

NINTH ARBITRAZH COURT OF APPEAL

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RULING

on discontinuance of proceedings

on petition for appeal

No. 09АП-45410/2020-ГК

Moscow

November 03, 2020

Case No. A40-73740/20

Judicial disposition was announced on November 02, 2020

Full ruling was prepared on November 03, 2020

Ninth Arbitrazh Court of Appeal composed of: presiding judge A.I. Trubitsyn, judges T.V. Zakharova, E.A. Ptanskaya, with the minutes of the court session kept by secretary S.V. Savatyukhina, considering in an open court session the appeal of Mikhail Andreevich Medvedev against the decision of the Moscow Arbitrazh Court dated July 16, 2020 in Case No. A40-73740/20, adjudicated by Judge A.V. Mischenko following the petition of "Yumanova" LLC on establishing the fact bearing legal significance, with the participation in the hearing of representatives: Smirnov I.A. - from the applicant (Power of Attorney dated 08.04.2020), from the complainant - representative notified, but failed to appear,

ESTABLISHED THE FOLLOWING:

"Yumanova" Limited Liability Company applied to the Moscow Arbitrazh Court with a petition on establishing facts of legal significance, namely, on recognizing the information discrediting honor, dignity or business reputation as untrue.

Decision of the Moscow Arbitrazh Court dated July 16, 2020 satisfied the appeal. The appeal was filed by Mikhail Andreevich Medvedev - a person not participating in the case (hereinafter referred to as Lodger of the Appeal), in which he asks to cancel the court ruling in the case and to adopt a new judicial act.

Having examined the case file and having heard the Lodger of the Appeal's representative, the Arbitrazh Court of Appeal established that there were grounds for terminating the proceedings on the appeal.

According to Article 257 of the Arbitrazh Procedure Code of the Russian Federation, the right to appeal against a court ruling in an appellate procedure have only the persons participating in the case, and other persons in instances provided for by the Arbitrazh Procedure Code of the Russian Federation. By virtue of Article 42 of the Arbitrazh Procedure Code of the Russian Federation, such persons include persons who did not participate in the case, on whose rights and obligations the court adopted the court ruling.

In clause 2 of Resolution No. 12 of the Plenum of the Supreme Court of the Russian Federation “On the application of the Arbitrazh Procedure Code of the Russian Federation when considering cases in the Arbitrazh court of appeal” dated June 30, 2020 it is explained that after accepting the appeal from a person who did not participate in the case, the court of appeal determines whether the adopted court ruling directly affects the rights or obligations of the applicant, or not.

Therefore, in order to recognize the right to appeal a court ruling it is necessary to establish that the adopted court ruling directly affects the rights and obligations of the person not involved in the case, including creation of obstacles in exercising his subjective right or in proper management of his responsibilities to one of the parties to the dispute.

Taking into account the above rules of law, the Court of Appeal found that Medvedev M.A. was not a person whose rights and legitimate interests were affected by the challenged court ruling. The Lodger of the Appeal also failed to provide such arguments.

As explained in clause 2 of Resolution No. 12 of the Plenum, if, after the adoption of the appeal it is established that the Lodger of the Appeal did not have the right to appeal against the court ruling, then, per clause 1 of part 1 of Article 150 of the Arbitrazh Procedure Code of the Russian Federation, the proceedings on the appeal are subject to termination.

Since the appeal was filed by a person who did not have the right to appeal a court ruling by virtue of law, and the applicant does not belong to the circle of persons specified in Article 42 of the Arbitrazh Procedure Code of the Russian Federation, the court of appeal terminates the proceedings on the appeal of Medvedev M.A. in the manner prescribed by clause 1 of part 1 of article 150 of the Arbitrazh Procedure Code of the Russian Federation.

Guided by articles 150, 184, 185, 188, 265 of the Arbitrazh Procedure Code of the Russian Federation, the Ninth Arbitrazh Court of Appeal

D E T E R M I N E D:

To terminate the proceedings on the appeal of Mikhail Andreevich Medvedev against the decision of the Moscow Arbitrazh Court dated July 16, 2020 in case No. A40-73740/20.

The Ruling shall come in force from the date of its adoption and can be appealed in the Moscow District Arbitrazh Court within a month from the date of its full execution.

Presiding Judge:

A.I. Trubitsyn

Judges:

T.V. Zakharova

E.A. Ptanskaya

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