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Russian Civil Legislation: Changes in Case Law

Alongside changes made this year to Russian civil legislation as part of an ongoing modernization process of the Civil Code, some notable changes have also emerged in case law. Russian courts currently have changed their traditional interpretation of many statutory regulation issues, and are taking new approaches. This has affected the implementation of existing statutes by parties to contractual relationships. Below we point out some examples of such changes in the case law.

“Future” Real Estate Acquisition

In general, the acquisition of “future” property (property which does not exist upon a contract signing, but will exist upon the contract’s closing) is allowed by section 2 article 455 in the Civil Code of the Russian Federation. However, the established case law in Russia has traditionally maintained the position that such acquisition is in fact impossible: the courts deem contracts void where the subject matter is not identified. At the same time it’s been widely recognized that the cadastral number of the real property must be the sufficient identification of such property in the contract. From the statutory perspective, new real property obtains its cadastral number only after the completion of its construction.

In a recent Decree of the Plenum of the Supreme Arbitrazh Court of the Russian Federation issued on July 11th, 2011 (No. 54), the Court changed this approach and gave the new following guidelines to the lower courts in deciding on similar matters.

According to position of the Supreme Arbitrazh Court, the parties to the sale purchase agreement of future real estate are not required to indicate the cadastral number of the acquired real property in the agreement. The sufficient individualization is permissible by other means like detailed descriptions of future locations, future footage of the premises, etc. Hence, absence of the cadastral number shall not constitute a ground for voiding the agreement.

The Supreme Arbitrazh Court presumes that in the case of a future real property sale the seller would first become its owner by registration of the title to such property upon completion of construction. Accordingly, in case of housing construction the investor financing the purchase of the future dwelling should become the second owner in the chain of ownership after obtaining the title from the initial owner. The initial owner should assume the entity that has completed construction of the relevant real property.

The Supreme Arbitrazh Court has also expressed its opinion in regards to investment contracts concerning future real estate objects. When one party to the agreement makes contributions (transfer land plot, invest funds etc.), such agreement shall be viewed by the court as a simple partnership agreement. In other cases the so called “investment agreements” shall be deemed to be sale-purchase agreements.

It used to be a widespread practice in the real estate and development business to conclude preliminary sale purchase agreements. This form of framing contractual obligations caused significant difficulties if one party decided to claim funds, paid under such agreement, from its counterparty. If parties conclude such an agreement with regard to future real estate and such a dispute arises the courts, based on the above-cited Decree of the Supreme Arbitrazh Court, deems such agreement as a future real estate sale-purchase agreement with prepayment clause. Thus in case of failure to pay under the agreement, the court shall view the payments affected by the investor as payments under the main agreement.

The above-described issues addressed in detail by the Supreme Arbitrazh Court shall make the conclusion of transactions related to future real estate more clear and safe both for the purchaser as well as for the seller.

Jurisdiction in Real Estate Disputes

On May 26th, 2011, the Constitutional Court of the Russian Federation adopted Judgment No. 10-P, which confirmed the arbitral tribunals' competence to decide on disputes pertaining to real property. The possibility of referring such disputes to arbitral tribunals was discussed for a long time.

The relevant proceedings were initiated upon the request of the Supreme Arbitrazh Court. According to the position taken by state arbitrazh courts in previous case law, the state's registration of transactions and other legal actions with immovable property constitutes a "public element." Thus, the presence of a public element precludes consideration of such disputes by the non-state court. This position was confirmed in the Informational Letter of the Presidium of the Supreme Arbitrazh Court of the Russian Federation dated December 22, 2005, No. 96.

In its ruling, the Constitutional Court rejected the idea of requiring a public element in such disputes, confirming the possibility of transferring them to arbitral tribunals.

Thus, the Constitutional Court stated that the public law element occurs in these respects, not due to an arbitral tribunal decision, but as a result of the property sale at a public auction.

Confirmation of the arbitration tribunals' competence to decide on disputes pertaining to real property can broaden the range of legal protections for parties of commercial contracts. In addition, the submission of disputes to arbitration tribunals may reduce the burden on the state court system and speed up the final resolution.

Developments in Consumer Protection Law

One other remarkable development in recent Russian case law is connected to the issue of re-assigning creditor's rights under consumer credit contracts from bank to debt collection agencies (so called 'collector agencies'). This issue raises a dispute between the Federal Agency on Supervision in the sphere of consumers' rights and population welfare (hereafter –"Rospotrebnadzor") and the Supreme Arbitrazh Court. In its Letter No. 01/10790-1-32 dated August 23rd, 2011, Rospotrebnadzor considered such assignment of creditor's rights to be against the law and infringing on customers' rights, as such assignment of rights entails a change in the creditor.

Rospotrebnadzor's main arguments were that the bank has a special status as a credit organization that implies certain legal requirements and a special basis for activity. In the case of assigning creditor's rights to a collection agency which is not a credit organization, customers' rights may be significantly infringed upon, mainly by a breach of bank secrecy as, in accordance with Rospotrebnadzor's point of view, collector agencies are not bound by it.

Moreover, Rospotrebnadzor argued, that credit agreement is a special type of civil agreement and is regulated by a distinct chapter of the Civil code and differs from simple loan agreements mostly because the special subject – the bank – acts as a creditor. The fulfillment of obligations is connected to the creditor's identity and that is why, from the standpoint of Rospotrebnadzor, assignment in this case is unlawful. The Supreme Arbitrazh Court issued Informational letter No. 146 dated October 13th, 2011, in which it covered the same topic and insisted that such assignment is lawful and does not constitute a breach of consumer protection law. In this informational letter, summarizing the court's practice in the sphere of customer rights protection, it was stated, that:

- the assignment of creditor rights in customer crediting does not constitute a breach of existing law, because the obligation to return the sum of credit is not connected to the identity of the creditor under article 382 of the Civil code. Such obligations may be transferred to third parties without prior consent of the debtor;
- the transferee shall abide by the rules regarding bank secrecy in accordance with article 26 of the Federal law, "On banks and banking activity" of the Russian Federation.

Rospotrebnadzor rejected these arguments in its Letter No. 01/13941-1-32 dated November 2nd, 2011, by literally restating its initial reasoning. Thus we apparently face a conflict between both the approaches of controlling executive authorities and judicial authorities in relation to the issue of creditor's rights assignment in consumer crediting.

Such discrepancies in the positions of executive and judicial bodies may cause further administrative procedures against banks, imputing them offence with regards to consumer protection legislation by transferring their rights from credit agreements to collector agencies. However, when these are challenged in court, relevant administrative sanctions are very likely to be deemed unjustified and subsequently cancelled.