



Local Knowledge
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The moratorium on bankruptcy helped the organization get rid of the forfeit

The owner rented out to the organization premises with an area of 1,000 sq. m. on the territory of the shopping center. A lease agreement was concluded between the parties, which provided for two types of rent: constant (for the use of the premises) and variable. The variable part is the payment for utility bills, which must be paid by the tenant no later than the 25th day of the month following the reporting one.

However, the lessee did not properly fulfill the obligation to pay the variable part of the rent, which led to arrears, as well as penalties.

The lessor applied to the Arbitration Court to collect the resulting debt and forfeit. The court, in turn, recognized the demand for payment of the principal debt as justified, but the lessor submitted documents confirming the fact that the principal debt was paid off.

Nevertheless, the question of the forfeit remained open, to the payment of which the owner, as he believed, rightly claims.

However, the Tribunal noted the following. The tenant was presented with a measure of support in the form of a moratorium on bankruptcy, and information about this was posted on the official website of the Federal Tax Service. The lessee, according to his OKVED, fell under the category of organizations affected by the circumstances that served as the basis for the introduction of a moratorium, which are subject to the moratorium.

Recall that for organizations that are presented with a measure of support in the form of a moratorium, the consequences provided for in paragraph 1 of Art. 63 of the Federal Law "On Insolvency (Bankruptcy)", namely, from the moment of the imposition of the moratorium, as well as from the moment of the introduction of supervision in respect of the debtor, no penalties (fines, penalties) and other financial sanctions for non-fulfillment or improper fulfillment of monetary obligations and mandatory payments, excluding current payments.

The moratorium on bankruptcy for affected organizations is valid for 6 months, that is, from 04/06/2020, from the date of publication of the corresponding Resolution of the Government of the Russian Federation No. 428, it is impossible to charge the debtor with financial sanctions.

In his Review, the Lessee asked to reduce the amount of the penalty, but the court clarified that this argument has no independent legal significance, since, in fact, the penalty claimed by the owner is not subject to collection.

Despite the fact that the amount of the forfeit was small, it remains important that the court exempted the Defendant from the forfeit based on the consequences of the moratorium on bankruptcy. That is, the consequences of the moratorium were applied outside the insolvency (bankruptcy) case.

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