



RUSSIAN DESK

New overview of the court practice of the Supreme Court for 2020: key positions on disputes arising from agreements

On 25 November 2020 the Presidium of the Supreme Court of the Russian Federation approved Overview of Court Practice No. 3 for 2020. The overview contains a number of important clarifications on issues that arise when legal entities participate in court proceedings.

SPECIFICS OF DISPUTES ON THE TERMINATION OF SUPPLY AGREEMENTS

When courts consider the claim of a buyer for the termination of a supply agreement and the return of the amount paid for goods pursuant to the procedure set out by Clause 2 of Article 475 of the RF Civil Code, one issue frequently comes up – what should happen to the property transferred under the contract.

The Supreme Court indicated that if a court establishes grounds for satisfying the claim of the buyer, it must resolve simultaneously the issue of the return to the seller of the goods transferred to the buyer, irrespective of whether the seller filed the indicated claim or not.

DECREASE IN THE AMOUNT OF A PENALTY FURTHER TO AN INDEPENDENT CLAIM OF THE DEBTOR

The Supreme Court clarified that a court may not only resolve the issue of decreasing the amount of a penalty pursuant to the procedure set out by Article 333 of the RF Civil Code during proceedings held further to a claim of the creditor for the recovery of the penalty. The filing of an independent claim by the debtor for a decrease in the penalty, whose payment had been demanded by the creditor pursuant to the claims procedure, is also a legitimate way to protect infringed rights.

THE REFUSAL OF A CLIENT TO PAY FOR PREVIOUSLY ACCEPTED WORK, CITING THE FACT THAT NO AGREEMENT HAD BEEN CONCLUDED

Using the example of a dispute arising from a contracting agreement, the Supreme Court once again confirmed a position that has been formed in legislation and court practice on the inadmissibility of bad faith references by a client to the lack of a duly concluded agreement in order to avoid paying for work actually

performed by the contractor and accepted by the client, without any observations on the results of the work.

CONSIDERATION OF THE ISSUE OF MISSING THE DEADLINE FOR FILING OBJECTIONS TO THE RECOGNITION OF A FOREIGN COURT (ARBITRATION) AWARD

The Supreme Court clarified that if the deadline for the filing of a motion with a court on objections to the recognition of a foreign court (arbitration) award was missed, this does not serve as grounds for the dismissal of the motion.

The commercial court must agree to consider the respective motion and schedule a court session, during which it must establish together with other material circumstances the moment when the procedural timeframe should start to be calculated. The start of this timeframe is determined as the moment when the parties had an opportunity to study the full text of the award of the foreign court (arbitration court) that has entered into legal force.

COMPETENCE OF THE COMMERCIAL COURTS IN CASES ARISING FROM CORPORATE DISPUTES

The Supreme Court confirmed the competence of commercial courts to consider this category of cases. A dispute on the recovery of debt under a share sale and purchase agreement, where one of the parties is an individual, is an economic dispute. This means that commercial courts may consider the motion for the issue of a writ of execution for the enforcement of the award of an arbitral tribunal on the recovery of debt under such an agreement.

The full text of the Overview is posted on the official website of the Supreme Court of the Russian Federation: <http://bc.pf/documents/practice/29424/>.



Alexander Bezborodov

Attorney-at-law | LL.M. | Partner
BEITEN BURKHARDT Moscow
E-mail: Alexander.Bezborodov@bblaw.com



Ekaterina Teteryuk

Lawyer | Associate
BEITEN BURKHARDT Moscow
E-mail: Ekaterina.Teteryuk@bblaw.com



Artem Nikolaev

Lawyer | Associate
BEITEN BURKHARDT Moscow
E-mail: Artem.Nikolaev@bblaw.com

Imprint

This publication is issued by
BEITEN BURKHARDT
Rechtsanwaltsgesellschaft mbH
Ganghoferstrasse 33 | D-80339 Munich
Registered under HR B 155350 at the Regional Court Munich/
VAT Reg. No.: DE811218811

For more information see:
<https://www.beiten-burkhardt.com/en/imprint>

EDITOR IN CHARGE

Alexander Bezborodov
Artem Nikolaev
Ekaterina Teteryuk

© BEITEN BURKHARDT Rechtsanwaltsgesellschaft mbH.
All rights reserved 2020.

PLEASE NOTE

This publication cannot replace consultation with a trained legal professional.

If you no longer wish to receive this newsletter, you can unsubscribe at any time by e-mail (please send an e-mail with the heading "Unsubscribe" to newsletter@bblaw.com) or any other declaration made to BEITEN BURKHARDT.

YOUR CONTACT

MOSCOW

Turchaninov Per. 6/2 | 119034 Moscow
Falk Tischendorf
Tel.: +7 495 2329635 | Fax: +7 495 2329633
Falk.Tischendorf@bblaw.com