based on the evidence in the case, the first instance court came to the correct conclusion about the unfoundedness of the stated falsification petitions.

In addition, it follows from the materials of the case that the basis for the issuance of the contested decision was the decision of the head of the Kirov Regional Department of the Department of Social Protection of the city of Saratov, Basyrova A.E. of July 29, 2019 on the cancellation of the decree of the deputy head of the department - senior bailiff of the Kirovskiy ROSP Muratova A.N. from 10.12.2018.

In the opinion of Kvant-Telecom JSC, the establishment of the illegality of the Resolution of the head of the Kirov Regional Department of the Department of Social Protection of the city of Saratov, Basyrova A.E. from 07/29/2019 will entail the illegality of the decision of the bailiff-executor Kurbanova K.S.

At the same time, the decision of the Arbitration Court of the Saratov Region dated December 10, 2019 in case No. A57-19378 / 2019, upheld by the Resolution of the Twelfth Arbitration Court of Appeal dated February 13, 2020, in satisfying the claims of Firm "Smur" JSC to declare illegal and cancel the decision Basyrova A.E., Head of the Kirov Regional Department of the Federal Security Service of the city of Saratov. 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 10.12.2019 on cancellation of the act of commission of executive actions from 22.06.2018; on recognizing as illegal and canceling the decision of the bailiff-executor of the Kirov Regional Department of Public Administration of the City of Saratov of the Federal Bailiff Service of Russia in the Saratov Region Kurbanova K.S. from 07/29/2019 on the end of enforcement proceedings, refused.

It should be noted that 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 entrepreneurial and other economic activities (Articles 198, 200 and 201 of the Code, 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

No. 6/8 "On some issues related to the application of the first part of the Civil Code of the Russian Federation").

In this case, the contested decision complies with the law and does not violate the rights and legitimate interests of the applicant in the field of entrepreneurial and other economic activities.

Evidence to the contrary was not presented by the applicant.

JSC Kvant-Telecom has not presented evidence of violation by the contested resolution of its rights and legitimate interests.

The arguments of the appeal actually boil down to an indication of non-execution of the court decision in case No. A57-233 / 2017, which were the subject of research when considering court cases No. A57-12788 / 2018, No. A57-14818/2018, No. A57-16161 / 2018, No. A57-28364 / 2018, No. A57-29166 / 2018, and are not subject to reevaluation.

The argument of Kvant-Telecom JSC that the fact of full execution of the judicial act by ALS and TEK Company LLC is used for illegal recovery of unjust enrichment from Kvant-Telecom JSC and the affiliated person of Smur JSC in other arbitration disputes, thus, violating the rights, is untenable.

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

By itself, the reference of LLC "Company" ALS and TEK "in substantiating its arguments and objections in the framework of other property cases to the contested resolution cannot violate the rights and legitimate interests of JSC

Kvant-Telecom, since the evidence is subject to assessment by the court in the framework of the disputes under consideration.

The Collegium 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 established by this Code.

The applicant did not explain how the applicant's rights were violated, and how this dispute will restore the applicant's rights if the claims are satisfied, given that Kvant-Telecom JSC is not a party to the enforcement proceedings.

From the systemic interpretation of the norms of Chapter 24 of the Arbitration Procedure Code of the Russian Federation, it follows that the range of circumstances to be established when considering cases of challenging non-normative acts, actions (inaction) of state bodies includes 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 an action (inaction) the rights and legitimate interests of the applicant, as well as the observance of the deadline for filing an application to the court.

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

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

The appeal to the court should have as its goal the restoration of the violated or disputed rights and legitimate interests of the person who applied to the court.

Based on the foregoing, the court of first instance reasonably pointed out that the rights and legitimate interests of the Company were not violated, and therefore, rightfully came to the conclusion that the stated requirements were refused.

Based on the foregoing, the appellate instance considers that a lawful and well-grounded decision has been made in the case, and there are no grounds for canceling it. The conclusions of the court in this case are based on the established circumstances and the

evidence available in the case with the correct application of the rules of substantive and procedural law.

The arguments set out in the appeal cannot serve as a basis for canceling the decision. The appeal is not subject to satisfaction.

Guided by Articles 268-271 of the Arbitration Procedure Code of the Russian Federation, the arbitration court of the appellate instance,

DECIDED:

the decision of the Arbitration Court of the Saratov Region of February 27, 2020 in case No. A57-19374 / 2019 shall be left unchanged, the appeal - dismissed.

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

Presiding E.The. Puzina

Judge S.G. Veryaskina

CM. Stepura