

Consideration of commercial disputes in state courts: new clarifications of the Supreme Court of the Russian Federation



On 23 December 2021, the Supreme Court of the Russian Federation adopted several important clarifications concerning the consideration of cases involving commercial disputes in the state commercial courts of the Russian Federation [1].

Let's have a look at the most important ones.

1. The court may, at its own initiative, declare the behaviour of one of the parties to be an abuse of a right if its behaviour clearly differs from good-faith behaviour.

If the court establishes that a right has been abused, it is entitled to charge court costs to the party acting in bad faith and to deny a motion, if the motion was purposefully filed by a party at the wrong time.

2. If the court establishes that the claimant is guilty of committing bad-faith actions aimed at artificially changing the venue when filing a claim, then the court shall hand over the case to the court that would have had jurisdiction if the bad-faith actions had not occurred.

3. Based on a petition filed by a participant in the case, the court may reclaim the required evidence from third parties. The petition does not have to contain an indication of the specific details of the evidence and proof that the corresponding person has this evidence does not need to be attached to the petition.

4. The court may accept a counterclaim if it is a plea in reconvention of the original claim. For example, counterclaims on the payment under several different contracts can be considered within a single case if there are grounds to offset the claims under these contracts.

5. If a counterclaim was not filed on time by a party due to an abuse of procedural law, and the filing of the counterclaim is unquestionably aimed at dragging out the court proceedings, the court is entitled to issue a ruling concerning the return the counterclaim.

6. The place of actual performance of obligations or an indication in a contract of the place of performance of one of the obligations (for example, the address of the seller's warehouse) are not, in and of themselves, sufficient grounds for filing a claim at the place of performance of the contract. If the contract does not directly indicate the place of its performance or there is no address of performance, jurisdiction over the case shall be determined based on the general rules.

7. The rules on exclusive jurisdiction at the location of real property do not apply to corporate disputes involving the transfer of immovable property (for example, on the transfer of real estate due to the creation, reorganisation and liquidation of a legal entity, when a corporation challenges the real estate transactions).

8. An agreement of the parties to change the venue (a contractual jurisdiction clause) that is part of a contract does not depend on the other terms and conditions of the contract, i.e., it is autonomous. Therefore, if a civil-law contract is deemed invalid (void) this itself does not invalidate this clause.

However, in certain circumstances the grounds for the invalidity of the main contract and the contractual jurisdiction clause may be identical (for example, on the establishment of a failure of intent at the onset of the agreement, the text of which includes a contractual jurisdiction clause, or on the discovery of falsification).

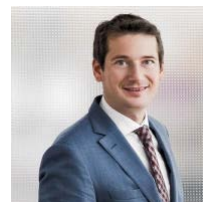
[1] Judgment No. 46 of the Plenary Session of the Supreme Court of the Russian Federation dated 23 December 2021 "On Applying the Commercial Procedure Code of the Russian Federation during the Consideration of Cases in the Courts of First Instance".

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