Renting real estate: the Russian Supreme Court gave its clarifications due to the pandemic

The possibility of deferring rental payments and their reduction was one of the government measures to protect citizens and the most affected by the pandemic sectors of the economy.

In previous digests, Law Group Paradigma has already covered the main legislative provisions on this topic. On April 30, 2020, the Supreme Court made several important clarifications regarding rental vacations.

**The procedure and conditions for granting a deferral of payment**

- A deferral is considered as granted from the date of introduction of a high-alert (or emergency) state in the region, regardless of when the parties has entered into a deferral agreement. However, the parties may also establish an earlier date.
- Deferral can be granted both under leases of real estate in whole or in part;
To obtain a deferral, the lessee does not need to confirm the inability to use the property for its intended purpose. It is enough to confirm that the activities carried out by him are referred by the Government to the most affected sectors of the economy (according to the Decree of the Government of the Russian Federation of 04.03.2020 N 434, as amended on 04/18/2020, "On approval of the list of sectors of the Russian economy that were most affected by the deterioration of the situation as a result of the spread of a new coronavirus infection").

**Note:** Despite this, the lessee should behave in good faith. The court will not support the lessee if he did not actually suffer and obviously would not suffer in a pandemic. By way of example, the tenant's actual use of property, contrary to established restrictions, will be recognized as knowingly unfair. In this case, the lessor's refusal to grant a deferral can be recognized as lawful.

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**Rent reduction**

It is recalled that the lessee has a right to demand a reduction in rent due to the inability to use the property as intended in the conditions of restrictions introduced.

- The Supreme Court clarified that rental fee should be reduced from the moment when it became impossible to use the property. It does not matter when parties entered into an agreement to reduce rent or when court rendered a decision to force the reduction of rental fee.
- Moreover, the Supreme Court of the Russian Federation noted that a requirement to force the reduction of rental fee could be made by the lessee in the form of a counterclaim during the process for recovering a rental debt already incurred by him. In this case, the court will assess the circumstances of the lessor's unreasonable evasion from concluding an additional agreement and determine the amount of the reduced rent to be collected.

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