

On Derivative Lawsuits and Settlement Agreements

The Supreme Court allowed (did not allow) participants to claim the company's property from illegal possession of other persons

Relevant as at 19.02.2025

On February 14, 2025, the Supreme Court of the Russian Federation (hereinafter referred to as the SC RF) issued a Ruling on the case of N.B. Kuibida versus DV-Rybka LLC, whereby it reviewed the matter of the company participant's right to claim the corporate property from illegal possession of other persons and assessed the legal implications of a settlement agreement in relation to a particular dispute for other disputes involving the parties to the agreement.

1. Can a company participant claim the corporate property from illegal possession of third parties and what are the prerequisites for such claim to be satisfied?
2. Can a settlement agreement executed under a particular case entail any legal implications for another case?

How did the SC respond to these questions and why is this relevant for the legal practice?

Statement of Facts

In 2018–2019, Komkon JSC (acting as the borrower) and DV-Rybka LLC (acting as the lender) entered into loan agreements for a total amount of 120,000,000 RUB.

In 2020, the parties entered into an accord and satisfaction agreement, whereby Komkon JSC transferred immovable property items to DV-Rybka LLC. Part of the property acquired by DV-Rybka LLC was subsequently sold to the benefit of multiple legal entities and individual entrepreneurs.

In late 2020, N.B. Kuibida, the sole shareholder of Komkon JSC, brought an action to invalidate the loan agreements and the accord and satisfaction agreements and to claim the alienated property in full for the benefit of Komkon JSC (Case No. A24-5930/2020).

Simultaneously, P.V. Rudenko, the former shareholder of Komkon JSC, brought an action against N.B. Kuibida to terminate the share sale agreement with an obligation to return the shares (Case No. A24-6040/2020). In 2023, the parties to the conflict made a comprehensive settlement agreement to resolve all disputes and disagreements between them. N.B. Kuibida was reinstated as a shareholder of Komkon JSC.

The action brought by N.B. Kuibida to challenge the property transfer transactions passed two review rounds and was satisfied in 2024. The disputed property was claimed from possession of both DV-Rybka LLC and the other final transferees.

In its Determination dated 14.02.2025 the SC RF reversed the judicial acts of lower courts and ordered a retrial.

When reviewing the cassation appeals made by N.B. Kuibida's opponents, the SC RF raised the following legal questions:

1. Is a company participant entitled to bring an action to claim property from illegal possession of the parties other than the parties to the transaction made by the corporation? If yes, what are the prerequisites for such claim to be satisfied?
2. Shall a settlement agreement under a particular dispute apply to any other disputes involving its parties if the settlement agreement provides for a procedure for comprehensive resolution of all conflicts?

Derivative Lawsuit and Right to Vindication Claim

The proprietary interests of a legal entity may be protected by both the company itself and, as may be required by law, by the participants (shareholders) of the legal entity. The law recognizes the right of the latter for filing a derivative lawsuit, i.e. a formal claim made personally by the participant on behalf and in the interests of the corporation. In particular, corporation participants shall be entitled to claim reimbursement of losses incurred by the company and dispute any transactions made in breach of the corporate transaction approval procedure.

In a corporate conflict, filing a derivative lawsuit is often one of the few ways for a company participant to protect his/her interests from illegal actions of the persons controlling the company, where the opponents intend to withdraw assets to the benefit of the affiliates.

The SC noted the situation whereby a transaction made on behalf of the corporation was disputed on the basis of the participant's lawsuit, but by then the alienated property had already passed into ownership of third parties (specifically by means of subsequent resale).

In order to resolve such situations, the owner is entitled to claim the property from illegal possession of other persons, i.e. make a vindication claim. If the property was passed out of ownership beyond the owner's will, the owner is entitled to claim its return, including the cases when such property has passed into ownership of a transferee acting in good faith, i.e. a person who is not or may not be aware of the illegal nature of its acquisition (Article 302 of the Civil Code of the Russian Federation).

The SC RF acknowledged that the right to vindication claim shall be granted not only to the corporation as the property owner, but also its participants in case the vindication claim supplements the lawsuit filed to challenge the transaction.

In order for the participant's vindication claim to be satisfied, the court shall, in addition to the grounds to invalidate the transaction made by the company, determine that by the property transfer date the participant has lost control over the company due to illegal actions of third parties (e.g. by using forged documents or illegally removing the company director from office). In such case, the property is deemed to be passed out of ownership beyond the company's will and may thus be claimed from possession of, inter alia, the final transferee acting in good faith.

However, the mere fact of property being passed out of the company's ownership in case of a corporate conflict against the company's interests and without obtaining corporate approval does not constitute grounds for a vindication claim.

Settlement Agreement to Resolve All Disputes

Simultaneously, the SC RF noted the settlement agreement entered into between the existing and former shareholders of Komkon JSC under a separate arbitration dispute.

The settlement agreement stipulated that 100% of Komkon JSC shares be sold by N.B. Kuibida acting as the claimant with a subsequent waiver of vindication claim.

The SC RF pointed out that, despite the settlement agreement being concluded under a separate dispute and not giving rise to automatic termination of any other disputes, the SC RF views it as a civil law transaction that entails the claimant's obligation to waive the claim.

The subsequent failure to act as stipulated by the settlement agreement is deemed as contradictory behaviour on the part of the claimant, therefore, the SC RF raised a question to the lower courts regarding admissibility of protecting the claimant's interests.

SC's Conclusions

1. The corporation participants shall be entitled to make a vindication claim, i.e. to claim the property to the company's benefit, including the property subsequently transferred to the ownership of transferees acting in good faith.
2. In a corporate conflict, such claim may be satisfied only if the court determines that at the time of property alienation the participant has lost control over the company due to illegal actions of third parties.
3. Execution of a settlement agreement in Dispute A with the claimant undertaking to waive a claim in Dispute B obliges the claimant to waive a claim in Dispute B facing the risk of the court refusing to protect its interests.
4. Execution of a settlement agreement (under any case) that stipulates the company participant's obligation to waive transaction invalidation / claim of property from third parties certifies the subsequent approval by the participant of the corresponding transactions and property alienation. Due to the public nature of a court settlement agreement, third parties are entitled to rely on such agreement as a document certifying the company participant's will.



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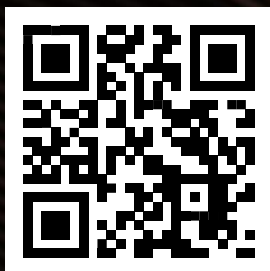
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