CZ: Longer time interval when applying pre-emption right

As is well known, the legal pre-emption right of co-owners to property will return to Czech law with effect from 1 January 2018. One related issue is the length of time after the co-owner has learned of a violation of the pre-emptive right where it will still be possible to exercise the pre-emption right.

At first glance there is a clear answer to this question, which is that the ultimate limit is the general three-year limitation period. However, the Civil Code also provides that an obvious misuse of rights, i.e. the exercise of rights contrary to their purpose, does not enjoy legal protection. This second rule could result in a "delayed" application of pre-emption rights, for example, after one or more years have elapsed since a transfer made in violation of the pre-emption right was registered in the Land Register.

The Supreme Court resolved this question in a recent ruling in which it stated that a longer time interval between the discovery of a violation of statutory pre-emption right and exercising a claim arising from it is not in itself contrary to good morals, i.e. that it is not an obvious misuse of rights. In a particular case, however, a longer time interval when exercising the pre-emption right can (together with other essential circumstances of the case) justify the conclusion that an obvious abuse of the pre-emption right has occurred. A specific example would be claiming that the pre-emption right was violated in response to a dispute with neighbours.

According to the Supreme Court, however, the above conclusion should be made only exceptionally where clearly indicated by the specific circumstances.

Jakub Verlík

CZ: A slightly different approach to prohibition of competition

The Supreme Court of the Czech Republic has recently confirmed that certain business activities can be forbidden on an encumbered plot of land by an easement.

In the case under consideration, the parties established an easement contract that restricts the owner of the encumbered (servient) estate in favour of the owner of the neighbouring (dominant) estate, whereas the owner of the servient estate is obliged *to refrain from constructing and operating a business premises on the encumbered land whose line of business is related to furniture, home accessories, etc. that will come into direct contact with end customers.*

The Land Register refused to register this easement and the lower instance courts also considered it problematic. They argued that the easement consists of **an obligation that does not encumber the land as such, but only restricts the owner's business** and that such a restriction "*goes beyond the meaning and purpose of the easement*". The lower courts also stated that the parties could achieve the intended restriction by entering into an obligationary agreement.

However, the Supreme Court concluded that:

(a) The Civil Code (Act No. 40/1964 Coll.) did not contain an exhaustive list of types of easements, **so the parties could negotiate any kind of easement that meets the statutory conditions.**

(b) The agreed easement is therefore acceptable, because (i) it restricts the owner of the encumbered land by obliging it to refrain from an activity that would compete with the business activities carried out on the dominant estate, and (ii) the owner of the dominant estate enjoys the benefit that the owner of the servient estate is restricted in implementing its utility value.

(c) **The fact that the restriction concerns business activities cannot change this conclusion, because the law does not prohibit it.**

(d) That a similar result (albeit with a lower degree of legal protection) can be achieved by another contract (which is binding on the parties only and is not of a substantive nature) does not preclude the parties from giving priority to concluding a contract on establishment of an easement.

The same conclusions also apply under the New Civil Code, which also does not exclude the negotiation of an easement or servitude with individual content, provided the statutory requirements are met.

Dominika Veselá

CZ: Consequences of not indicating the size of a plot in the purchase agreement

The broader public has yet to fully digest certain provisions of the Civil Code effective from 1 January 2014, even though their impact on legal relationships may be significant. The first paragraph of Section 2129 is definitely among these.

This provision stipulates that if the plot of land does not have the size stated in the purchase agreement, the buyer is entitled to a reasonable discount on the purchase price. At the same time, however, the second sentence adds that if the plot of land does not have the size registered in the Land Register, the express agreement of the parties is required for the buyer to be able to claim a discount on the purchase price. In the latter case, the discount is not automatic.

What specific recommendations can therefore be made for negotiating land purchase agreements in practice?

If you are the seller and the buyer does not explicitly require it (e.g. because for some reason the size is very important to him), do not specify the size of the plot in the purchase agreement. And if you must, do not do so unless you include a reference to the data in the Land Register. This reference must explicitly indicate that the size is listed in the official list, not guaranteed by you (in case of a difference in the indicated size compared to the actual size this would give the buyer the right to claim a discount on the purchase price).

If you are the buyer, the exact opposite applies. If you require precise determination of the size, keep in mind that simply listing data according to the Land Register will not entitle you to a discount and that it must be negotiated explicitly. Whether (and under what conditions) this will succeed will depend on the negotiating abilities of the parties and their lawyers.

Tomáš Mls

SK: Obligations of property owners towards "foreign" employees

Employees often work at sites other than their employer's headquarters or operation. For example, in order to perform contracts for work, employees work at the premises of another employer. Does the other employer, as the owner of the property, have a duty and responsibility towards the "foreign" employees or persons in its premises?

Conditions for ensuring occupational health and safety ("OSH") are regulated by Act No. 124/2006 Coll., on Occupational Health and Safety (the "OSH Act"). Occupational injuries are closely related to the issue of OSH. Under Section 195 (1) of the Labour Code, the employee's employer at the time of the occupational injury is the employer responsible for the damage caused to him in connection with the occupational injury.

An occupational injury may also occur at the premises of another employer where the employee performs work (service, delivery of goods) or at a workplace where the employees of several employers perform work (common workplace).

Liability for the occupational injury always rests with the employer. Despite the clear regulation of liability for occupational injuries, under Section 6 (4) of the OSH Act, the owner of the space is obliged to ensure that information and instructions for OSH valid for its premises are given:

- to employees of other employers and natural persons / entrepreneurs (if they carry out work on its premises); and
- to other persons present in the premises with its knowledge.

Cooperation between employers on OSH issues should be part of the contract (Section 18 of the OSH Act). It is necessary to agree which of the employers is obliged to ensure the conditions for OSH at the common workplace and to what extent.

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