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Enforcement Proceedings in Russia: Rostov-On-Don

Often, seafarers have to go through several rounds of legal proceedings in order to recover their legitimately earned wages which had not been not paid by the shipowner. Twelve crew members of the infamous motor ship "L", which was arrested for wage arrears, also have this experience.

Thus, by the decision of the Proletarskiy District Court of Rostov-on-Don, the wage arrears were recovered from the company "K" in favor of the plaintiffs. However, in accordance with the information obtained from the response of the International Maritime Organization to the UN to the plaintiffs' request, the offshore company does not own property on the territory of the Russian Federation, which makes it impossible for the actual execution of the court decision.

In this regard, the plaintiffs were forced to appeal to the Zheleznodorozhny District Court of Rostov-on-Don with claims against the personnel selection service.

The Zheleznodorozhny District Court of Rostov-on-Don, having considered the said statement of claim, established that "one of the ways to protect the rights of seafarers in the event of non-payment of wages is compensation for unpaid wages by an agent for the recruitment of seafarers, which is directly provided for by international law". Thus, the court concluded that the plaintiffs' claims were satisfied.

But getting a court decision on the recovery of unpaid amounts is a solution to half of the problem, it is also necessary to execute it. This is where the bailiffs-executors come into play.

The fact that the debtor belongs to an offshore jurisdiction significantly complicates the procedure for the execution of a court decision. The debtor, being a foreign company, according to the plaintiffs, does not have current accounts in Russian banks and there is no information about the availability of funds. In this regard, the only possible way to enforce the judgment is to foreclose on the debtor's property, in the manner prescribed by the Federal Law "On Enforcement Proceedings" No. 229-FZ. In turn, the debtor does not possess, by right of ownership, any property located in the Russian Federation, with the exception of ships that periodically call at Russian ports.

Thus, the seizure of property is not only an admissible measure of enforcement proceedings, but also the only possible measure of court's decision enforcement. If the debtor's property is not seized, then any opportunity to foreclose on it will be missed, which will lead to the impossibility of executing the court decision and, as a result, violation of the rights of the plaintiffs.

In this regard, the plaintiffs repeatedly (when entering the ports of the Russian Federation of ships belonging to the debtor on the right of ownership) appealed to the Leninsky district department of bailiffs of the city of Rostov-on-Don with applications for urgent seizure of the debtor's property and the appointment of a custodian, however, the requested arrests were denied due to misinterpretation by the bailiffs-executors of the norms of the Code of Merchant Shipping of the Russian Federation (KTM RF), namely, the opinion that "the arrest of a vessel can only be made on the basis of a court order, an arbitration court or an arbitration tribunal authorized to arrest." However, the bailiffs did not take into account the second half of part 1 of Article 388 of the Russian Federation of Labour Code: "For the purposes of this chapter, the arrest of a vessel is any detention or restriction in the movement of a vessel while it is within the jurisdiction of the Russian Federation, carried out on the basis of a court order, an arbitration court or authorized by law to seize an arbitration tribunal in maritime matters to secure a maritime claim, as defined in Article 389 of this Code, with the exception of the detention of a vessel carried out to enforce a judgment of a court, arbitration court or arbitration tribunal that has entered into legal force".

It follows from Article 388 of the Merchant Shipping Code of the Russian Federation that the legislator distinguishes between the concept of "arrest of a vessel" as a detention or restriction in the movement of a vessel, carried out on the basis of a judicial act (in everyday life, "sea arrest"), and the detention of a vessel to enforce a court decision.

The requested and possible arrests were not executed, as a result of which the vessels left the territory of the Russian Federation, which made it impossible to enforce the judicial act.

The complaint to the higher Directorate of the FSSP in the Rostov region about the inaction of the bailiff of the executor also did not have a positive effect.

Realizing that the bailiffs did not want to fulfill the duties assigned to them by law, the crew members decided to go the other way - a court proceeding was initiated to recover damages, the Russian Federation was declared a defendant in the person of the Federal Bailiff Service, acting as the manager of budgetary funds, as Third parties, who do not declare independent claims, were involved with the FSSP Administration for the Rostov Region and the Leninsky District Department of the bailiffs of the city of Rostov-on-Don.

The basis for the recovery of losses is the composition of the offense, which in this case is as follows.

Vessels owned by the debtor on the right of ownership may never again enter the ports of the Russian Federation, therefore, today the opportunity to collect the debt has been lost and the plaintiffs are deprived of the opportunity to satisfy their claims as creditors and receive the money awarded by the court, that is, they are harmed (damage).

The unlawfulness of the behavior of the bailiff-executor lies in the failure to fulfill the tasks assigned to him by the legislation of the Russian Federation to carry out the compulsory execution of judicial acts by seizing the debtor's property.

The causal relationship is absolutely indisputable - the delay of the bailiff and his failure to comply with the plaintiffs' legal requirement for the possible and enforceable arrest of the debtor's ship led to the loss of the possibility of executing the judicial act due to the fact that the act and receipt of funds collected in their favor.

To establish the guilt of the bailiff, it is necessary to determine whether it was possible to execute the judicial act. The requested arrests are permitted by the laws of the Russian Federation and are therefore lawful and justified. Thus, the bailiff-executor had the opportunity to execute the judicial act.

However, despite the existence of a corpus delicti, the stated claims were denied, the court concluded that the amount of money subject to collection from the debtor by way of enforcement proceedings on the basis of a judicial act, by its legal nature, cannot be attributed to losses.

Recovery of damages caused by the inaction of the bailiff is in line with the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the main approaches to the application of this Convention developed by the European Court of Human Rights. Article 1 of Protocol 1 to the Convention states that every natural or legal person has the right to respect for his property. The awarding of the amount of debt to a person by a court decision in accordance with the precedents developed by the European Court within the meaning of Art. 1 of Protocol No. 1 to the Convention can be considered as "property".

The adoption of a court decision on the recovery of a sum of money is provided by the person in whose favor this decision was made, with requirements that can be legally enforced. At the same time, the possibility of compulsory execution of a court decision can only be ensured through enforcement proceedings carried out by the bailiff service. Thus, the possession of the person, in favor of whom the judgment was made, of his property (the awarded amount of money) depends on the exercise of the broad powers of the public authorities.

Based on this, the European Court formulated a precedent according to which “property” within the meaning of Article 1 of Protocol No. 1 to the Convention may represent not only a material amount, but also a legitimate expectation that the bailiff service will exercise its powers to enforce a judgment.

Thus, the amount of money awarded to the plaintiffs by the court decision is the property of the plaintiffs, their legitimate expectation that the enforcement authority will fulfill the requirements of the judicial act.

Since the amount of money awarded to the plaintiffs as collectors was not recovered by the official of the state body for compulsory enforcement as a result of the illegal inaction of this official, the plaintiffs suffered harm in the form of losses.

Moreover, the court did not take into account the fact that the materials of the enforcement proceedings contain only evidence of the position actively taken by the claimants, which consisted in the independent tracking of the debtor's property (the entry of ships into the ports of the Russian Federation) and the repeated filing of applications for the seizure of the debtor's property, while the bailiffs-executors took a passive position: no inquiries were made to the tax authorities regarding the accredited branches and representative offices of the debtor as a foreign legal entity, regarding information about the debtor in the Unified State Register of Legal Entities, regarding the debtor's tax registration in the Russian Federation; there was no search for the debtor's property: neither his current accounts, nor real estate, nor movable property.

Among other things, the crew members made an attempt to initiate a criminal case, but, unfortunately, it was also unsuccessful. The main stumbling block is the conclusion of contracts by crew members on the territory of the Russian Federation (in fact) and under the jurisdiction of a foreign state with an offshore company (it is not possible for law enforcement agencies to establish information about the financial condition of companies falling under foreign jurisdiction).

For almost three years, the crew members of the motor ship "L" could not receive the money owed to them. At the same time, and with exactly the same set of problems, we received the case of the crew of the second ship of the same debtor company, who used the labour of the ship's workers for free.

Stubborn unwillingness to leave such a long mission unsuccessful and the opening window of fortune allowed us to catch the ill-fated ships in other ports, where the bailiffs turned out to be quick, competent and courageous. Arrests of two courts took place. As a result, the debts to the sailors who were already expecting nothing were paid off in full.

Of course, bailiffs-executors do not come across such atypical property of a debtor as sea vessels every day, but, as in any case, the willingness to take responsibility and use a wide range of powers, which are endowed with officials to fulfill the main goal, is important - not leave court decisions unfulfilled when it is possible to legally and fully restore the rights of the offended party.

Practice areas

[DISPUTE RESOLUTION](#)

Locations

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