



201/2019-43581(4)

**TWELFTH ARBITRAL APPEAL COURT**

410002, Saratov, st. Lermontov, 30, bldg. 2 tel: (8452) 74-90-90, 8-800-200-12-77; fax: (8452) 74-90-91, <http://12aas.arbitr.ru>; e-mail: info@12aas.arbitr.ru

RESOLUTION
arbitration court of appeal

Saratov Case No. A57-28364 / 2018

August 13, 2019

The operative part of the resolution was announced on August 06, 2019. The full text of the resolution was prepared on August 13, 2019.

The twelfth Arbitration Court of Appeal, composed of: presiding judge S.G. Veryaskina, judges Zemlyannikova V.V., Puzina E.V., while keeping the minutes by the secretary of the court session Astafyeva V.K., having examined in an open court session the appeal of the limited liability company "Directorate of communications enterprises under construction" (410002, Saratov, Chernyshevsky st., 197, TIN 6452048979, OGRN 1026402661119) on the decision of the Arbitration Court of the Saratov Region dated March 12, 2019 in the case

No. A57-28364 / 2018 (judge Y. P. Ognischeva)

at the request of the Limited Liability Company "Directorate of Communication Enterprises under Construction" (410002, Saratov, Chernyshevsky st., 197, INN 6452048979, OGRN 1026402661119),

interested persons: Kirovsky district department of bailiffs of the city of Saratov of the Office of the Federal service of bailiffs in the Saratov region (410054, Saratov, street 2 Sadovaya, 129), senior bailiff of the Kirovsky district department of bailiffs of the city of Saratov of the Office Federal Bailiff Service for the Saratov Region Basyrova A.E. (410054, Saratov, 2nd Sadovaya st., 129), Office of the Federal Bailiff Service for the Saratov Region (410600, Saratov, Teatralnaya Square, 11, TIN 6455039443, OGRN 1056405504650), limited liability "Company" ALS and TEK "(410012, Saratov, st. B. Kazachya, 8" D ", INN 6452045336, OGRN 1026402661108), joint-stock company "SMUR" (394019, Voronezh, Eremeeva st., 22, INN 3662020332, OGRN 1023601610878), bailiff of the Kirovsky district department of bailiffs of the city of Saratov of the Office of the Federal Service of Bailiffs in the Saratov Region Tumaeva K.S. (410054, Saratov, 2nd Sadovaya st., 129), Mezghorodnaya

International Telephone Station "(410012, Saratov, Bolshaya Kazachya st., 6, OGRN 1056405053352, TIN 6452913127),

o invalidation and cancellation of the decision of the senior bailiff of the Kirovsky district department of bailiffs of the Office of the Federal Bailiffs Service in the Saratov Region A.E.Basyrova. from 20.11.2018 on cancellation of the decree from 19.07.2018 on the end

of enforcement proceedings No. 29540/18/64042-IP,
with participation in the court session:

- from the joint-stock company firm "SMUR" - I.A. Tarovic, by power of attorney from 01.01.2019,
 - from the limited liability company "Directorate of communications enterprises under construction" - V.N. Vekozin, by proxy from 25.12.2018,
 - from the Office of the Federal Bailiffs Service in the Saratov Region
 - K.S. Tumaeva, by power of attorney dated 01.04.2019,
- without participation in the court session of representatives of other persons participating in the case, duly notified of the time and place of the trial, with the participation of representatives of the media: Business News Agency "Business Vector" - S.A. Laikask, passport presented, A.A. Laikask service certificate presented,

found:

Limited Liability Company Directorate of Communication Enterprises Under Construction (hereinafter - LLC DSPS, the applicant) applied to the Arbitration Court of the Saratov Region with an application to declare illegal and cancel the decision of the senior bailiff of the Kirovsky district department of bailiffs of the Federal Service of Bailiffs in 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.

By the decision of the Arbitration Court of the Saratov Region dated 12.03.2019, the claims were refused.

LLC "DSPS", disagreeing with the pronounced judicial act, applied to the court with an appeal, in which it asks to cancel the decision of the court of first instance on the grounds set out in the appeal.

The joint-stock company firm "SMUR" (hereinafter - JSC firm "SMUR") in accordance with Article 262 of the Arbitration Procedure Code of the Russian Federation (hereinafter - the Arbitration Procedure Code of the Russian Federation) submitted a written response to the appeal.

Information on the acceptance of the appeal for the proceedings and the appointment of the case for trial is posted on the official website of the arbitration court in the information and telecommunication network "Internet".

The representative of LLC "DSPS" in the court session supported the arguments set out in the appeal.

Representatives of the joint-stock company firm "SMUR", the Office of the Federal Bailiffs Service in the Saratov Region, in the court session objected to the satisfaction of the requirements of the appeal.

In accordance with part 3 of Article 156 of the Arbitration Procedure Code of the Russian Federation, the court considers the appeal in the absence of representatives of other persons participating in the case, duly notified of the time and place of the court session.

Having examined the materials of the case, having checked the arguments of the appeal, the court of appeal considers that the decision of the court of first instance is subject to cancellation on the following grounds.

As follows from the case materials, by the decision of the Twelfth Arbitration Court of Appeal dated 13.12.2017 in case No. A57-233 / 2016, the decision of the Arbitration Court of the Saratov Region dated 31.08.2017 in case No.

"The company" ALS and TEK "on the obligation of JSC firm" SMUR "to return the property under the second stage of the contract No. 3 / 12-12 dated 04.09.2012 were satisfied in full.

The court of appeal ruled to oblige the Joint Stock Company Firm "SMUR" to return in favor of the Limited Liability Company

"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 the city of Ershov to the city of Saratov: from the optical crossbar in a container on the territory of the RTRS" Saratov ORTPTS "At the 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 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, p. Pushkino, Zavodskaya, 1a, from the main distribution coupling MRM28 near the village of Pushkino, Sovetsky district, Saratov region. to optical distribution frame

"VOSTOK" Limited Liability Company "Company" ALS and TEK ", Saratov, st. B. Kazachya, 6, from the optical cross "VOSTOK" of the Limited Liability Company "Company" ALS and TEK ", Saratov, st. B. Kazachya, 6 to the optical cross of the Limited Liability Company

"Company" ALS and TEK "on the territory of the Open Joint Stock Company

"Integral" at the address Saratov, st. Chernyshevsky, 153, actually received for temporary use by the Closed Joint Stock Company "firm" SMUR "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 common share ownership in a fiber-optic communication line on the territory of 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 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 TPK ", 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 BOLS

"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.

In the opinion of the applicant and LLC "Company ALS and TEK", 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 the end of enforcement proceedings No. 29540/18/64042-IP.

The applicant also indicated that on 12.09.2018, LLC "Company ALS and TEK" and LLC "DSPS" concluded a property purchase agreement No. ALS-DSPS / OV-

12092018, according to which LLC "Company ALS and TEK" transferred ownership LLC "DSPS" received under a judicial act (resolution of the Twelfth Arbitration Court of Appeal dated 12/13/2017 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 for rent to LLC MMTS.

20.11.2018 Basyrova A.E., the senior bailiff of the Kirov Regional Department of the Federal Security Service of the city of Saratov. a resolution was issued to cancel the order dated 19.07.2018 on the end of enforcement proceedings No. 29540/18/64042-IP.

Considering the specified decision illegal, unreasonable and violating the rights and legitimate interests of LLC "DSPS", LLC "MMTS" and LLC

"The company" ALS and TEK "in the field of entrepreneurial and other economic activities, the applicant applied to the court with these requirements.

The court of first instance, refusing to satisfy the stated requirements, came to the conclusion that the reason for canceling the decision of 19.07.2018 on the end of enforcement proceedings No. 29540/18/64042-IP was the untimely notification of the debtor in enforcement proceedings - JSC firm "SMUR" on the execution of enforcement actions. 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. Thus, the senior bailiff issued a resolution to cancel the decision to end the enforcement proceedings and resume enforcement actions, taking into account the interests of the parties to the enforcement proceedings and compliance with the legislation on enforcement proceedings. The contested resolution cannot violate the rights of LLC DSPS in the field of entrepreneurial and other economic activities, since it was adopted in accordance with the norms of the Law on Enforcement Proceedings in the execution of a judicial act that has entered into legal force.

The court of appeal, having assessed in aggregate, as required by Article 71 of the Arbitration Procedure Code of the Russian Federation, the evidence presented in the case materials, arguments and objections of the parties, considers the findings of the first instance court not consistent with the circumstances of the case, the court's decision to be canceled on the following grounds.

In accordance with Part 1 of Article 121 of the Law on Enforcement Proceedings, decisions of the bailiff-executor and other officials of the bailiff service, their actions (inaction) on the execution of the enforcement document may be appealed by the parties to the enforcement proceedings, other persons whose rights and interests are violated by such actions (inaction), in the order of subordination and contested in court.

Clause 8 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of November 17, 2015 No. 50

"On the application of legislation by the courts when considering some issues arising in the course of enforcement proceedings", it was also clarified that the actions (inaction) of the bailiff and other officials of the FSSP of Russia can be challenged in court as parties to the enforcement proceedings (the claimant and the debtor), and by other persons who believe that their rights and legitimate interests have been violated, that obstacles have been created to the exercise of their rights and legitimate interests, or that they have been illegally assigned any obligation (part 1 of article 218, article 360 of the CAS RF, part 1 of article 198 of the APC RF, part 1 of article 121 of the Law on enforcement proceedings).

Consequently, the possibility of challenging the decision of the bailiff-executor in an arbitration court by a person who is not a participant in the enforcement proceedings, whose rights and legitimate interests have been violated as a result of the adoption of the contested

act, if the person appealing to the court believes that the actions of the bailiff-executor came into conflict with the requirements of the legislation on enforcement proceedings (Definition of the RF Armed Forces dated June 29, 2018 No. 303-KG18-800).

According to article 329 of the APC RF, the decisions of the bailiff-executor, his actions (inaction) can be challenged in the arbitration court in the 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 July 21, 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 actual fulfillment of the requirements contained in the enforcement document is one of the grounds for the end of the enforcement proceedings by the bailiff (paragraph 1 of part 1 of Article 47 of the Law on Enforcement Proceedings).

According to part 5 of Article 14 of the Law on Enforcement Proceedings, a higher official of the bailiff service has the right to cancel or change the decision of the bailiff or other official of the bailiff service that does not meet the requirements of the legislation of the Russian Federation.

Decisions on enforcement proceedings made by the bailiff-executor, the chief bailiff of the Russian Federation, the chief bailiff of the subject (chief bailiff of the constituent entities) of the Russian Federation, the senior bailiff and their deputies from the date of sending (presentation) of the executive document for execution, are drawn up by resolutions an official of the bailiff service (part 1 of Article 14 of the Law on Enforcement Proceedings).

In accordance with clause 6 of part 2 of Article 14 of the Law on Enforcement Proceedings, the decision of the bailiff-executor or other official of the bailiff service must indicate the grounds for the decision made with reference to federal laws and other regulatory legal acts.

When considering the dispute, it was established that on 12.09.2018 between LLC Company

ALS and TEK and DSPS LLC signed an agreement No. ALSDSPS / OV-12092018 for the purchase and sale of property (4 optical fibers in a fiber-optic communication line at the Saratov-Ershov section in the Saratov-Ozinki fiber-optic link), which LLC

"The company" ALS and TEK "transferred to the ownership of LLC" DSPS ", received under the act of commission of enforcement actions dated 06.22.2018, the property, the value of which amounted to 9,440,001 rubles. 41 kopecks, including VAT

(18%).

Resolution of 19.07.2018 on the end of enforcement proceedings

No. 29540/18/64042-IP was adopted on the basis of the specified act and paragraph 1 of part 1 of article of the Law on enforcement proceedings, in connection with the actual fulfillment of the requirements contained in the enforcement document.

Thus, the decision of the senior bailiff dated 20.11.2018 creates an obstacle to the exercise by LLC DSPS of its rights, as an owner, to dispose of property within the framework of the agreement No. ALS-DSPS / OV-12092018 concluded with LLC Company ALS and TEK of 12.09.2018, since it may result in the invalidity of the receipt by LLC Company ALS and TEK of property within the framework of enforcement proceedings No. 29540/18/64042-IP and, accordingly, the invalidity of agreement No. ALS-DS11S / OB-12092018 dated 12.09.2018 for the sale of the property received, concluded between LLC "Company" ALS and TEK "and LLC" DSPS ".

Moreover, it will entail repeated enforcement actions in relation to the property already owned by DSPS LLC.

Taking into account the foregoing, the appellate instance considers that the conclusion of the first instance court that the rights of OOO DSPS, the acquirer of the property under the sale and purchase agreement, were not violated by the contested resolution, contradicts the evidence presented in the case materials.

The court of appeal 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 06.22.2018, is owned by LLC" DSPS "and is used by it for its intended purpose, which is confirmed by the entered into legal force by the decision of the Arbitration Court of the Saratov Region in the case

No. A57-28371 / 2018 from 25.01.2019, from which it follows that the decision of the senior bailiff of the Kirovskiy Regional Department of the Russian Industrialists' Union of Saratov Basyrova A.E. of 20.11.2018 on the cancellation of the order of 19.07.2018 on the end of enforcement proceedings

No. 229540/18/64042-IP does not violate the rights of LLC "Company" ALS and TEK "in the field of entrepreneurial and other economic activities, since on 12.09.2018 between LLC" Directorate of communications enterprises under construction "and LLC" Company "ALS and TEK" contract No. ALS-DSPS / OV-12092018 purchase and sale of property (4 optical fibers in a fiber-optic communication line on the site

"Saratov-Ershov" in FOCL "Saratov-Ozinki"), under the terms of which and in accordance with the acceptance certificate dated 12.09.2018, LLC "Company" ALS and TEK "transferred into the ownership of LLC" Directorate of communications enterprises under construction "the awarded and received according to the effective resolution of the Twelfth Arbitration Court of Appeal dated 12/13/2017 in case No. A57-233 / 2017 property (4 optical fibers in a fiber-optic communication line at the SalatovErshov section in the Salatov-Ozinki fiber-optic link).

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 awarded by the ruling of the Twelfth Arbitration Court of Appeal dated 13.12.2017 in case No. A57-233 / 2017 (4 optical fibers in fiber -optical communication line on the Saratov-Ershov section in the Saratov-Ozinki fiber-optic communication line) ALS and TEK Company LLC was alienated in favor of a third party - Directorate of Communications Enterprises under Construction LLC under a sale and purchase agreement dated 12.09.2018

No. ALSDSPS / OV-12092018.

These circumstances also refute the debtor's argument that the ruling of the Twelfth Arbitration Court of Appeal dated 12/13/2017 in case No. A57-233 / 2017 was not actually

executed.

In violation of Article 65 of the Arbitration Procedure Code of the Russian Federation, the debtor does not provide any evidence that the disputed property is currently with him, despite the fact that the acts of enforcement actions in May-June 2018 indicate the receipt of the awarded property by the claimant, and the above-mentioned judicial acts confirm the fact that at the moment the disputed property is owned by the LLC

"ДЦПЦ" and is used by it for its intended purpose.

In support of its objections, SMUR JSC declares that decision No. A57-233 / 2017 has not actually been executed, since part of the optical fibers, in particular from the VOSTOK optical cross-country, LLC ALS and TEK Company, Saratov, st. B. Kazachya, 6, to the optical crossover of LLC "Company" ALS and TEK "on the territory of JSC" Integral ", Saratov, st. Chernyshevsky, 153, do not appear in the documents of enforcement proceedings, and no enforcement measures were taken against them.

The appellate court considers this argument untenable on the following grounds.

As it was mentioned above, claiming that the court decision was not actually executed, the debtor does not provide any evidence of the fact that the optical fibers in the area indicated by him continue to be in his use and possession.

In addition, by the effective resolution of the Twelfth Arbitration Court of Appeal dated 12/13/2017 in case No.A57-233 / 2017, the court ordered JSC "firm" SMUR ", Voronezh to return in favor of LLC" Company

"ALS and TEK" four optical fibers in a fiber-optic communication line

"Saratov-Ozinki" in the 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 RTRS

"Saratov ORTPTS" at the 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 item Pushkino, Sovetsky District, Saratov Region. before the optical cross in a container on the territory of the Open Joint Stock Company "Urbakhskiy kombinat khleboproductov" at the address Saratov region, Sovetskiy district, Pushkino, st. Zavodskaya, 1 a, from the main distribution coupling MRM28 near the village of Pushkino, Sovetskiy district, Saratov region. to optical junction "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 cross of LLC "Companies" ALS and TEK "on the territory of the Open Joint Stock Company" Integral "at the address Saratov, st. Chernyshevsky, 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 purchase and sale of optical fibers and a share in the right of common ownership in a fiber-optic communication line in the Voronezh and Saratov regions, concluded on 04.09.2012 between ALS and TEK Company LLC and Firm SMUR CJSC.

According to the arguments of LLC "Company" ALS and TEK ", the departure of the bailiff-executor to the premises at the address: Saratov, Volzhsky district, st. Chernyshevsky 153, was not required, since, despite the fact that one of the points of passage of the disputed FOCL route passed in the Volzhsky district of Saratov, this, in the opinion of the claimant, did not require a bailiff to take action in this particular place, as to measure and establish the normal quality of optical fibers could be from another point, located in the Kirov region of Saratov (B. Kazachya st., 6), which makes it possible to make an optical reflectometer. In the same regard, despite the passage of the disputed fiber-optic communication line and across the Saratov-Engels bridge, and in the city of Engels, and in the Engels district, no

executive actions were carried out in these areas.

The above arguments of the claimant were not refuted by the debtor.

LLC "Company" ALS and TEK "confirmed that the property in the execution of a writ of execution within the framework of enforcement proceedings

No. 29540/18/64042-IP was received by him on June 22, 2018, which is recorded in the act on enforcement actions.

In accordance with part 1 of Article 24 of the Law on Enforcement Proceedings, the persons participating in the enforcement proceedings shall be notified of the time and place of the enforcement actions or the application of compulsory measures.

performances are either summoned to the bailiff-executor by a summons with acknowledgment of receipt, telephone message, telegram, using electronic, other types of communication and delivery, or by a person who, with his consent, the bailiff-executor instructs to deliver them.

Part 2 of Article 24 of the Law on Enforcement Proceedings provides that in cases where a writ of execution is subject to immediate execution, as well as when the property is seized and other interim measures are taken, the bailiff is entitled to perform enforcement actions and apply enforcement measures without prior notification of this persons involved in enforcement proceedings. In this case, the bailiff-executor is obliged to notify the specified persons about the execution of enforcement actions or the application of enforcement measures no later than the next working day after the day of their commission or application.

In the appealed decision, the court of first instance, with reference to the final decision of the arbitration court dated 25.01.2019 in case No. A57-28371/2018, concluded that the cancellation of the decision dated 19.07.2018 on the end of enforcement proceedings No. 29540/18 / 64042-IP due to the untimely notification of the debtor in the enforcement proceedings - JSC firm "SMUR" about the enforcement actions.

The appellate court came to the following conclusions.

As follows from the above judicial act, the court, refusing to satisfy the requirements stated by LLC "Company" ALS and TEK "to cancel the decision of the senior bailiff of the Kirovskiy ROSP of Saratov, FSSP of Russia for the Saratov region A.E. of November 20, 2018 on the cancellation of the decision of July 19, 2018 on the end of enforcement proceedings No. 29540/18/64042-IP, proceeded not only from its legality, but also about the absence of violation of the rights and legitimate interests of LLC "Company ALS and TEK" by the contested resolution , in connection with the transfer by the latter of the property that is the subject of performance (4 optical fibers in a fiber-optic communication line on the Saratov-Ershov section in the Saratov-Ozinki fiber-optic link), DSPS LLC under contract No. ALS-DSPS / OV-12092018 from 12.09.2018

Thus, the court act that has entered into legal force does not refute the arguments of the applicant - DSPS LLC about the violation of his rights and legitimate interests by the contested decision.

In addition, at the time of the consideration of the case in the appellate instance, the court established that there are other judicial acts that have entered into legal force, which confirmed the legality of the actions of the bailiffs of the Kirovsky ROSP to transfer the disputed property to the claimant - LLC Company ALS and TEK, the resolution of 07/19/2018 on the end of enforcement proceedings in connection with the actual execution, and the absence of violation of the rights and legitimate interests of the debtor - JSC firm "SMUR".

So, from the ruling of the Twelfth Arbitration Court of Appeal on 15.07.2019 in case No. A57-16161 / 2018, it follows that since the actions of the bailiff of the Kirovsky ROSP Tumaeva K.S. on the application of measures of compulsory execution against the debtor were committed in the presence of attesting witnesses and a representative of the claimant,

aimed at the speedy execution of the requirements of the executive document, the appeal board concludes that the absence of the applicant in itself

actions does not discredit the actions of the bailiff-executor on the transfer of the disputed property and is not an unconditional basis for declaring them illegal. The appellate court in the framework of this case excluded from the reasoning part of the decision of the Arbitration Court of the Saratov Region dated 02.27.2019 the conclusions on the illegality of the actions of the bailiff-executor of the Kirovskiy ROSP, formalized by the act of performing actions dated 06.22.2018.

In addition, in the framework of case No. A57-29166 / 2018, the Twelfth Arbitration Court of Appeal, by its decision dated 08/05/2019, canceled the decision of the Arbitration Court of the Saratov Region dated 02/14/2019, declaring it illegal and canceling the decision of the deputy head of the department - senior bailiff of the Kirovsky ROSP of the city of Saratov UFSSP Russia in the Saratov region Muratova A.N. dated 10.12.2018 on cancellation of the act of performing enforcement actions dated 22.06.2018 on enforcement proceedings No. 29540/18/64042-IP.

In case No. A57-29166 / 2018, the appellate instance concluded that the act of performing enforcement actions dated June 22, 2018 on enforcement proceedings No. 29540/18/64042-IP is based on the actual performance by the debtor of the requirements of the executive document, and therefore, is justified that does not violate anyone's rights and legitimate interests. In the course of enforcement actions in case No. A57-233 / 2017, bailiffs on June 22, 2018 fully transferred the claimed property to the legal 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 claimed by the court after joining of a judicial act into legal force until it is forcibly withdrawn by the bailiffs-executors, as well as the fact that the cancellation of the order on the end of enforcement proceedings dated 07.19.2018 is aimed at restoring his rights and legitimate interests in the field of entrepreneurial or other economic activity, given the fact 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.

The court of appeal also considers unreasonable the reference of the court of first instance to the implementation of repeated enforcement actions and the drawing up of an act of 10.12.2018.

The act on the commission of repeated enforcement actions of 12/10/2018 does not replace the act of 06/22/2018, during which the actual transfer of the disputed optical fibers to the claimant was made, after which he transferred them into the ownership of DSPS LLC under a sale and purchase agreement.

Moreover, in the act of 10.12.2018. only the finding of optical fibers at DSPS LLC was recorded, in connection with which it was concluded that re-transfer of fibers from the debtor to the claimant is impossible.

These circumstances also refute the conclusion of the court of first instance that there was no violation of the rights of OOO DSPS by canceling the decision to end the enforcement proceedings. On the contrary, the fixation by the bailiffs in the act of December 10, 2018 of the fact of finding the disputed property at DSPS LLC confirms the company's arguments about the violation of its rights by repeated enforcement actions after the cancellation of the end of enforcement proceedings.

Taking into account the above, the court of appeal considers that the decision of the senior bailiff of the Kirovskiy ROSP of the city of Saratov of the FSSP of Russia for the Saratov region Basyrova A.E. of 20.11.2018 on the cancellation of the order of 19.07.2018 on the end of enforcement proceedings

No. 29540/18/64042-IP is not legal and violates the rights and legitimate interests of the applicant in the field of entrepreneurial and other economic activity, and therefore must be

canceled.

The contested decision to cancel the decision to end the enforcement proceedings, made in the absence of legal grounds by the senior bailiff, substantially violated the rights and legitimate interests of DSPS LLC, the current owner of the disputed property.

The decision of the Arbitration Court of the Saratov Region of 12.03.2019 in this case, taken without taking into account the above circumstances, is subject to cancellation with a new decision to satisfy the applicant's claims.

Guided by Articles 268-271 of the Arbitration Procedure Code of the Russian Federation, the Arbitration Court of Appeal

sentenced:

the decision of the Arbitration Court of the Saratov Region of March 12, 2019 in case No. A57-28364 / 2018 to cancel. Adopt a new judicial act on the case.

To recognize as illegal and to cancel the decision of the senior bailiff of the Kirovsky district department of bailiffs of the city of Saratov of the Office of the Federal Service of Bailiffs in 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.

The decision 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 District within two months from the date of making the decision in full through the arbitration court of first instance.

Presiding S.G. Veryaskina

Judges V.V. Zemlyannikova

E.V. Puzina