



A DIFFERENTIATED APPROACH TO CASES CONCERNING THE DEMOLITION OF UNAUTHORISED CONSTRUCTIONS

For the attention of CEOs of companies that own real estate assets


Pepeliaev Group advises that the Russian Supreme Court has applied a differentiated approach in a case concerning the demolition of an unauthorised construction. The court laid down new approaches, previously absent from court practice, to examining cases in the relevant category (Ruling No. 308-ES15-15458 of the Russian Supreme Court's Judicial Panel for Economic Disputes dated 10 March 2016 in case No. A32-22681/2014).

In the context of this case, the administration of a municipal district in the city of Krasnodar applied to the State Commercial Court for Krasnodar Territory with a lawsuit seeking an order for the demolition of a children's clinic that was an illegally constructed unfinished major facility. The administration relied on the facts that: (i) the clinic had been erected without a construction permit having been obtained; and (ii) the land plot had not been allocated for construction.

Having examined the above case, the Supreme Court stated that, in disputes concerning the demolition of unauthorised constructions, the following needs to be taken into consideration.


1. Whether the criterion of good faith is met in the actions of a state or local government authority asserting a claim to have an unauthorised construction demolished. The court stated that **it is possible for such actions to be classified as an abuse of a right in accordance with article 10 of the Russian Civil Code.**

In the dispute at hand, the administration had applied to the court having first given its approval for the relevant executive department to construct the clinic building. (The materials had been approved, there was preliminary agreement as to the site for the facility, design and survey works were allowed to be carried out with the project for building the clinic being drawn up, and an agreement for cooperation was entered into).

 We note that the approach in question is completely new, since previously this type of claim did not feature an examination of whether a public claimant was conducting itself in good faith. It was only the good faith of the owner of the unauthorised construction that could be considered if that person applied to the court to have the construction declared legal (i.e. for its ownership title to the unauthorised construction recognised). This was to establish whether the owner had taken steps to obtain a construction permit.

Thus, owners of unauthorised constructions are now receiving an additional and extremely important basis on which they can defend a petition seeking demolition - namely, by citing the bad-faith conduct that has followed from the preceding actions of a state or local government authority.

2. The public interest needs to be taken into consideration in disputes concerning the demolition of an unauthorised construction. The Supreme Court has stated that, if there is a public interest in the construction of a socially significant facility and there are no substantive violations in the structure that is erected (i.e. violation of town planning and construction regulations and rules), no account is taken of purely formal violations (a lack of the necessary permits).

 We believe that in only a limited number of cases concerning the demolition of unauthorised constructions will the issue of infringing the public interest be examined. At the same time, we believe that, in a wide range of cases concerning the demolition of unauthorised constructions, it will be possible, under article 10 of the Civil Code, to classify the actions of state and municipal authorities as an abuse of a right.

What to think about and what to do

We advise owners to carry out a legal expert examination of documents in order to assess the risk of claims from state authorities seeking to have items of immovable property declared to be unauthorised constructions. If the risk exists that a petition will be filed seeking demolition, account needs to be taken of the above position of the Russian Supreme Court when preparing to defend claims of this nature.

Help from your adviser

Pepeliaev Group's lawyers provide the full spectrum of services with respect to checking whether the construction has been performed in compliance with the legislation, analysing adopted decisions ordering demolition, drafting any documents required and challenging such decisions in court.

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