BIRCH LEGAL

Legal Alert from Dispute Resolution Team

On the current procedural issues in dispute resolution

Cold winter weather is no reason not to pay attention to the latest procedural innovations which allow one to more confidently interact with contractors and state authorities.

In today's overview, the lawyers of BIRCH LEGAL analyze an array of the latest interesting procedural novelties and give their recommendations.

The applicant for unjustified interim measures is obligated to cover damages and reimburse legal costs

The court twice granted interim measures preventing an auction from being conducted.

The bankruptcy trustee applied to the court for the recovery of legal costs from the applicant of interim measures since the auction was scheduled but not carried out due to the imposed interim measures.

The lower courts denied the bankruptcy trustee's application.

The Supreme Court of the RF did not agree with its colleagues in the judiciary and nevertheless decided to recover said legal costs according to the rules of paragraph 3 of Art. 1064 of the Civil Code of the Russian Federation on compensation for damage caused by lawful actions.

Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated 25 August 2023 N 307-ES19-8097(5) in case N A13-8408/2015

Recommendation from BIRCH LEGAL:

To avoid such recovery, we recommend assessing the objective need to apply to the court for interim measures in every case. Most likely, such legal costs will not be too large, but if the court applies such a standard to the damages of the defendant against whom the interim measures were laid, then the total amount to be recovered could be disproportionately higher.

Changes in the Code of Administrative Procedure of the RF: the administrative process has become more modern

In August 2023, several changes to the CoAP RF came into force:

a) Persons without higher legal education can represent interests on issues not related to the provision of qualified legal assistance to a participant in a case (for example, familiarization)

b) The court is allowed to send electronic orders, summonses, and subpoenas. This will relieve the courts from paperwork.

c) In an administrative claim, you must indicate the telephone numbers and email of the party and representative

Federal Law of 24 July 2023 N 349-FZ "On Amendments to the Code of Administrative Procedure of the Russian Federation"

Commentary from BIRCH LEGAL:

As a whole, the administrative process is becoming more "modern" and "electronic", the courts are being relieved of paperwork and interactions between the parties are also being carried out electronically.

Having a legal expertise conducted for free is not possible

A bill has been prepared on the need to deposit funds into a special account to pay for a legal expertise before scheduling it.

If the party did not deposit funds, the court may declare said party to be declining to have a legal expertise conducted and may refuse to appoint one.

Draft Federal Law "On Amendments to Certain Legislative Acts of the Russian Federation" (prepared by the Ministry of Justice of Russia, project ID 04/13/08-23/00140999)

Commentary from BIRCH LEGAL:

Guarantees are being created to pay for the legal expertise before it is carried out in order to avoid a situation where a party evades payment for such a legal expertise that has already been carried out.

Jurisdictional ties have become tighter

In a dispute over payment for an insured event, the Supreme Court of the Russian Federation considered the possibility of having the dispute considered by a Russian court under the following circumstances:

- foreign defendant
- absence in the contract of a clause referring the jurisdiction of disputes to a Russian court
- defendant's lack of property in Russia

The lower courts refused to consider the dispute since it did not have any ties to the Russian jurisdiction.

The Supreme Court of the RF did not agree with the lower courts and established the dispute as having close ties to the territory of Russia due to the fact that the place of fulfilling the main contract was a Russian city and that the defendant had an unofficial representative in Russia.

Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation dated 6 October 2023 N 308-ES23-10334 in case N A32-57787/2022

Recommendations from BIRCH LEGAL:

This dispute expands Russian businesses' access to Russian justice. Applying the wide scope of the jurisdiction of Russian courts to an increasing number of disputes has long been a stable trend.
A Russian court may see a close connection with the Russian jurisdiction in the most unexpected trivialities - payment in rubles, payment through a Russian bank, drafting the text of an agreement in Russian, and even the presence of unofficial representatives.

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