Is a guarantor entitled to include in the guarantee a condition stipulating payment only upon a demand received before the expiry of the guarantee's term? Against what should the amount of the claim be compared if several items constitute the subject of the security: their total value or the value of one of them? Does the declaration of a payment as invalid in bankruptcy proceedings mean that the obligation has been definitively discharged and terminated? When calculating the guarantee limit, how are the guarantee amount and the advance payment offset by work accepted related to one another? The Russian Supreme Court has addressed these and other questions in recent cases.

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Case Law Review of Russian Supreme Court for Q2 and Q3 2026: the most important issues for banks

A guarantee nearing its expiry date: who bears the risk of a late claim[1]?

Facts of the case





On 13 August 2024, the Fund (the client, beneficiary) entered into a Contract with the company (the contractor, principal) for the performance of works.

In fulfilment of its contractual obligations, the Fund paid the company an advance of 50 per cent of the contract price. The proper performance of the company's obligations was secured by an independent guarantee issued by a bank (the guarantor) on 15 August 2024, valid up to and including 30 November 2024.

The guarantee allowed for a claim for payment to be made in two ways:

— in writing on paper — to the bank's postal address specified therein;
— in the form of an electronic document — to the bank's email address specified therein.

[1] Ruling of the Commercial Court of the SC of the Russian Federation dated 8 September 2026 No. 305-ES26-5368.

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In this regard, the claim had to be received by the bank before the expiry of the guarantee's term; otherwise, the bank is entitled to refuse payment.

Due to the company's failure to fulfil its obligations to work off or repay the advance, the Fund sent a claim to the bank by post on 29 November 2024, demanding payment of the guarantee amount. However, the claim reached the bank after the guarantee had expired. The bank refused to pay, citing the requirement set out in the terms of the guarantee that the relevant document must be received before the expiry of the guarantee's term.

The Fund brought an action before the court to recover the guarantee amount and a penalty. The courts at all three levels granted the claim, holding that sending the demand via the postal service within the guarantee's term of validity constituted a proper means of exercising the beneficiary's right and relieved the beneficiary of the risks associated with the delivery of correspondence, whilst the guarantee's condition regarding refusal to pay in the event of late receipt of the demand was invalid.

Legal issue

The case raised the issue of a conflict of interests between the Fund, which had sent the claim for payment under the guarantee within the time limit, and the bank, which had followed the terms of the guarantee and refused to pay.

At first glance, the Fund's position appears correct: the deadline for sending the letter was met, so the funds should be paid out. This is all the more so given that, as a general rule, the handing over of a letter to a postal service provider within the guarantee's validity period is recognised as proper presentation of a claim, in which case the beneficiary does not bear the risks of delivery. However, it was precisely the terms of the guarantee, which were thoroughly examined by the SC[1], that proved to be the key issue in this dispute.

The position of the Russian SC

The SC held that the approach taken by the lower courts was erroneous, quashed the judgements of the three lower courts and dismissed the Fund's claims, reaching the following conclusions.

Firstly, the provisions on independent guarantees do not prevent the guarantor, by virtue of the principle of freedom of Contract, from including in the guarantee a condition that payment shall be made only upon a demand received before the expiry of its term. Therefore, the late receipt of a demand does not preclude payment only where the guarantee itself does not specify otherwise.

[1] Article 194 of the Civil Code of the Russian Federation; paragraph 26 of the Case Law Review of the SC No. 4 (2018), approved by the Presidium of the SC on 26 December 2018; paragraph 4 of the Case Law Review on the Resolution of Disputes Relating to the Application of Legislation on Independent Guarantees, approved by the Presidium of the SC on 5 June 2019.

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Secondly, such a condition is not invalid. It could only be deemed invalid if such an allocation of risks were expressly prohibited by law or substantially infringed the rights of the beneficiary, who did not participate in the ruling on the terms of the guarantee, for example, by making the timely submission of a claim impossible or onerous and thereby artificially shortening the period of guarantee protection.

Thirdly, no such circumstances exist in the present case. The guarantee expressly provided for the need for the bank to receive the claim before the expiry of its term and permitted the claim to be submitted in electronic form, which was no more onerous for the Fund: electronic document circulation is not an extraordinary requirement for parties to the transaction. Since the Fund sent the claim by post one day before the guarantee expired, it assumed the risk of the document not arriving in time, and the courts had no grounds for not applying the terms of the guarantee agreed by the parties[1].

The rules governing independent guarantees do not prevent the guarantor, by virtue of the principle of freedom of Contract, from including in the guarantee a condition that payment shall be made only upon a claim received before the expiry of its term.

As a key legal conclusion, the Court noted the admissibility of a contractual allocation of risks relating to the making of a claim under an independent guarantee, provided that the relevant terms do not contravene mandatory provisions of law and do not create unjustified obstacles to the exercise of the beneficiary's rights.

Thus, an independent guarantee provides the beneficiary with an independent claim against the guarantor; however, the practical effectiveness of this security depends not only on the occurrence of circumstances giving rise to payment, but also on compliance with the agreed procedure for making a claim. At the same time, freedom of contract allows for the allocation of risks associated with the submission of a claim, but must not be used as a means of artificially shortening the term of the guarantee's cover.

Where there are several items of security, the court itself rules which of them are sufficient for enforcement[2]

Facts of the case

To secure the buyer's obligations under supply agreements, five vehicles and and self-propelled machines were pledged as collateral.

[1] Article 422(1) of the Civil Code of the Russian Federation.
[2] Ruling of the Judicial Board on Economic Disputes dated 3 June 2026 No. 305-ES25-14813.

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The buyer failed to fulfill its payment obligations: the outstanding balance under the supply agreements amounted to RUB 4.9 million, with a penalty of RUB 23.7 million, bringing the total to RUB 28.6 million.
The creditor filed a lawsuit seeking to enforce a claim against the collateral by taking ownership of all five pledged items.

Legal issue

The courts were faced with the following questions:

— whether the presumption of a minor breach (Article 348(2) of the Civil Code of the Russian Federation) applies if the amount of the claim has become disproportionate to the value of the collateral solely as a result of the court reducing the penalty;

— against what should the amount of the claim be compared where several items constitute the collateral - against their total value or against the value of one of them;

—Is the claimant obliged to amend the claim by specifying which of the items forming the subject of the security he considers sufficient for enforcement, or should the court do so?

The first instance court reduced the penalty pursuant to Article 333 of the Civil Code of the Russian Federation to RUB 200,000, as a result of which the amount of the claim stood at RUB 5.2 million, and dismissed a claim, stating that the value of the pledged property at the time of the hearing (RUB 22 million) exceeded the amount of the claim by a factor of several times. The court also noted that it is not entitled to go beyond the scope of the claim and independently select the items of collateral against which enforcement was to be sought. The appeal and cassation courts concurred with this.

Where several items constitute the subject of the pledge, the amount of the outstanding obligation may be compared with the value of one of them, rather than with the total value of the pledged property, unless it follows from the law or the Contract that enforcement must be directed exclusively at all the items as a whole.

Position of the Russian SC

The SC quashed the judgements of the three lower courts and referred the case back for reconsideration, drawing the following conclusions.

Firstly, Article 348(2) of the Civil Code of the Russian Federation links the presumption of a minor breach and the manifest disproportion of the claim to the simultaneous fulfilment of two conditions: the amount of the outstanding obligation is less than 5 per cent of the value of the pledged property, and the period of default is less than three months. In the case in question, even after the penalty had been reduced, the amount of the claim amounted to 23.5 per cent of the value of the collateral, whilst the period of default was seven months. Consequently, the presumption did not apply; the defendant failed to prove the contrary; and the courts had no grounds to dismiss a claim on the basis of Article 348(2) of the Civil Code of the Russian Federation.

Secondly, if the collateral consists of several items, the amount of the unfulfilled obligation may be compared against the value of one of those items rather than the total value of all the collateral unless the law or the agreement stipulates that recovery must be sought against all the items collectively.

Since the collateral in question consisted of movable property, and neither the law nor the agreement established any such restrictions, the court should have compared the claim amount it deemed valid (RUB 5.2 million) against the value of either the backhoe loader (RUB 6.5 million) or the mobile crane (RUB 6 million); this, in turn, would have precluded the dismissal of the claim. [1]

Thirdly, the claimant cannot be faulted for failing to clarify their claims. The amount originally claimed (RUB 28.6 million) exceeded the value of the pledged property as agreed upon by the parties (RUB 20.3 million); therefore, the claimant had no reason to anticipate the application of Article 348(2) of the Civil Code of the Russian Federation or to adjust their claims accordingly. Prior to the issuance of the final judgment, the claimant could not have known whether the defendant's motion to apply Article 333 of the Civil Code of the Russian Federation would be granted; consequently, in exercising their procedural rights in good faith, the claimant was under no obligation to seek an amendment to their claim.

Fourthly, upon reducing the penalty, the court was obligated to determine on its own which of the items serving as collateral should be awarded to the claimant, taking into account the final amount of the claim. This clarification also applies in cases where the necessity of enforcing a claim against specific items depends on the court's findings — findings whose substance the parties could not have known in advance. Any other interpretation would contradict the court's discretionary powers and infringe upon the legitimate interests of bona fide participants in the legal proceedings. At the same time, a defendant who objects to the amount of the penalty is not precluded from personally suggesting to the court which specific collateral items would be sufficient to satisfy the portion of the secured creditor's claim that has been upheld.[2]

At the same time, the Russian Supreme Court did not consider the arguments in the appeal regarding the justification for the first instance court's reduction of the penalty amount, as such arguments fall outside the scope of the cassation court's competence.

A returned payment does not mean the debt is extinguished: reinstatement of a suretyship following the avoidance of a transaction in bankruptcy proceedings[3]

Facts of the case

An individual (the guarantor) entered into a suretyship agreement, under the terms of which she undertook to be liable to the bank (the creditor) for the performance by a company (the principal debtor) of obligations arising from bank guarantees; the term of the suretyship was limited to 31 August 2023. By a judgment of a court of general jurisdiction, the debt under the guarantee was recovered from the individual.

[1] Paragraph 56 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 27 June 2023, No. 23, "On the Application by Courts of the Rules Regarding the Pledging of Property."
[2] Paragraph 69 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 27 June 2023, No. 23, "On the Application by Courts of the Rules Regarding the Pledging of Property."
[3] Ruling of the Judicial Board on Economic Disputes No. 305-ES25-14181 dated 19 May 2026.

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The debt was settled by the company.

Subsequently, as part of the company's bankruptcy proceedings, the court declared the payment of the debt under the guarantee to be invalid as a preferential transaction. The disputed sum was returned by the bank to the company's estate[1].

Following the return of the funds, the bank, as part of the individual's bankruptcy proceedings, filed a claim to have the claim under the guarantee included in the register, arguing that the declaration of the principal obligation as void had resulted in the reinstatement of both the company's obligation and the individual's guarantee securing it.

Legal issue

The first instance court reinstated the limitation period and included the bank's claim in the third priority category of the register. However, the Appellate Court set aside this ruling and dismissed the claim; the Circuit Court upheld the Appellate Court's judgment. The courts based their decisions on the individual's objections relating to the termination of the guarantee and the bank's bad faith in receiving the disputed payment.

Declaring a payment invalid in bankruptcy proceedings does not allow the situation to be treated as if the obligation had been definitively performed and terminated.

The courts were therefore faced with the following questions:

— whether the original obligation can be regarded as definitively terminated if the legal basis for the creditor's retention of the performance received subsequently ceased to exist;

— Is the inclusion of the claim in the register of the citizen's creditors' claims a proper means of reinstating her guarantee?

— Does the payment received from the company indicate that the bank acted in bad faith?

The position of the Russian SC

The SC quashed the judgments of the Appellate Court and regional courts, upheld the ruling of the First instance court and resolved the dispute in favour of reinstating the security obligation, drawing the following conclusions.

Firstly, declaring a payment invalid in a bankruptcy case does not allow the situation to be treated as if the obligation had been definitively performed and terminated. Proper performance of the principal obligation generally entails the termination

[1] Article 61.3 of Federal Law No. 127-FL dated 26 October 2002 "On Insolvency (Bankruptcy)".

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of the guarantee securing it. However, in the case under consideration, the legal assessment could not be limited to the fact of the initial receipt of funds by the bank: it was necessary to take into account the subsequent declaration of the transaction as void and the return of the performance to the insolvency estate. The performance declared void did not terminate the obligations of either the company or the individual[1].

Secondly, the right to choose the method of restoring the security obligation, by bringing a claim for recognition or for an award, lies with the creditor. Since, within the term of the guarantee, the Court of general jurisdiction, upon the bank's claim, recognised the guarantee as valid and enforceable, the Appellate Court had no grounds to consider the inclusion of the claim in the register as an improper method of restoring the individual's obligation[2].

Thirdly, the bank's reinstated claim against the company was entered in the third priority category of the register of creditors' claims without any reduction in priority. The court used this circumstance as confirmation that there were no grounds to regard the receipt of the initial payment as a preferential payment made in bad faith. Accordingly, the same rules on the reinstatement of obligations and the determination of priority also apply to the citizen's guarantee in her bankruptcy proceedings.

The SC adopted a systematic approach: the consequences of the invalidity of performance in bankruptcy proceedings must be assessed taking into account the reinstatement of the securing obligations.

The SC adopted a systematic approach: the consequences of the invalidity of performance in bankruptcy proceedings must be assessed taking into account the reinstatement of the underlying obligations. Any other interpretation would mean that a creditor who had returned the funds received would lose the right to make a claim against the guarantor, even though no grounds provided for by law for the termination of the guarantee had arisen.

In doing so, the SC distinguished between the actual receipt of performance and the final termination of the obligation, taking into account the subsequent legal fate of that performance.

An important conclusion follows from this: an assessment of the consequences of challenging a payment and the fate of the guarantee must take into account not only the formal fact of the transaction being declared invalid, but also the grounds for the challenge, the legal consequences of the return of the performance, and the established status of the reinstated claim in the principal debtor's bankruptcy proceedings.

At the same time, the return of funds in itself should not be regarded as universal evidence of the creditor's good faith.

[1] Article 329(4), Article 367(1), and Article 408(1) of the Civil Code of the Russian Federation; paragraph 30 of Judgement No. 45 of the Plenum of the SC dated 24 December 2020 "On Certain Issues Concerning the Resolution of Disputes Relating to Guarantees".

[2] Paragraph 26 of the Case Law Review of the SC No. 3 (2018), approved by the Presidium of the SC on 14 November 2018.

In this case, the conclusion of the SC was based on the totality of the circumstances and the outcome of the examination of the claim against the principal debtor.

The provision stating that amendments to the contract do not release the guarantor from its obligations maintains the validity of the guarantee even if the advance payment exceeds its amount[1]

Facts of the case

A public contract was concluded between an institution (the customer, beneficiary) and a company (the main contractor, principal) for the performance of works at a price of RUB 3.6 billion, with an advance payment of 30 per cent of the contract price (RUB 1.09 billion).

The bank (the guarantor) issued an independent guarantee to the client for the amount of the advance payment, under the terms of which it irrevocably undertook to pay the beneficiary any sum within the limits of the guarantee amount, including the amount of the advance payment. Clause 10 of the guarantee stipulated that no amendments or additions made to the contract would release the guarantor from its obligations under the guarantee.

Subsequently, the amount of the advance payment was successively increased by supplementary agreements:

— by supplementary agreement No. 5 — to RUB 1.8 billion, subject to payment upon provision of appropriate security; the bank also increased the guarantee by the same amount;

— by supplementary agreements Nos. 10 and 13 — to RUB 2.4 billion, and subsequently to RUB 2.9 billion; these did not contain a provision for a prior increase in the amount of security, and the amount of the guarantee remained unchanged.

The client accepted works worth RUB 2.6 billion, against which the advance payment was repaid in the amount of RUB 1.2 billion; subsequently, due to a breach of deadlines, the client unilaterally terminated the contract and demanded the return of the unearned advance payment in the amount of RUB 1.7 billion. As the main contractor failed to comply with this demand, the client made a claim against the guarantor, and the bank made the payment.

Taking the view that the increase in the advance payment under supplementary agreements Nos. 10 and 13 was not covered by the guarantee, and that the guarantee limit (RUB 1.8 billion) should be reduced by the amount of the repaid advance (RUB 1.2 billion), the bank brought an action before the court seeking a declaration that the client's claim was unlawful and seeking to recover RUB 1.1 billion in damages as an amount received in excess of the guarantee limit.

[1] Ruling of the Civil Chamber of the SC of the Russian Federation of 13 August 2026 No. 305-ES26-4737.

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Legal issue

The courts were required to rule on the extent of the guarantor's liability, namely:

—whether the guarantee secured the repayment of the advance in respect of the section by which it had been increased under supplementary agreements concluded without increasing the amount of the security;

—how, when calculating the guarantee limit, the sum of the guarantee and the sum of the advance payment offset by work accepted relate to one another.

The courts at all three levels granted the claim, stating that the guarantee did not cover the repayment of the increased advance payment and that, therefore, the amount of the advance payment offset by work completed (RUB 1.2 billion) should be deducted from the guarantee amount (RUB 1.8 billion) without taking into account supplementary agreements Nos. 10 and 13.

The Position of the Russian SC

The SC quashed the judgements of the lower courts and dismissed the claim, reaching the following conclusions.

Firstly, the terms of an independent guarantee are determined on the basis of its content (Article 368(2) and (1) of the Civil Code of the Russian Federation). The courts' conclusion that the increased advance payment was not covered by the guarantee was reached without taking into account clause 10 of the guarantee, which expressly excludes the guarantor's release from liability in connection with amendments to the contract.

Accordingly, the bank undertook to pay the beneficiary any amount within the limits of the guarantee (RUB 1.8 billion), including the amount of the advance payment, and the increase in the advance payment through supplementary agreements does not release it from this obligation. The customer's claim, which defined the payment amount as the difference between the advance payment transferred (RUB 2.9 billion) and the amount of the advance payment repaid (RUB 1.2 billion), was lawful and was lawfully honoured by the bank.

Secondly, the SC rejected the bank's argument that clause 10 of the guarantee refers to other amendments to the contract not related to an increase in the advance payment: such an interpretation is not based on the text of the clause, which contains no provisions specifying the amendments falling within its scope.

Thirdly, the SC noted the inconsistency and bad faith of the bank, which, on the one hand, does not recognise supplementary agreements on increasing the advance payment for the purposes of the guarantee, whilst, on the other hand, when calculating the reduction in the guarantee limit, uses the amount of the advance repaid, calculated on the basis of the advance payments actually made under those same agreements, thereby recognising their legitimacy.