CZ: Linear constructions under the Civil Code

The first amendment to Act No. 89/2012 Coll., Civil Code ("CC") with effect from 28 February 2017 introduced the term *"linear construction"*.

The provisions of Section 509 of the CC redefine the range of structures that due to their specific nature do not form part of the land and represent an exception to the general rule. So far it covered only *utilities*, such as water, sewerage, power lines and the like.

It's not only the terminology that has changed. The group of structures that do not share the legal fate of the land will expand to include structures that inherently pass through multiple plots. After the amendment comes into effect, these will for instance include reinforcement of drainage gutters or railway constructions. This change of the CC has also led to a change in Act No. 266/1994 Coll., on Railways, in which the same rule is incorporated.

The provision of the CC in question stipulates (as a legal presumption) that linear constructions shall include constructions and installations operationally associated with them.

The effect of the amendment will also lead to the cancellation of mutual pre-emptive rights established under the transitional provisions of the Civil Code, i.e. the pre-emptive rights of landowners to utilities located on the land, and the pre-emptive rights of the owners of the utilities to the land on which the utilities are located.

Tomáš Mls

CZ: "As is" – a simple solution that does not always work

The provisions of Section 1918 of the Civil Code state that "if a thing is sold *as is* (in aggregate), its defects shall be borne by the buyer. This shall not apply if the thing does not have the properties that the seller declared that it has or that the buyer stipulated as a condition for its acquisition."

If you thought you could avoid liability for defects in a thing that you have sold by including a clause on sale of a thing *as is* in the purchase agreement, you're not alone. Unfortunately, however, you will not be alone in making a mistake if you planned to use this solution, for example, when selling a car or an apartment. But why doesn't it work in these cases?

This provision actually embodies an exception when defects in the subject of sale are borne by the buyer. The buyer here implicitly waives rights arising from defects in the sold thing.

Of course it's not that simple. It is not a matter of any assignment of a thing *"as is"*. The essential matter is the postscript on assignment of things **in aggregate**. This provision can therefore be used only if a certain set of things is sold without further specification of individual items (i.e. in aggregate). The subject of sale must be formed by a group of things, regardless of the specification of individual pieces, but also regardless of their exact number, weight or measure. Examples might be factory equipment, inventory or the contents of a kitchen cupboard.

The provisions of Section 1918 fundamentally cannot be used when selling individually designated things or groups of things that are specified individually (e.g. an apartment or car, but also art collections, whose individual items are described individually).

While "proper" use of the provisions of Section 1918 in the sale of goods designated in aggregate is a consequence of the complete exclusion of rights arising from defective performance, during "improper" use, when selling individually designated things the covenants on sale of the thing *as is* will be invalid. The seller's liability for defects will thus not be excluded.

The general exclusion of the seller's liability for defective things sold in aggregate shall be breached in cases where the condition of uncertainty of the subject of sale is *breached* in some way. If the seller expressly declares that the thing (to be sold in aggregate) has a specific property, or the property is stipulated as a condition by the buyer, then these specified characteristics excluded from the seller's liability for defects in the subject of sale shall not apply and the seller shall be liable for the defects (but only for the properties of the things stipulated by the parties) in the usual legal or contractually agreed manner.

Dominika Veselá

CZ: Sublease of office space

In our practice we have seen a marked increase in requests to draft sublease contracts for office space. Clearly the aim is not only to use all the space, but also to maximise profits (whether by subleasing space that the tenant does not use or by subleasing the entire space in the event of relocation during the lease period). What do tenants who are considering subletting their office space need to look out for?

In particular, they need to understand that with a few exceptions (e.g. rent) the sublease conditions cannot differ from the conditions of the lease. If the subtenant intends to use the premises for activities other than those permitted under the lease agreement, they first need to change the lease agreement. Otherwise, the tenant runs the risk of breaching the lease agreement with all the potential negative consequences. Establishing a sublease is subject to the prior consent of the landlord. It is also important to understand that the conclusion of a sublease contract does not relieve the tenant of its obligations with respect to the landlord. If the subtenant behaves contrary to the tenant's obligations, the tenant shall be liable for this conduct towards the landlord.

That is why when preparing a sublease contract it is necessary to carefully analyse the terms of the lease and to ensure that the tenant's obligations will be similarly transferred to the subtenant, including all possible consequences (possibility to terminate the sublease contract, penalties, etc.).

Lukáš Zahrádka

SK: Property developers and illegal employment

Property developers may be excluded from participation in public procurements for three years if they are fined for violating the prohibition to accept work or services under the Illegal Employment Act.

Property developers should be wary of violating the ban on accepting work or services provided to them under contract or supplied by a subcontractor through its employees. Property developers do not have a legal relationship with any employees of the subcontractor, but nevertheless bear the consequences for any violation of employment laws.

If an illegally employed worker of the subcontractor provides services or work on the construction, there will be two overlapping violations. The subcontractor will violate the prohibition of illegal employment and the property developer will violate the prohibition of accepting any work or service by an illegally employed worker.

For a violation of the prohibition to accept work or service by an illegally employed worker the Labour Inspectorate is obliged to impose on the property developer a fine of up to EUR 200,000. This is known as absolute objective liability, i.e. the property developer is required to pay a penalty regardless of its knowledge of the violation of the prohibition of illegal employment.

Payment of a fine is not the only risk. In addition, the property developer will no longer meet one of the conditions for participation in public procurement and will be excluded from participating in public procurements for the next three years.

In order to avoid these problems, property developers should always verify the existence of an employment relationship between the subcontractor and its workers, e.g. by requiring the submission of employment contracts.

Natália Jánošková

Dvořák Hager & Partners Czech Republic

Oasis Florenc, Pobřežní 394/12
186 00 Prague 8
Czech Republic

tel.: +420 255 706 500
fax: +420 255 706 550
e-mail: praha@dhplegal.com

Dvořák Hager & Partners Slovakia

Cintorínska ul. 3/a
811 08 Bratislava
Slovakia

tel.: +421 2 32 78 64 – 11
fax: +421 2 32 78 64 – 41
e-mail: bratislava@dhplegal.com