LEGAL ALERT

SELECTION OF LEGAL UPDATES

January 2024

ŠIROKÝ ZRZAVECKÝ
ADVOKÁTNÍ KANCELÁŘ

Employer's Termination of Non-compete Clause Without Stating a Reason

The Supreme Court, in its recent decision, confirmed that it is possible for an employer to terminate a non-compete clause during the duration of the employee's employment, even based on contractual agreement allowing the employer to do so without stating a reason or for any reason, or alternatively, based on any similarly agreed-upon provision for termination of the non-compete clause.

The Supreme Court also examined the validity of such termination, stating that concerning the validity of the termination, it is significant whether the employer, considering all relevant circumstances, acted arbitrarily or abused its contractually stipulated right to terminate the non-compete clause.

According to the court, the resulting assessment cannot merely be an arithmetic average of the considered circumstances, as certain circumstances must be attributed greater significance than others based on the specific peculiarities of the case under consideration.

(according to the judgment of the Supreme Court, file no. 31 Cdo 2955/2023)

Definition of Grounds for Termination of Lease of Business Premises

In the context of terminating a residential lease, it is generally established that the landlord must specify the grounds for termination factually. It is then up to the court to assess which provisions governing termination grounds apply to the factual description provided and whether it indeed constitutes a reason for which the landlord can terminate the lease. The Supreme Court further added that this conclusion can also be utilized when reviewing the legitimacy of terminating a lease of premises used for business purposes (in proceedings pursuant to Section 2314 (3) of the Civil Code).

(according to the judgment of the Supreme Court, file no. 26 Cdo 2068/2023)

Contract for Construction Work and Determination of Work Price According to Budget: Extraordinary and Unforeseeable Circumstance within the Meaning of § 2620 (2) of the Civil Code

In the matter under consideration, the plaintiff (contractor) sought payment of a monetary amount, including interest for delay, from the defendant (client). This claim was supposed to arise from a contract for work, the subject of which was the replacement of pipelines on the defendant's premises according to project documentation. The price for the work was agreed upon as a fixed amount with a subsequent amendment for its increase, with the understanding that this price includes all costs associated with completing the work and is maximum and non-exceedable. Any further change in the price of the work was only possible based on a pre-approved written amendment to the contract. However, it subsequently emerged from the submitted documents that the project had incorrectly estimated the quantity (dismantling of existing pipelines), and based on this fact, the defendant then requested the conclusion of the mentioned amendment to increase the price of the work, which the client refused.

The Supreme Court, within the framework of the submitted appeal, summarized

that an entirely extraordinary and unforeseeable circumstance can be considered one that substantially complicates the completion of the work, arises (completely) beyond the contractor's control, cannot be or could not have been prevented by exerting effort that can reasonably be expected from a person in the contractor's position, and the occurrence of which, and the fact that it substantially complicates the completion of the work, could not have been anticipated by the contractor at the time of concluding the contract (with an adequate level of probability), and this circumstance, with its extraordinariness, entirely deviates from the circumstances that commonly occur in similar situations.

(according to the judgment of the Supreme Court, file no. 33 Cdo 301/2023)

Settlement of Claims for Unjust Enrichment under § 2993 of the Civil Code

In this decision, the Supreme Court addressed the conditions under which the presumption formulated in provision § 2993 of the Civil Code, namely that a party performed "*without there being a valid obligation*," will be fulfilled. The court stated that this will be (and the performance subject to the regime of § 2993 of the Civil Code will occur) even where it is necessary to settle the provided performance because the parties were mistaken in the assumption that the contract continues, although a termination condition has already occurred, leading to its termination (for future periods).

Furthermore, the Supreme Court in this matter assessed whether the provided performance can be regarded as performance based on an implied (impliedly continuing) sublease agreement if, at the time of accepting the performance, the lessee knew (unlike the sublessee, as the provider of the performance) that it could no longer be about subleasing because the sublease agreement terminated contractually (by termination of the lease agreement, under which the lessee subleased the leased object to the sublessee).

It can thus be concluded that if both contractual parties continue to provide each other with mutually agreed-upon performances after the termination of the contract, with at least one of them accepting such performance (assessed from its objective perspective) as performance under the contract, the provisions contained in § 2993 of the Civil Code will apply regardless of whether the other contractual party accepted the mutual performance, although it knew that performance according to the contract was no longer possible (that the contract had already terminated), and whether this second contractual party subsequently raises the objection of mutual performance.

(according to the judgment of the Supreme Court, file no. 29 Cdo 3609/2022)

Is a Partner in a Limited Liability Company Entitled to Claim Reflexive Damage?

According to a recent judgment of the Supreme Court, a partner in a limited liability company is not entitled to seek compensation for so-called reflexive damage (i.e., damage incurred by the company resulting in a decrease in the value of the partner's share in the company) either through § 2913 (1) of the Civil Code, which regulates compensation for damages resulting from a breach of contractual obligations.

Firstly, in cases where the damage to the company has not been caused by a member of its statutory body, it is the director who is obligated to seek compensation for the company (to comply with the requirements of the duty

of care of a prudent manager). If they fail to do so and do not seek compensation for the damage caused to the company (which, concerning the partner, constitutes reflexive damage), the partner is entitled to assert a derivative claim against this director.

Furthermore, the Supreme Court stated that the opposite conclusion, according to which a partner would be entitled to claim compensation for damages directly if the damage to the company was not caused by a member of its statutory body, cannot hold true precisely because while actual damage caused to the company is also compensated by replacing the reflexive damage incurred by the partner, compensating only the reflexive damage to the partner does not compensate for the actual damage caused to the company. Compensating reflexive damage directly to the partner could, on the contrary, harm other partners or creditors of the company.

(according to the judgment of the Supreme Court, file no. 27 Cdo 3333/2022)

Contract for Performance of Function and the So-called Managerial Contract: What Happens in Case of Their Concurrency?

The Constitutional Court assessed a situation in which a member of a statutory body simultaneously entered into a contract for the performance of functions as a member of the statutory body and a so-called managerial contract with a commercial company.

The Constitutional Court stated that a managerial contract may be contractually subject to the regime of the Labor Code, but only within the limits arising from the mandatory norms of commercial and civil law, among which is the requirement for the approval of the remuneration of a member of the statutory body by the general meeting of the company.

Reference is also made to the case law of the Supreme Court, which no longer holds the view that a "managerial contract" concluded under the Labor Code regime is always invalid. Lower courts followed this change in legal opinion, leaving them room to assess the managerial contract as allowed by the Constitutional Court. General courts acknowledged that although the performance of the function of a member of the statutory body cannot be carried out concurrently in commercial and labor law regimes, it is possible for the contractual agreement of the parties to incorporate the regulation contained in the Labor Code into the commercial relationship (i.e., the relationship between the commercial company and a member of its body).

The Constitutional Court added that this legal opinion respects the reservation from its previous findings, namely that the fact that conceptually it does not involve the performance of dependent work does not mean that other legal relationships cannot be contractually subject to the regime of the Labor Code.

(according to the decision of the Constitutional Court, file no. III.ÚS 410/23)

***

If you have any questions or need consultation, please do not hesitate to contact us via email at info@sirokyzrzavecky.cz.