



ARBITRATION COURT OF THE SARATOV REGION
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In the name of the Russian Federation
DECISION

Saratov city

January 25, 2019

The operative part of the decision was announced on January 21, 2019 The full text of the decision was made on January 25, 2019 Дело № A57-28371/2018

The Arbitration Court of the Saratov Region composed of Judge Viklenko T.I., while keeping the minutes of the court session by the secretary of the court session Omarova B.T. Limited Liability Company "ALS and TEK", INN 6452045336, o recognition of illegal and cancellation of the decision of the senior bailiff of the Kirov Regional Department of the Russian Specialist Service of the city of Saratov Basyrova A.E. of 20.11.2018 on the cancellation of the decree of 19.07.2018 on the end of enforcement proceedings No.

interested parties: Kirovskiy ROSP Saratov

Basyrova A.E. UFSSP for the Saratov region

JSC "Firm" Smur "

LLC "Directorate of communications enterprises under construction" with the participation of:

from the applicant - Demidov AND.A. by power of attorney dated 21.12.2017, V.N.

Vekozin by power of attorney dated 01.12.2017,

from JSC "Firm" Smur " - Litvinova N.N. by power of attorney dated 05/17/2018, I.A.

Tatarovich by power of attorney dated 01.01.2019,

from the Office of the Federal Service of Bailiffs in the Saratov Region - Plekhanov A.S. by power of attorney dated 09/11/2018,

other persons did not appear, were notified,

found:

ALS and TEK Limited Liability Company applied to the Arbitration Court of the Saratov Region with the above statement.

In the course of the consideration of the case, the court attracted the Federal Bailiff Service for the Saratov Region, Firma Smur JSC, and the Directorate of Communications Enterprises under Construction LLC to participate in the case as interested persons.

The applicant's representatives supported the stated claims in full.

Representatives of the bailiff service, JSC "Firm" Smur "objected to the satisfaction of the stated requirements.

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.

The court considers the case according to the rules of Chapter 24 of the Arbitration Procedure Code of the Russian Federation.

As follows from the materials of the case, entered into legal force 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 of 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 ORTPPTS" address Saratov region, Ershov, Meliorativnaya str., 32A to the main distribution coupling MRM28 near the settlement of Pushkino, Sovetsky district, Saratov region, from the distribution main coupling MRM28 near the settlement Pushkino, Sovetsky district, Saratov region. to an optical crossbar in a container on the territory of the Open Joint Stock Company

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

"Company" ALS and TEK ", Saratov, B. Kazachya str., 6, from optical crossover" VOSTOK LLC

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

"ALS and TEK" on the territory of the Open Joint Stock Company "Integral" at the address Saratov, Chernyshevskogo st., 153, actually received for temporary use by the Closed Joint Stock Company "Firm" SMUR ", Voronezh under the act of acceptance and transfer of property in temporary use from 10.10.2012 in accordance with the terms of the contract

No. 3 / 12-12 purchase and sale of optical fibers and a share in the right of common share ownership in a fiber-optic communication line in the Voronezh and Saratov regions, concluded on 04.09.2012 between the ALS and TEK Company Limited Liability Company and the Closed Joint Stock Company "Firm SMUR".

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 December 33, 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 Tumaeva K.S. 05/30/2018 enforcement proceedings No. 29540/18/64042-IP were initiated.

As follows from the statement, LLC "Company" ALS and TEK ", as a claimant, received the property according to the writ of execution and 07/19/2018. bailiff

Kirovskiy ROSP of Saratov UFSSP in the Saratov region 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 "On enforcement proceedings" - the actual fulfillment of the requirements contained in the enforcement document.

LLC "Company" ALS and TEK "confirms that the resolution of the Twelfth Arbitration Court of Appeal dated 13.12.2017. in case 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 enforcement proceedings

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

12.09.2018 between LLC "Company" ALS and TEK "and LLC" DSPS "entered into a contract of sale and purchase of property No. ALS-DSPS / OV-12092018, according to which LLC "Company "ALS and TEK" transferred into ownership of LLC "DSPS" obtained under a judicial act (resolution of the Twelfth Arbitration Court of Appeal dated 13.12.2017 in the case

No. A57-233 / 2017) property.

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 resolution was issued to cancel the resolution of 07/19/2018. on the end of enforcement proceedings No. 29540/18/64042-IP, which was received by LLC Company

"ALS and TEK" 11/23/2018

Considering that the Resolution of the senior bailiff of the Kirovskiy ROSP of Saratov Basyrova A.E. of 20.11.2018 on the abolition of the decree of 19.07.2018. on the end of enforcement proceedings No. 29540/18/64042-IP is illegal, unreasonable, the applicant appealed to the court with these requirements.

In support of the stated requirements, LLC "Company" ALS and TEK "indicates that the decision of the senior bailiff Kirovskiy ROSP g. Saratov Basyrova A.E. from 20.11.2018 on the cancellation of the decree of 07/19/2018. on the end of enforcement proceedings No. 29540/18/64042-IP does not contain a reasoned rationale for the decision taken with reference to federal laws and other regulatory legal acts that do not correspond to the canceled decision.

In addition, according to the applicant, the decision of the senior bailiff of the Kirovskiy ROSP g. Saratov Basyrova A.E. from 20.11.2018 on the cancellation of the decree of 07/19/2018. on the end of enforcement proceedings No. 29540/18/64042-IP, does not comply with the Federal Law "On Bailiffs" (Articles 12,13) and the Federal Law "On Enforcement Proceedings" (Article 2, Clause 6 Part 2 and part 5 of article 14, article 49) and violates the rights and legitimate interests in the field of entrepreneurial and other economic activities of LLC "Company" ALS and TEK "and LLC" DSPS ".

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 the proper defendant on the stated requirements for declaring illegal decisions, actions (inaction)

the bailiff-executor can only be the bailiff-executor himself as an official of the Federal Service of Bailiffs of Russia.

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 enforcement 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) unlawful, two conditions must be present simultaneously: their inconsistency with the law or other legal act and violation of the applicant's rights and interests protected by law.

When considering cases on challenging the actions of officials, the arbitration court establishes the compliance of the named actions (inaction) with the law or other regulatory legal act, the presence of the powers of the person who committed the contested actions, and whether the contested actions violate the rights and legitimate interests of the applicant in the field of entrepreneurial or other economic activity (part 4 of article 200 of the Arbitration Procedure Code of the Russian Federation).

By virtue of paragraph 1 of Art. 12 of the Federal Law N 118-FZ of July 21, 1997 "On Bailiffs" (hereinafter - the Law on Bailiffs) 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 takes measures for the timely, complete and correct execution of executive documents.

As follows from the case materials, enforcement proceedings 29540/18/64042-IP, initiated on May 30, 2018 on the basis of executive document No. FS 016402251 dated December 29, 2017, issued by the Arbitration Court of the Saratov Region in case No. A57 -233/2017, which entered into force on December 13, 2017, the subject of execution: the obligation of JSC "firm" SMUR ", Voronezh 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 an optical crossbar in a container on the territory of the RTRS

"Saratov ORTPTS" at the address Saratov region, Ershov, Meliorativnaya str., 32A to the main distribution coupling MRM28 near the settlement of Pushkino, Sovetsky district, Saratov region, from the distribution main coupling MRM28 near the settlement of Pushkino, Sovetsky district, Saratov region. to the optical crossbar in a container on the territory of the Urbakhskiy Kombinat Khleboproduktov Open Joint Stock Company at the address Saratov region, Sovetskiy district, Pushkino, Zavodskaya str., 1a, from the main distribution coupling MRM28 near Pushkino, Sovetsky district, Saratov region. to optical cross-platform "VOSTOK" LLC "Company" ALS and TEK ", Saratov, B. Kazachya st., 6, from optical cross-platform" VOSTOK "LLC" Company "ALS and TEK", Saratov, B. Kazachya, 6 to the optical cross of LLC "Company" ALS and TEK "on the territory of the Open Joint Stock Company" Integral "at the address Saratov, Chernyshevskogo st., 153, actually received for temporary use by the Closed Joint Stock Company" Firm "SMUR", St. Voronezh on the act of acceptance and transfer of property for temporary use dated 10.10.2012 in accordance with the terms of the agreement No. 3 / 12-12 for the sale and purchase of optical fibers and a share in the right of common share ownership of 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 Closed Joint Stock Company "firm SMUR".

05/30/2018 the bailiff-executor initiated enforcement proceedings, on the basis of Art. 33 Φ 3 № 229 "On enforcement proceedings".

The debtor did not fulfill the requirements of the executive document within the period established by law.

Due to the fact that the debtor did not receive applications, appeals, complaints, the bailiff-executor performed enforcement actions in accordance with Article 64 of FZ-229.

On June 22, 2018, the bailiff-executor took enforcement actions, a corresponding act was drawn up.

07/19/2018 enforcement proceedings ended on the basis of paragraph 1 of part 1 of Art. 47 Φ 3 №229 "On enforcement proceedings", in connection with the actual execution. On 19 July 2018, copies of the decisions on the end of the enforcement proceedings were sent to the parties to the enforcement proceedings, by post.

In accordance with Article 35, Article 64 of the Federal Law-229 "On Enforcement Proceedings" by the bailiff-executor JSC to the firm "Smur" at the address: 394019, Russia, Voronezh, st. Ereemeeva, 22, 06/15/2018 a notice was sent about the place of enforcement actions.

On November 20, 2018, the senior bailiff issued an order to cancel the order to terminate and resume enforcement actions in enforcement proceedings.

On 10.12.2018, a resolution was issued to cancel the measures taken against the debtor, namely, to cancel the act of performing enforcement actions of 22.06.2018, this decree was handed over to the parties to the enforcement proceedings.

On December 10, 2018, enforcement actions were repeated with the involvement of specialists within the framework of enforcement proceedings, as well as with due notification of all parties to the enforcement proceedings.

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

In accordance with part 9 of Article 47 of the Law on Enforcement Proceedings, within the period of submission of a writ of execution for execution, the decision of the bailiff-executor on the end of the enforcement actions and application, including repeated, enforcement measures.

It follows from the cited legal norm that the senior bailiff has the right, at the request of the claimant or on his own initiative, if it is necessary to repeat enforcement actions and (or) the application of enforcement measures, to cancel the decision to terminate the enforcement proceedings.

In this case, the reason for cancellation of the cancellation of the order dated 07.19.2018 on the end of enforcement proceedings No. 29540/18/64042-IP was that the debtor in enforcement proceedings, JSC Smur, was not notified of the execution of enforcement actions, as well as the initiation of enforcement production.

From the materials of the enforcement proceedings, it follows that on December 10, 2018, enforcement actions were repeated with the involvement of specialists within the framework of the enforcement proceedings, as well as with due notification of all parties to the enforcement proceedings.

Thus, the court concludes that the senior bailiff issued an order to cancel the decision to terminate and resume enforcement actions in enforcement proceedings, taking into account the interests of the parties to enforcement proceedings and compliance with the legislation on enforcement proceedings.

The court also notes that the decision of the senior bailiff of the Kirovskiy ROSP g. Saratov Basyrova A.E. from 20.11.2018 on the cancellation of the decree of 07/19/2018. on the end of enforcement proceedings No. 29540/18/64042-IP does not violate the rights of LLC

"The company" ALS and TEK "in the field of entrepreneurial and other economic activities, since 09/12/2018. between LLC "Directorate of communications enterprises under construction" and LLC

"The company" ALS and TEK "concluded an agreement No. ALS-DSPS / OV-12092018 for the sale and purchase of property (4 optical fibers in a fiber-optic communication line on the Saratov-Ershov section in the Saratov-Ozinki fiber-optic link), according to the terms which and in accordance with the act of acceptance and transfer of 12.09.2018. LLC "Company" ALS and TEK "transferred to the ownership of LLC

"Directorate of communications enterprises under construction" awarded and received by the effective resolution of the Twelfth Arbitration Court of Appeal dated 13.12.2017. in case No. A57-233 / 2017 property (4 optical fibers in a fiber-optic communication line at the Saratov-Ershov section in the Saratov-Ozinki fiber-optic communication line).

JSC "Firm" Smur ", as a debtor, does not deny the fact that it has transferred the property that is the subject of collection under the writ of execution.

JSC firm "SMUR" recognizes the fact that in the contract No. ALS-DSPS / OV-12092018 of 12.09.2018, concluded between LLC "Company" ALS and TEK "and LLC" DSPS ", and the enforcement proceedings on the case, one and the same property (4 optical fibers in a fiber-optic communication line on the Saratov-Ershov section in a fiber-optic communication line Saratov-Ozinki).

Thus, the arguments presented in the statement are not confirmed.

Based on the foregoing, the court comes to the conclusion that the contested decision complies with the norms of the current legislation and that there is no violation of the rights and legitimate interests of the applicant, in connection with which the stated requirements are not subject to satisfaction.

By virtue of part 3 of Article 201 of the Arbitration Procedure Code of the Russian Federation, if the arbitration court finds that the contested non-normative legal act, decisions and actions (inaction) of the bodies exercising public powers, officials comply with the law or other normative legal act and do not violate the rights and legitimate interests the applicant, the court decides to refuse to satisfy the stated claim.

Guided by Articles 167 - 170, 201, 329 of the Arbitration Procedure Code of the Russian Federation, the court

DECIDED TO:

In meeting the stated requirements of the Limited Liability Company "ALS and TEK" on the recognition as illegal and cancellation of the decision of the senior bailiff of the Kirov Regional Department of the Russian Specialist Service of Saratov 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 - refuse.

The decision can be appealed in accordance with Art.Article. 257-259 APC RF by filing through the Arbitration Court of the Saratov Region an appeal to the Twelfth Arbitration Court of Appeal within one month from the date of the decision, in accordance with Art. 273-276 of the Arbitration Procedure Code of the Russian Federation by filing a cassation appeal through the Arbitration Court of the Saratov Region with the Arbitration Court of the Volga District within two months from the date of entry into force of the decision..

The full text of the decision will be made within five days from the date of announcement of the operative part of the decision and sent to the parties to the case in accordance with Article 177 of the Arbitration Procedure Code of the Russian Federation.

Arbitration Judge

court of the Saratov region T.AND. Viklenko

<p>The electronic signature is valid. Electronic signature data: Verification Center of FGBU IAC of the Judicial Department Date 16.03.2018 12:50:42 To whom Tatyana Ivanovna Viklenko was issued</p>
