BLC Law Office

AMENDMENTS TO THE RULES ON PRELIMINARY INJUNCTION

Long awaited amendments on preliminary injunction have been introduced to the Civil Procedures Code of Georgia.

Companies and practicing lawyers have been widely criticizing the law because of its rather rigid and outdated approaches that in most cases, overly favored parties seeking injunction, to the detriment of defendants.

Under former regulations, injunctions, in most cases were used to freeze defendant's property, including bank accounts, of exceedingly higher value than the claim itself. As a result, companies were paralyzed throughout the entire litigation to the extent that they sometimes were not able to pay even salaries to their employees.

Effective from 7 July 2016, the new regulations require that the value of the property to be seized does not exceed the value of secured claim. If, however, collateralized property is defendant's only asset, he may offer the court an alternative, more adequate collateral. Defendant is also entitled to request the partition of the property.

Even though, the critics doubt whether the judges will be able to handle the applications for changing or partitioning the property within 5 days, the amendments were well welcomed and we shall await to see how the new rules actually operate in practice.

OTHER IMPORTANT CHANGES TO PERFECTION OF PROPERTY RESTRICTIONS

Effective from 17 June 2016, parties willing to end the dispute with settlement or a defendant acknowledging the claim, shall submit the note to the court confirming absence of any restriction on the disputed property.

According to explanatory note, this amendment aims at protecting the interests of third parties by restricting the ability of a party to circumvent a seizure, established in the course of the litigation or otherwise, by way of initiating a sham dispute and enforcing the court decision through such property.

Important amendments were also introduced to the Law of Georgia on Public Registry. According to previously established practice, an application for registering restriction on a property, even if not substantiated with all required documents, was given a priority over all subsequent applications, effectively barring registration of all subsequent rights by at least 30 days. According to the changes enacted from 17 June 2016, suspension on such applications will last for not more than 3 days or, if appealed, until the decision of Court of Appeals on the injunction. Amendments are expected to decrease frivolous applications in the future.

In addition to this, under new changes, restriction imposed on the property under the court injunction can be lifted if the party to whom the injunction has been granted submits an application to the Public Registry to that effect.

IMPORTANT COURT INTERPRETATION OF PRINCIPLE OF MORALITY IN THE GEORGIAN CIVIL LAW

Recently, Tbilisi Court of Appeals (case 2b/4259-14) delivered judgment that introduces new interpretation of principle of good faith and morality, likely to change previously established court practice.

In its decision of 12 January 2016, Tbilisi Court of Appeals declared that monthly 10% interest on a loan is inconsistent with rates established by the National Bank of Georgia (14,5% per annum) and therefore runs head against the principle of morality in private law. In its decision, the Court of Appeals stated that unfair and unequal distribution of the rights and obligations makes transaction immoral, hence invalid.

In highly debatable TV Rustavi 2 decision, affirmed by Tbilisi Court of Appeals (case 2b/6052-15), Court clarified that when purchase price is much lower than a market price and the parties are not able to provide reasonable explanation of such a significant difference, agreement is immoral and invalid.

Establishment of such practice will bring entirely new chain of arguments into the Contract Law disputes. Opponents argue that Georgian legislation has never restricted the parties from negotiating the terms of their own bargain, even when they look unusual to third party observers. This seems to unreasonably restrict party autonomy, especially with respect to qualified and experienced entrepreneurs, who fully understand the consequences of their bargain.

The ball is in the Supreme Court now to establish unified and consistent court practice.

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