

LEGAL «UNCONTROLLED SETTLEMENT»:

the Praesidium of the Supreme Arbitrazh Court explained procedure for registration of the ownership rights to the buildings constructed before 1995

The Ruling of the Praesidium of the Supreme Arbitrazh Court of the RF No. 5698/12 of 25/09/2012
(published at the Website of the SAC on 28/11/2012)



It's not a rare case nowadays when the company among other property owns real property constructed using own resources before 1995. Very often such buildings are used without any title documents as the relevant ownership rights were not registered in the Unified State Register of the Rights to Real Estate and Transactions therewith. In fact this entails the impossibility to sell and purchase such buildings and additional difficulties with the registration and re-registration of the rights to the land-plots.

In its ruling of 24/01/2012 No. 12048/11 the Praesidium of the Supreme Arbitrazh Court of the RF explained that the non-residential buildings, constructions and structures erected before 01/01/1995 by virtue of law cannot be considered to be built without proper legal authorization and demolished on that basis. However, ruling out the possibility of demolition of such buildings by virtue of article 222 of the Civil Code of the RF, the Praesidium failed to provide any instruction on how to register the rights to such buildings.

One of possible variants was offered by the Praesidium of the Supreme Arbitrazh Court of the RF in its ruling No. 238/12 of 05/06/2012: Once again the SAC confirmed that the non-residential buildings erected before 01/01/1995 cannot be considered to be constructed without proper legal authorization and the relevant rights of ownership to such buildings can be recognized pursuant to part 1 article 234 of the Civil Code of the RF (title by prescription). A lot of question arise if upon construction such building was transferred from one owner to the other in the absence of legal succession (quite often when the assets with duly registered rights were sold, such unregistered buildings were transferred in addition to the main facilities constituting the subject matter of the transaction).

In its ruling No. 5698/12 of 25/09/2012 the Praesidium of the SAC of the RF explained that the right of ownership to the real property constructed using own resources before 01/01/1995 arises by virtue of creation and is

considered to be an elder title in the meaning of p.1 article 6 of the Federal law of 21/07/1997 No. 122-FZ «On state registration of rights to real property items and transactions therewith». If the owner of such facilities wants to register the legal ownership in the Unified State Register of Rights to Real Estate and Transactions therewith he must file a relevant request with the registration agency and in case of refusal to register such rights to challenge such refusal in court.

Therefore, the owners of such buildings erected using own resources before 1995 have two options for registration of rights to such buildings:

- recognition of the right as a title by prescription (subject to fulfilment of all conditions stipulated in article 234 of the Civil Code of the RF) pursuant to the ruling of the Praesidium of the SAC of the RF No. 238/12 of 05/06/2012;
- challenge of the refusal of the registration authority to register an elder title in accordance with the ruling of the Praesidium of the SAC of the RF No. 5698/12 of 25/09/2012.

In both cases the evidence of compliance of such buildings with the construction, health, fire etc. standards and regulations should be provided.

Both rulings of the SAC Praesidium (No. 5698/12 of 25/09/2012 and No. 238/12 of 05/06/2012) refer to a possibility of revision of judicial acts that have already taken legal effect in cases with similar factual circumstances. In view of the above the owners of the buildings constructed before 1995 the rights to which were not registered in the Unified State Register of Rights to Real Estate and Transactions therewith due to the absence of the title documents (including construction permit and permission to place an object into use) have a chance to legalise their rights to such buildings even if they filed a relevant claim with the court earlier and such claim was dismissed.

CONTACT INFORMATION:



IGOR
CHUMACHENKO

Partner, Head of
Real Estate, Land &
Construction Practice

Chumachenko@vegaslex.ru



NIKOLAY
ANDRIANOV

Senior Associate
Real Estate, Land &
Construction Practice

Andrianov@vegaslex.ru

Additional information about the products and services of VEGAS LEX can be found at www.vegaslex.ru.

Current issue contains an overview of the recent legislative changes.

The presented material should be treated as general information and not as professional advice.

© Law firm VEGAS LEX

VEGAS LEX is one of the largest law firms headquartered in Russia, with over 100 lawyers based in Moscow, Volgograd and Krasnodar. Since 1995 we have been providing services in every region of Russia, as well as in other countries of the world.

PRACTICE AREAS

- Competition & Antitrust
- Dispute resolution and pretrial conflict settlement. Mediation
- Energy
- Real Estate, Land & Construction
- Capital Markets, Securities, Listings
- PPP & Infrastructure
- Investments. Project Finance
- Corporate and M&A
- Taxation
- Environment
- Forensics
- Compliance. Anti-bribery compliance.
- Innovative Projects
- International Arbitration
- International Property
- International Taxation
- Regulatory and GR issues.
- Law-Making

KEY INDUSTRIES

- Automotive
- Aviation
- Chemical & Petrochemical
- Industries
- Energy & Natural Resources
- Finance & Securities Markets
- Food Products & Agriculture
- Housing & Utilities
- Information Technology
- Infrastructure & PPP
- Insurance
- Life sciences
- Metallurgy & Mining
- Nanotechnology
- Public sector
- Real Estate & Construction
- Telecommunications

RECOMMENDATIONS & RECOGNITION

- Best Lawyers 2012
- IFLR1000 2012
 - M&A
 - Project finance
 - Restructuring & Insolvency
- Chambers Europe 2012
 - PPP
 - Competition/Antitrust
 - Dispute Resolution
- The Legal 500 EMEA 2012
 - PPP
 - Dispute Resolution
 - Real Estate
 - Corporate and M&A
 - Tax
 - Energy & Natural Resources
- European Legal Experts 2012
- Russia's leading rankings Pravo.Ru-300 in 2011
 - Competition/Antitrust
 - Corporate and M&A
 - Dispute resolution
 - Tax
 - Real Estate
 - Energy and natural resources
 - Employment

OUR CLIENTS

Belon, British Airways, Gazprom dobycha Astrakhan, Gazprom neft, HOCHTIEF, Ilyushin Finance Co., Interregional Distribution Grid company of Volga, MAN, MirLand Corp., Mosenergosbyt, MTD Europe Holding GmbH, Mobile TeleSystems, M.Video, Peter Hambro Mining, PhosAgro AG, PPF Real Estate, R-Quadrat, RESO Holding, RusHydro, ROSNANO, ROSNO, Russian Funds, Rockwool, Sun InBev, SITRONICS, WABCO, WPP, Vitkovice Power Engineering, etc.

COOPERATION

Ministry of Economic Development, Ministry of Transportation of the RF; Ministry of Regional Development, Federal Antimonopoly Service, Federal Financial Markets Service, Committees of the State Duma and the Federation Council, Vnesheconombank, various Federal agencies, PPP and Investment Commission of the Russian Union of Industrialists and Entrepreneurs, Protection Committee of the National Securities Market Association, Agency of Strategic Initiatives, etc.

MOSCOW

tel. +7 (495) 933 08 00
fax +7 (495) 933 08 02
vegaslex@vegaslex.ru

VOLGOGRAD

tel. +7 (8442) 26 63 12/13/14/15
fax +7 (8442) 26 63 16
volgograd@vegaslex.ru

KRASNODAR

tel. +7 (861) 274 74 08
fax +7 (861) 274 74 09
krasnodar@vegaslex.ru