



ARBITRATION COURT OF THE SARATOV
REGION

410002, Saratov, st. Babushkin Vzvoz, 1;
<http://www.saratov.arbitr.ru>

RULING

Saratov city
08 May 2019

case № A57-233/2017

The operative part of the definition was announced on April 29, 2019 The full text of the definition was made on May 08, 2019

The Arbitration Court of the Saratov Region composed of Judge I.M. Zagranichny, while keeping the minutes, the secretary of the court session A.S. Markelova, having considered at the hearing in the premises of the arbitration court at the address: Saratov, st. Babushkin Vzvoz, d. 1 Arbitration case at the request of the Joint Stock Company firm "SMUR" to terminate the enforcement proceedings in case No. A57-233 / 2017 on the claim of the Limited Liability Company "Company ALS and TEK", Saratov, OGRN 1026402661108 к Closed joint stock company "firm" SMUR ", Voronezh, OGRN 1023601610878 third party: JSC "Kvant-Telecom ", Voronezh on the reclamation of property third parties: UFSSP of Russia in the Saratov region, Kirovskiy ROSP of Saratov, LLC "Directorate of communications enterprises under construction" with participation in the meeting:

from the plaintiff: Vekozin V.N. by power of attorney No. 35 dated 03.12.2018, Demidov I.A. by proxy

No. 27 dated 21.12.2017,

from the defendant: Tatarovich AND.A. by power of attorney No. 17 dated 01.01.2019, N.N. Litvinova by power of attorney No. 36 AB 2524556 dated 17.05.2018,

from JSC "Kvant-Telecom": Litvinova N.N. by power of attorney No. 36 AB 1625824 dated 25.08.2015, from OOO DSPS: V.N. Vekozin by proxy from 25.12.2018,

from Kirovskiy ROSP of Saratov: Shvab M.A. by power of attorney dated 09/01/2019, from other persons: did not appear, were notified,

FOUND:

The Arbitration Court of the Saratov Region was approached by the Joint Stock Company Firm

"SMUR" with a statement on the termination of enforcement proceedings in case No. A57-233/2017 on the claim of the Limited Liability Company "Company

"ALS and TEK", Saratov, OGRN 1026402661108 to Closed Joint Stock Company

"Firm" SMUR ", Voronezh, OGRN 1023601610878 third party: JSC "Kvant-Telecom ", Voronezh on reclaiming the property of third parties: Federal Bailiff Service of Russia in the Saratov region, Kirovskiy ROSP of Saratov, LLC Directorate of communications enterprises under construction ...

The representative of LLC "Company" ALS and TEK "in satisfaction of the application for termination of enforcement proceedings asked to refuse on the basis of the position set out in the explanation.

The representative of JSC firm "SMUR" supported the submitted application and asked him to satisfy.

The representative of LLC "DSPS" asked to refuse on the basis of the position stated in the objection.

The representative of Kvant-Telecom JSC supported this statement. The representative of the Kirovskiy ROSP of Saratov supported this statement.

The materials of the case established that by the decision of the Arbitration Court of the Saratov Region of August 31, 2017 in case No. A57-233 / 2017, the claims were rejected.

By the decision of the Arbitration Court of the Appeal Instance of 13.12.2017, the decision of the Arbitration Court of the Saratov Region of August 31, 2017 in case No. A57-233 / 2017 was canceled, the stated requirements were satisfied, namely: the court ordered the Joint Stock Company SMUR Company, Voronezh to return to benefit of the Limited Liability Company "Company" ALS and TEK "four optical fibers in the fiber-optic communication line" Saratov Ozinki "in 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 ORTPS" 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 st., 1a, from the main distribution coupling MRM28 near Pushkino, Sovetsky district, Saratov region. to the optical crossover "VOSTOK" of the Limited Liability Company "Company" ALS and TEK ", Saratov, B. Kazachya st., 6, from the optical crossover" VOSTOK "of the Limited Liability Company" Company

"ALS and TEK", Saratov, B. Kazachya st., 6 to 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, Chernyshevsky 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 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 share in the right of common shared ownership in a fiber-optic communication line in the Voronezh and Saratov regions, concluded on 04.09.2012 between the ALS and TEK Company Limited Liability Company and the Firm SMUR Closed Joint Stock Company.

On the basis of this resolution, a writ of execution, series FS 016402251 dated December 29, 2017, was issued, enforcement proceedings were initiated.

The Arbitration Court, having considered the application of the Joint Stock Company firm "SMUR", finds no reason to satisfy it.

When addressing this statement, the applicant points out that on 10.12.2018 the Deputy Head of the Department of the Chief Bailiff of the Kirovsky District Department of the Department of Public Administration of the City of Saratov issued a Decree on the cancellation of the measures taken in respect of the debtor and his property, which canceled the act of performing the enforcement actions of 22.06.2018, adopted in relation to JSC firm "SMUR" on enforcement proceedings No. 29540/18/64042-IP.

In connection with the resumption of enforcement proceedings, the bailiff of the Kirovskiy ROSP of Saratov sent a simple letter to the Debtor and received a notice of enforcement actions on December 10, 2018 at the access node at the address: Saratov, st. Bolshaya Kazachya, 6.

On December 10, 2018, an exit to the place of enforcement actions took place at the access node at the address: Saratov, st. Bolshaya Kazachya, 6. During the enforcement actions, it was found that the optical fibers indicated in the executive document could not be identified due to the fact that the claimant was denied to bailiffs and involved independent specialists in opening the optical crossbar for identification, as well as due to the fact that according to the documents, the disputed optical fibers are owned by DSPS LLC, which is recorded in the act of enforcement actions dated 10.12.2018, drawn up by the bailiff - the executor of the Kirov Regional Department of Industrial and Social Development of the city of Saratov.

Thus, the property, which should be seized from the Debtor and transferred to the Recoverer within the framework of enforcement proceedings, is not with the Debtor, but according to the

documents has already passed into the ownership of a third party - LLC DSPS.

According to the information provided by LLC "Company" ALS and TEK "in the materials of court case No. A57-16161 / 2018, the optical fibers that are the subject of execution were alienated by the claimant LLC" Company "ALS and TEK" in LLC "Directorate of communications enterprises under construction" (410002, Saratov, Chernyshevskogo st., 197, INN 6452048979, OGRN 1026402661119, abbreviated name LLC DSPS) under the property purchase and sale agreement No. ALS-DSPS / OV-12092018 dated 12.09.2018, concluded between LLC

"Company" ALS and TEK "and LLC" DSPS ".

Moreover, in clause 6.1.8. property sale and purchase agreement No. ALS-DSPS / OV-12092018 dated 12.09.2018, it is stated that optical fibers on the date of transfer will be the property of the Seller, will be free from any rights and claims from third parties, including not encumbered with collateral, under arrest and prohibition will not be and will not be the object of a lease, financial lease (leasing) or other use concluded with third parties, are not limited in civil circulation and can be freely alienated by any means provided for by the current legislation of the Russian Federation.

Thus, at present, the Debtor - JSC firm "SMUR" cannot execute the court decision and transfer to the Claimant - LLC "Company" ALS and TEK "the property that was not returned by the Debtor to LLC" Company "ALS and TEK", but nevertheless less sold by the Claimant to a third person - LLC DSPS.

Having examined the materials of the case, after hearing the opinion of the persons participating in the case, the court finds no grounds to satisfy the claim of the plaintiff on the following grounds.

Part 1 of Article 318 of the Arbitration Procedure Code of the Russian Federation stipulates that judicial acts of arbitration courts are enforced after their entry into legal force, with the exception of cases of immediate execution, in the manner established by this Code and other federal laws governing enforcement proceedings.

From the moment it comes into legal force, a judicial act becomes binding on state authorities, local authorities, other bodies, organizations, officials and citizens and is subject to execution throughout the territory of the Russian Federation (Part 1 of Article 16 of the APC RF). From that moment on, the court decision has a sign of enforceability (part 1 of Article 182 of the Arbitration Procedure Code of the Russian Federation) and can be brought to compulsory execution by the claimant.

In accordance with Part 1 of Art. 327 of the Arbitration Procedure Code of the Russian Federation, the Arbitration Court, upon the application of the claimant, the debtor, the bailiff - the executor may suspend or terminate the enforcement proceedings initiated by the bailiff - the executor on the basis of a writ of execution issued by the arbitration court, in the cases provided for by the federal law on enforcement proceedings.

An exhaustive list of grounds for termination of enforcement proceedings is contained in Article 43 of Federal Law No. 229-FZ.

According to this provision, enforcement proceedings are terminated by the court in the following cases: death of a claimant-citizen (debtor-citizen), declaration of him as deceased or recognition as missing, if the requirements or obligations established by a judicial act, an act of another body or official cannot pass to the legal successor and cannot be implemented by a trustee appointed by the guardianship and trusteeship body; loss of the possibility of executing a court order obliging the debtor to perform certain actions (refrain from performing certain actions); the recoverer's refusal to receive the thing seized from the debtor during the execution of a court order containing a requirement to transfer it to the recoverer; in other cases when federal law provides for the termination of enforcement proceedings.

Within the meaning of this article, the termination of enforcement proceedings is allowed if objective and irreparable circumstances arise at the stage of enforcement proceedings that make it impossible to further enforce the requirements of the enforcement document.

Thus, in order to terminate the enforcement proceedings, the fact of the occurrence of a real loss of the possibility of executing the enforcement document and the impossibility of its execution by any means must be established.

Based on the literal interpretation of this provision, the termination of enforcement proceedings is possible only on the grounds established by Article 43 of Federal Law No. 229-FZ or

in cases directly specified in federal laws. This list is not subject to broad interpretation.

This is also confirmed by the legal position expressed in the resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated October 27, 2009 No. 7159/09.

Within the meaning of the specified norm of the law, the loss of the possibility of executing an enforcement document should be objective in nature, caused by extraordinary and insurmountable circumstances

According to paragraph 1 of Article 416 of the Civil Code of the Russian Federation, the obligation is terminated by the impossibility of performance if it is caused by a circumstance for which neither of the parties is responsible.

At the same time, by virtue of part 1 of Article 65 of the Arbitration Procedure Code of the Russian Federation, the obligation to prove the circumstances that served as the basis for applying to the court with a statement to terminate enforcement proceedings lies with the applicant.

The representative of LLC "Company" ALS and TEK "indicates that at present the optical fibers, which were the subject of execution under the writ of execution in the case

No. A57-233 / 2017 and received by LLC "Company" ALS and TEK "within the framework of enforcement actions on enforcement proceedings in case No. A57-233 / 2017, sold and transferred into the possession and ownership of LLC" DSPS "under the terms of the purchase and sale agreement from 09/12/2018 and the Transfer and Acceptance Act dated 09/12/2018.

The disputed property was received by the claimant and sold to a third party, which was established, among other things, by the decision of the Arbitration Court of the Saratov Region in case No. A57-28371 / 2018 dated 25.01.2019 that entered into force.

At the same time, the loss of the possibility of executing a court order should be objective and irreparable. In this case, the fact of the real loss of the possibility of executing the judicial act is not confirmed.

After evaluating the evidence presented, the court concluded that it clearly does not follow from the application and supporting documents that the possibility of executing the court order has been lost.

Based on the above provisions of the current legislation, having examined and evaluated the evidence presented in the case materials, taking into account the specific circumstances of the case, having established the absence of evidence of the transfer of all property by the debtor according to the court act that entered into legal force to the recoverer, taking into account that on the date of consideration of the application for termination of enforcement proceedings the judicial act, on the basis of which the writ of execution was issued, was not canceled, the court concluded that there were no grounds for satisfying the stated claim.

Guided by Article 327, Articles 184-188 of the Arbitration Procedure Code of the Russian Federation, the arbitration court

DECIDED:

In satisfaction of the application of the Joint Stock Company firm "SMUR" on the termination of enforcement proceedings No. 74142/18/64042-IP, resumed by the order of the bailiff-executor of the Kirov ROSP of Saratov from 20.11.2018 No. 64042/18/5130552 on the basis of the writ of execution No. FS 016402251 issued on December 29, 2017 by the Arbitration Court of the Saratov Region in case No. A57-233 / 2017 - to refuse.

The ruling of the arbitration court may be appealed to the appeal or cassation instance in the manner prescribed by Chapters 34, 35 of Section VI of the Arbitration Procedure Code of the Russian Federation.

Send copies of the arbitration court's ruling to the persons participating in the case in accordance with the requirements of Article 186 of the Arbitration Procedure Code of the Russian Federation.

Arbitration Court Judge
Saratov region

I.M. Zagranichnyy

The electronic signature is valid.
Electronic signature data: Verification Center of
FGBU IAC of the Judicial Department
Date 07.03.2018 13:39:13
To whom was Zagranichny Ivan Mikhailovich