PRIVATE PROFESSIONAL EDUCATIONAL INSTITUTION "KRASNOYARSK CO-OPERATIVE TECHNOLOGY OF ECONOMICS, COMMERCIAL AND LAW"

Topic of the educational and research interdisciplinary professional project:

“SEARCH FOR PROPERTY AND MONEY OF THE DEBTOR IN ENFORCEMENT PROCEEDINGS”

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ANNOTATION

 The relevance of this study lies in the fact that currently every second resident of Russia is a debtor according to the FSSP of Russia. This means that citizens have quite a lot of questions about the activities of FSSP employees. The main issues concern the modern and correct execution by the bailiff of foreclosure on the property and income of the debtor-citizen, especially on cash and real estate. Also, the relevance is due to the existence of various gaps and contradictory provisions in the current legislation and the need to eliminate them.

Keywords

 Legislation, property, debtor, collector, debt, FSSP, civil code.

INTRODUCTION

 According to statistics from the Federal Bailiff Service of Russia, over the 12 months of 2020, the service had more than 93 million enforcement proceedings pending. These figures show that on average every second resident of Russia is a debtor according to the FSSP of Russia database (hereinafter referred to as the Service). This means that citizens have quite a lot of questions about the activities of FSSP employees. The main issues concern the legality of the correct and timely execution by the bailiff of foreclosure on the property and income of the debtor, including bank accounts, cash and real estate. The main part of the questions is raised by interdepartmental electronic interaction (IIC) between banks and other credit institutions for foreclosure on debtors’ funds, and registration authorities, such as the Rosreestr for issuing a ban on registration actions in relation to real estate, the State Traffic Safety Inspectorate for issuing a ban on registration actions in relation to transport funds and much more. Citizen debtors have a full understanding of the new technologies used by the bailiff service. For example, when foreclosure is applied to bank accounts in a bank or other credit organization, the debtor citizen immediately receives an SMS notification about the applied enforcement measure in the form of seizure of bank accounts. A special procedure for foreclosure on real estate of individuals. The main part of this property is real estate, which is pledged. According to the Bank of Russia, the number of mortgage loans is growing steadily. Real estate is currently one of the most common objects of foreclosure in enforcement proceedings.

 The object of this study is the foreclosure of the debtor's property, which belongs to him by right of ownership, as well as a special procedure for foreclosure of the debtor's property.

 The subject of the study is the norms of civil, civil procedural and executive law of Russia, regulating the specifics of enforcement proceedings, within the framework of which foreclosure is carried out on the property and income of a debtor-citizen; law enforcement jurisprudence.

 The purpose of the work is to identify the features of foreclosure on the property and income of a debtor-citizen in enforcement proceedings, based on these objects, contradictions in the legislation governing these issues.

1. Search for property and funds of debtors as a law enforcement function

1.1 The concept and essence of searching for debtors

 The law provides for an exhaustive list of coercive measures. Basically, these are direct measures (collection of property, prohibition of certain actions of the debtor, forced installation of the collector, etc.). There are several indirect enforcement measures (which are not directly aimed at enforcement, but can lead to it): inclusion in public lists of debtors, temporary ban on traveling abroad, temporary restriction of the debtor’s right to drive vehicles.

 The use of indirect measures was successful, as a result of which it was proposed to expand them. Enforcement measures are effective if they are sufficiently diverse and allow taking into account the individual characteristics of a particular enforcement proceeding. Thus, in addition to dividing measures into direct and indirect, the issue of an open list of enforcement measures should be considered, in which the court may have the right to determine a measure not specified in the law, based on the decision of the recoverer or bailiff. request.

 In general, in Russia the idea of imprisonment for debt is perceived extremely negatively and is considered excessively cruel. On the contrary, the idea of forced labor by a debtor, which is currently used as an administrative punishment for minor offenses, seems promising for situations where such a debtor has neither property nor income. In this case, full-time tasks performed at the request of local authorities and paid for from their budget (garbage removal, land reclamation, etc.) can become a mechanism that both allows for actual enforcement and acts as an indirect enforcement measure. for the debtor. who actually owns property or receives income but hides it.

 According to Art. 64 of the Federal Law of October 2, 2007 N 229-FZ “On Enforcement Proceedings”, the bailiff has the right to perform the following enforcement actions: 1) summon the parties to the enforcement proceedings (their representatives), other persons in cases provided for by law; 2) request the necessary information, including personal data, from individuals, organizations and bodies located on the territory of Russia, as well as on the territories of foreign states, in the manner established by the international treaty of the Russian Federation, receive explanations, information, and certificates from them; (see text in the previous edition); 3) conduct an inspection, including an inspection of financial documents, regarding the execution of executive documents; 4) give instructions to individuals and legal entities to fulfill the requirements contained in executive documents; 5) enter non-residential premises occupied by the debtor or other persons or belonging to the debtor or other persons for the purpose of executing enforcement documents; 6) with the permission in writing of the senior bailiff (and in the case of execution of a writ of execution on the move-in of the claimant or eviction of the debtor - without the said permission) to enter the residential premises occupied by the debtor without the consent of the debtor; 7) in order to ensure the execution of a writ of execution, seize property, including cash and securities, seize said property, transfer seized and seized property for storage; 8) in the manner and within the limits established by Federal Law No. 229-FZ of October 2, 2007 “On Enforcement Proceedings,” evaluate property; 9) engage specialists who meet the requirements of the legislation on valuation activities to evaluate property; 10) search for the debtor and his property, independently or with the involvement of internal affairs bodies; 11) request the necessary information from the parties to enforcement proceedings; 12) consider applications and petitions of the parties to enforcement proceedings and other persons participating in enforcement proceedings; 13) collect enforcement fees; 14) contact the body that carries out state registration of rights to property and transactions with it to register the property belonging to him in the name of the debtor in the cases and in the manner established by Federal Law of October 2, 2007 N 229-FZ “On Enforcement Proceedings” ; 15) establish temporary restrictions on the debtor’s departure from the Russian Federation; 16) check the correctness of the withholding and transfer of funds according to a judicial act, an act of another body or official, as well as the correctness of debiting from the debtor’s personal account in the register maintenance system and securities accounts in depositories opened by a professional participant in the securities market, and crediting to the personal account account or depository account of a claimant of issue-grade securities at the request of the claimant or on his own initiative, including under writs of execution presented in the manner prescribed by Part 1 of Art. 8, part 1 art. 8.1 and part 1 of Art. 9 of the Federal Law of October 2, 2007 N 229-FZ “On Enforcement Proceedings”) to offset counter homogeneous claims, under writs of execution presented in the manner prescribed by Part 1 of Art. 8, part 1 art. 8.1 and part 1 of Art. 9 of the Federal Law of October 2, 2007 N 229-FZ “On Enforcement Proceedings”) to offset counter-similar claims confirmed by enforcement documents for the collection of funds; 18) perform other actions necessary for the timely, complete and correct execution of executive documents.

2. Organization of the search for the debtor’s property and funds in enforcement proceedings

2.1 Legal regime for searching the property and funds of the debtor

 It should be noted that establishing the whereabouts of the debtor often takes several years. This problem deprived claimants, in particular recipients of alimony, of material support. However, in 2018, the legislator made attempts to simplify the procedure for recognizing a debtor-payer of alimony as missing, namely, changes were made to the current legislation on enforcement proceedings regarding the deadline for searching for the debtor - now this period is limited to one year. After the alimony debtor is declared missing by the court, the alimony recipient has the right to receive financial support from the state.

 It is worth noting that, by law, the period for searching debtors for bailiffs is not limited, however, as judicial practice shows, after an unsuccessful search for a debtor for one year, bailiffs terminate enforcement proceedings and explain to collectors the right to go to court to recognize the debtor as missing [16, p. . 403-405].

 Amendments to Art. 65 of the federal law “On Enforcement Proceedings” did not relieve the workload of bailiffs, but gave them the opportunity to “delay” the period for searching for a debtor up to one year, since after this period the proceedings are terminated. Despite the fact that bailiffs are given a fairly wide range of powers within the framework of executive search actions, as a rule, the search for a debtor is limited only to contacting law enforcement, tax authorities or migration authorities. We consider it advisable to consolidate a specific list of actions of bailiffs to search for debtors, which must be carried out within a year from the moment the search is announced.

 To carry out the search, the bailiff, at the request of the claimant, has the right to use information obtained as a result of private detective (detective) activities, and to carry out the search for the debtor-citizen, also use the capabilities of the media free of charge.

CONCLUSION

 Summarizing the above, we can draw the following conclusions. The enforcement system is the most important element of the legal system for restoring violated rights and freedoms when fulfilling obligations. The final stage of legal proceedings. The activities of bailiffs help strengthen the role of the state as a guarantor of legal business conditions for all entities. Social relations, regulated by legislation on enforcement proceedings, become more complicated every year. New types of property are emerging to which debtors are liable for their obligations and to which foreclosure is applied in the course of enforcement proceedings. A large number of regulations that regulate relations in enforcement proceedings entail many practical problems in connection with foreclosure on the debtor’s property. Federal Law No. 229 “On Enforcement Proceedings” does not sufficiently regulate issues of forced execution of judicial and other acts, including the issue of foreclosure on the property of a citizen debtor.

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