

## The Latvian Supreme Court Clarifies Recovery for Cancellation of Leasing Contract



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In Latvian Case SKC-176/2017, lessor Swedbank Leasing resold the lease objects to another buyer after lessee Mednis had made full payment, such that, according to the judgment of the arbitration court, at the moment the objects were resold the lessee was not in debt to the lessor. After the sale of the objects Swedbank Leasing kept

the difference between the value of each leasing object and the total payment made by Mednis (excluding interest and VAT). As a result, Mednis argued, Swedbank Leasing unjustly acquired wealth at the expense of Mednis for the difference, because the payment of Mednis included both interest and payment of principal amounts that were the price for buy-out of the leasing objects.

Swedbank Leasing contra-argued that it retained the title to the leasing objects up until the moment Mednis fulfilled all its obligations under the leasing contracts; thus it had just gained all possible benefits from its property, including reselling the leasing objects.

According to Swedbank Leasing, it used the funds obtained from the sale to settle the debt of Mednis. The leasing contracts did not provide that Swedbank Leasing should return the difference to Mednis. Mednis did not buy out the leasing objects and the leasing contracts were terminated before their term. Swedbank Leasing as the owner of the leasing objects realized full power of its ownership of the property by selling those objects to third parties after the leasing contracts had been terminated, and in doing so had acted according to the law and the leasing contracts.

The main motive of the cassation complaint was the allegedly unjustified acquisition of wealth by Swedbank Leasing, which had gained almost double the income from the sale of the same leasing objects first to Mednis and then to third parties.

The Supreme Court recognized Mednis's claim as substantiated, ruling that, although at the moment the leasing contracts were concluded there were no specific provisions of law regulating them, provisions that regulate transactions which in this particular case could be considered elements of the lease, as a compound transaction, should have

been applied.

According to the Court, the leasing contracts qualified as purchase by gradual instalments, because the intention of the parties was to transfer the leased objects into the possession of Mednis after all leasing payments were made. Such qualification conforms with Article 463(2) of the Latvian Commercial Law, which provides that the provisions of the Civil Law regulating the purchase agreement apply to leasing contracts if at the end of the term of contract the lessee is obligated to buy out the lease object. Therefore, the Regional Court should have applied the provisions of the Civil Law regarding purchase agreement by gradual instalments.

In the opinion of the Supreme Court, although Mednis's claim was based on the general provisions of the Civil Law restricting unjustified acquisition of wealth, according to the principle *inra novit curia*, the Regional Court should have known the applicable provision in the legal system itself and therefore it should have applied the specific provision of the Civil Law restricting unjustified acquisition of wealth in cases of purchase by gradual instalments provided in Article 2070 of the Civil Law.

Clause 2070 of the Civil Law provides that: *"If the right of payment of a purchase price by instalments has been contracted for, and the purchaser has defaulted with respect to two payments, but the seller does not wish to burden himself or herself with the collection of late payments, [...], then the seller may request setting aside of the contract and return of the sold property together with compensation for the use, during the period from the delivery of the property to the purchaser until the return of the property to the seller, and for the losses caused for the latter. Against the amount, that the seller is entitled to from the purchaser on such basis shall be set off all the payments made by the purchaser, and if they exceed such amount, then the remainder shall be paid back to the purchaser. Agreements contrary to these regulations shall be void."*

Pursuant to the specific provision applicable in case of termination of the leasing contract, the seller's claimed right for payment of the purchase price transforms into a claim for payment for use of the leasing object and compensation of losses, but any sum exceeding those payments shall be refunded. In these circumstances, on the basis of Article 2070 of the Civil Law, Mednis was entitled to have the overpaid amount returned.

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