

## TO THE QUESTION OF THE BANK DEPOSIT: OPINION OF THE EXPERT (ON THE EXAMPLE OF PJSC MAY DAY BANK KRASNODAR)

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Scientific research is directed to identification of problems of civil regulation and protection of the rights of investors of PJSC May Day Bank, causes of failure in review on new circumstances of separate categories of the civil cases which have arisen from legal relationship on a bank deposit agreement courts of law of Krasnodar and Gelendzhik. The analysis of court practice on review of civil cases on new circumstances is carried out. Explanations and legal line items of Resolutions of the Constitutional Court of the Russian Federation, the Resolution of Plenum of the Supreme Court of the Russian Federation, the Resolution of the Krasnodar regional court and the decision of the Gelendzhik city court were considered. Refusal consequences in satisfaction of the declared requirements about review for new circumstances of civil cases of the injured investors of PJSC May Day Bank resulting from a bank deposit agreement are analysed. Regulations of the Resolution of the Constitutional Court of the Russian Federation of October 27, 2015 № 28-P and the Civil code Russian Federation which have been applied in case of permission of the designated requirements by courts of law of Krasnodar and Gelendzhik in other constitutionally – legal sense are researched.

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**Keywords:** material regulations, the analysis of court practice, the Resolution of the Constitutional Court, the Resolution of Plenum of the Supreme Court, courts of law, review on new circumstances, property damage (harm), a bank deposit, banking service, money, the civil defendant

According to the Constitution of the Russian Federation constitutional legal guarantees the cash and non-cash existing in the form of record on the bank account of their owner which by the nature represent the covered by concept of property, obligations requirement to bank resulting from a bank deposit agreement shall be provided.

In 2012 several tens citizens have concluded with Bank Pervomaysky (PJSC) bank deposit agreements – in the building of bank and in the presence of his workers – and in 2013 have tried to withdraw deposits ahead of schedule, but were refused. The prosecutor's office of Krasnodar Krai has reported that the staff of additional office of Bank Pervomaysky (PJSC), among them the director of office, has stolen deposits of 188 citizens on the amount of 387 million rubles, contracts on which have been signed in 2007–2013. It has become clear that bank deposit agreements were signed by the director of additional office Larisa Golodnova who did not have on it powers, and money of investors in cash desk of bank was not placed. At the same time bank, without wishing to be responsible for actions of the workers, I suggested the victims to make a claim to defendants who have already spent the stolen means. Thus, investors have actually lost an opportunity to receive back the money.

However, in August, 2015 the Supreme Court of the Russian Federation has cancelled the decision by which Bank Pervomaysky (PJSC) has been eliminated defendants for the crime committed by his employees. On criminal case, on representation of the deputy attorney general S.G. Kekhlerov. The Supreme

Court of Russia has made the decision that Bank Pervomaysky (PJSC) shall be the civil defendant and the deceived investors have tried to collect the money judicially. But the Gelendzhik city court recognized their agreements insignificant as those did not correspond to a standard form, have been signed by the unauthorized person, and the agreement of a contribution did not certificate entering of money into cash desk. Confirmation of the fact of entering of money into bank, the Constitutional Court of the Russian Federation recognized and I have decided that any documents issued by bank can serve as proofs, and the cash receipt order (which investors did not have "May Day Bank") only one of possible options. The validity of the agreement is also specified by actions of bank, for example acceptance of additional contributions and interest payment. But courts of law and the Supreme Court of the Russian Federation have not wanted to understand in this case, having followed absolutely inadmissible way of formal application of regulations about a bank deposit agreement which as a result has led to the unfair decision. VIP-investors of Bank Pervomaysky (PJSC) in the Constitutional court of the Russian Federation have got chance of review of decisions of the courts about refusal to return them the lost means placed under the overestimated rates under non-standard agreements.

Seven investors of Bank Pervomaysky (PJSC) who signed contracts with bank under the overestimated percent and could not return the money, have appealed to the Constitutional court. The constitutional court of the

Russian Federation has supported investors. On October 27, 2015 the Constitutional Court of the Russian Federation has issued the Decree № 28-P on check of constitutionality of item 1 of Art. 836 of the Civil Code of the Russian Federation according to claims of citizens I.S. Biler, P.A. Guryanov, N.A. Guryanova, S.I. Kaminskaya, A.M. Savenkov, L.I. Savenkova and I.P. Stepanyugina by whom it is established that courts of law, recognizing agreements of bank deposits of citizens with PJSC May Day Bank uncompleted, have misinterpreted the regulations which are been the basis for decisions, including item of 1 St. 836 The civil code of the Russian Federation, having given them other interpretation dispersing from their constitutional and legal sense revealed in the specified Resolution that is the basis for reconsideration of the case taking into account these new circumstances. Also in it the decision it was specified that introduction of funds for a bank account by investors can be proved by any documents issued to them by bank. And if the agreement has been signed from a bank name by the unauthorized person, then it is necessary to consider that for the citizen appropriate authority of the representative can appear from a situation in which he acts. The court has no right to qualify the agreement as insignificant when rationality and conscientiousness of actions of the investor in case of the conclusion of the agreement and transfer of money to the unauthorized employee of bank are not confuted. The constitutional court of the Russian Federation has decided that introduction of funds for a bank account by investors can be proved by any documents issued to it by bank. In such cases the bank shall bear burden of negative consequences, have decided in the Constitutional court of the Russian Federation.

With this decision investors have returned to court of Gelendzhik. But that has considered that the resolution KS is not new circumstance whereas the decision which has come into force can be reviewed only on again opened or new circumstances which list is strictly determined.

According to item 3 of the part 4 of Art. 392 of the Code of civil procedure of the Russian Federation treats new circumstances: recognition by the Constitutional Court of the Russian Federation not corresponding to the Constitution of the Russian Federation of the law applied in specific case on which in connection with decision making the applicant appealed to the Constitutional Court of the Russian Federation. According to Art. 393 of the Code of civil procedure of the Russian Federation review on again opened or new circumstances of resolu-

tions of courts of appeal, cassation or supervising instance by which it is changed or the new court decree is accepted, it is made by the court which has changed the court decree or accepted the new court decree. According to Art. 397 of the Code of civil procedure of the Russian Federation court, having considered the application, idea of review of court decrees on again opened or new circumstances, grants the application and cancels court decrees or refuses their review. The court by consideration of the corresponding statement resolves a question of cancellation or refusal in cancellation of the judgment which has entered into force on the bases determined by article 392 of the Code of civil procedure of the Russian Federation taking into account all circumstances, including execution of a judgment, and regulations of a substantive and procedural law, and the persons participating in the case having the right to file a petition for permission of a question of a possibility of cancellation of the judicial acts which have entered into force in the court which has made these decisions. The private complaint can be made about determinations of trial court about satisfaction (refusal in satisfaction) such statement.

Considering that not only recognition of regulation unconstitutional is the basis for review of court decrees in connection with new circumstances, but also interpretation of regulation the Constitutional Court of the Russian Federation otherwise, than it is made in the challenged judicial act about what it is specified in determination of the Constitutional Court of the Russian Federation of October 18, 2012 to № 1962-0. The legal line item of the Constitutional Court of the Russian Federation concerning interpretation of material regulations of the civil legislation reflects the imminent need for courts of law to reconsider civil cases, from bank deposit agreements on new circumstances, considering private interests of citizens investors as equal participants of the property relations.

Despite solutions of the Constitutional Court of the Russian Federation, cynical violation of the civil laws of investors "Bank May Day" (PJSC) Krasnodarskim regional court and the Gelendzhik city court continues.

So, on December 9, 2015 the Gelendzhik city court (the Judge O.V. Shutkin, P.A. Popov) has rejected statements of investors "May Day Bank" of S. Kaminskaya, and I. Bilera about review on new circumstances of decisions of the Gelendzhik city court of Krasnodar Krai on civil cases № 2-1787/13 and № 2-1516/13 on new circumstances. The private complaint can be made

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According to the stated line item, provisions of point 3 of part 4 of article 392 of the Code of civil procedure of the Russian Federation do not interfere with courts according to the statement of the persons which were not taking part

in the constitutional legal proceedings to review on new circumstances the court decrees which have entered into force, but are not performed or performed partially based on decisions Constitutional court of the Russian Federation in which the constitutional and legal sense of these or those standard provisions is revealed.

At the same time, such review cannot be made without proper declaration of will of the interested subjects and accounting of requirements of the industry legislation. Availability of material and procedural prerequisites and obstacles for review of decisions is subject to establishment by court to which competence such review is referred.

The group of injured investors on personal acceptance has transferred in regional prosecutor's office addressed to the prosecutor of Krasnodar Krai the statement for criminal prosecution of the judges passing obviously illegal decisions concerning investors of Bank Pervomaysky (PJSC). Injured investors have specified in the statement for the fact that judges ignore the resolution of the Constitutional Court of the Russian Federation from 10/27/2015 № 28-P and continue to take out judicial acts for benefit of bank. Injured investors of Bank Pervomaysky (PJSC) intend to address to the State Office of Public Prosecutor and the RF IC. Also to the Constitutional Court of the Russian Federation injured investors have directed the notification on illegal actions of judges of Krasnodar Krai. The edition of obviously unfair decisions is legalized arbitrary behavior, and their execution – injustice generation.

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