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SPECIAL RULES IN BUILDING CONTRACTOR

BY

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Abstract. The concept of entrepreneurship is general because on the basis of this contract is executed construction works, installation works and trade debtors etc. In the absence of specific regulations or in addition to, the rules relating to contract applies intellectual work and tutoring, professional consultations etc. The essence of the contract, regardless of the work performed is that the contractor is bound to the client to execute acertain work and to deliver, but the work being executed at his own risk, the entrepreneur.

Although the Romanian legislator has developed a series of regulations for construction, such as the Law no. *10*/1995 on the quality of construction, the Law no. *50*/1991 on the authorization of construction works, etc., we analyze the special rules construction contracting regulations in terms of the new Civil Code, which entered into force in 2011.

Work contracted out is governed by the new Civil Code in art.1851-1873 and the contract for construction work in art.1874-1880.

Key words: special rules; contract; constructions.

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1. Introduction

Among all types of construction contracting is best known, given their complexity and the work is being executed by this kind of enterprise.

Building Contractor has the widespread practice and may relate to building construction, reconstruction, strengthening extension, modification buildings and other structures such as the execution of roads, fences, underground facilities and plumbing and repair construction, design etc.

From art. 1874 content of the new Civil Code, it appears that "by the contract for construction works, the contractor undertakes to perform work which, by law, require the issuance of the building permit".

Also, the new Civil Code provides in Articles 1875-1878, novelty, a number of other conditions necessary for the execution of the Contract, under which we will develop further.

2. Conditions Necessary for Execution of Works Contract under the New Civil Code

Execution of construction works, installations and repairs, as well as their dissolution can be made only under an authorization issued by an administrative authority (mayor, county council president).

In accordance with the provisions of Law No. *10*/1995 on the quality of construction, issuance of the building permit shall be made only on the basis of projects verified by certified experts and work, for which authorization has been issued, can only be done by individuals or legal entities authorized.

In the case of building contractor completion of a written contract is required by law only for sample.

A first novelty, art. 1875 provided by the new Civil Code, is referring to the fact that to achieve optimal use of the work contracted, the beneficiary (client) is required to enable the contractor, when this is imperative for the performance of work, the use of access roads, plant their own water supply and other utilities serving the property. At the same time, the customer has the obligation to obtain all authorizations and permits required by law for the execution of work of which the beneficiary is.

Another novelty is the set of art. 1876 provisions of the new Civil Code, according to which, during the execution of the contract, the customer/beneficiary is entitled without hinder normal operations of the contractor, to monitor progress of implementation, quality and appearance work done and materials used, and any other issues that contribute to the fulfillment by the contractor of its obligations arising from the contract. Communication beneficiary to the contractor on its findings and directions will be in writing, if not otherwise provided in the contract.

New Civil Code provides in art. 1877, and entrepreneur some obligations incumbent in this position. Thus, if during the execution of the contract, the contractor found some mistakes or deficiencies in design work on which the contract was concluded that it is a party, then it shall be required to immediately inform both the beneficiary and the designer about its findings and request the recipient to take appropriate measures to be taken .If the recipient is not taken to remove the deficiencies pointed out by the contractor, or if appropriate measures are not taken, the contractor may suspend the execution of the work, informing the recipient that so and the designer paper.

Regarding the risk contract art. 1878 the new Civil Code provides that, after completion, proceed according to the law, the provisional reception after work, after which will follow final acceptance. Important to remember is that the risks are transferred to the customer from the date of provisional acceptance, on completion.

3. Subcontracting

In principle, the performance of a construction contract with one customer ends entrepreneur. If he was not expressly prohibited by a clause in the contract, the contractor may entrust the execution of parts of the work of subcontractors for plumbing, electricity, carpentry, etc., based on subcontracts.

In this sense, art. 1852 par. (1) of the new Civil Code provides that under a subcontract, the contractor may entrust one or more subcontractors execution of parts or elements of the work or services, except in the situation where the contract for work was concluded in considering person.

Based subcontracts rights and obligations arise only between contractor and subcontractor, client also is third to the two parties.

As contractor liability for subcontractors deed, it will be liable to the client, as well as for his own act, under Art. 1852 par. (2) of the new Civil Code.

4. Liability in Construction Contracting

Law No. *10*/1995 on the quality of construction provides for special rules regarding liability contractor (manufacturer). The contractor is responsible for:

a) all hidden defects of construction occurred within 10 years after the reception of the work;

b) vices resistance structure of the building, resulting from non-compliance with the design and execution throughout the life of the building;

c) apparent faults to reception or only during the warranty period, if the latter was established by law or by contract. It should be remembered here that

the prescription right of action for apparent defects begins to run from the date of final acceptance or, if applicable, the expiration for entrepreneurs through the minutes of final acceptance, to remove defect [art. 1880 paragraph . (1) of the new Civil Code].

To remember is that they are not allowed in the contract clauses to limit or eliminate the liability of the contractor, but are admitted for worsening of liability clauses. Liability for defects lies not only entrepreneurs, but also the designer (architect), if it finds that the construction defect stems from a design error.

As regards the limitation of the right to work designing action vices, it begins with the right prescription for action vices contractor executed works, except the situation where design flaws were discovered work before, in which case the prescription will begin to run from the date of their discovery [art.1880 par. (2) of the new Civil Code].

Regarding the client's right to claims liability for hidden defects, art. 2531 of the New Civil Code provides that prescription right of action for latent defects begins thus:

a) in the case of works executed, other than a building, the first anniversary of the date of final acceptance of the work, unless the defect was discovered before, when prescription begins to run from the date of discovery;

b) if a building from the end of three years from the date of final acceptance of construction, unless the defect was discovered before, when prescription begins to run from the date of discovery. Period of three years is the warranty for the work, timeframe in which it should appear vices.

5. Exclusion of Liability

Disclaimer is governed art.1879 the new Civil Code, which provides that the architect or engineer is relieved of liability for defects only work if it turns out that they do not result from deficiencies of surveys or plans that provided them and if any, of any lack of diligence in coordination have supervision of works.

Contractor shall be relieved of liability only if it proves that the defects arising from deficiencies in surveys or plans of the architect or engineer selected by the client (beneficiary). Subcontractor shall not be relieved unless he proves that the defects resulting from the decisions of the expert or contractor or architect or engineer.

All these people will be released from liability if the work will prove that the defects resulting from the decisions required by the customer (client) in soil or material choice in choosing subcontractors, experts or methods of construction. Disclaimer not operate when these vices, although they could be provided in the paper, they were not notified to the beneficiary.

6. Special Rules for Termination of Contract

In principle works contract terminated in cases and common law regarding reciprocal agreements (bilateral). However, there are some special rules for contract termination, termination or rescission, which may be the fault of both contractor and customer/beneficiary work.

Related to this, art. 1872 of the New Civil Code provides for cases in which the beneficiary is entitled to obtain termination or rescission of the contract, due to the fault of the contractor, namely:

a) when meeting the deadline agreed to receive work became impossible;

b) if the work is not executed in an agreed manner when a deadline set by the customer/client according to the circumstances, the contractor does not remedy the deficiencies found and does not change for the future mode of execution of the work or service;

c) when the contractor fails to perform other duties prescribed by law or contract.

As the fault termination or rescission of the contract beneficiary art.1873 the new Civil Code provides that if the contractor can not begin or continue performance of the contract due to failure by the beneficiary of their obligations, the contractor is entitled to obtain termination or, as the case, terminate the contract,with damages, if they were provided in the contract. In relation to entrepreneurship, there are special rules for death hypothesis contractor or inability to perform the contract, and the death of the beneficiary.

Regarding the work of the beneficiary's death, according to the new Civil Code art.1870 "not cause termination of the beneficiary's death unless it is impossible or unnecessary execution".

For death hypothesis contractor or ability to perform the contract, art. 1871 of the New Civil Code provides that if the contractor dies or becomes, through no fault of his, unable to complete the work or to provide the service contract is terminated if was concluded in considering personal skills of the entrepreneur.

The beneficiary is required to receive the already executed if he can use. However, the beneficiary is required to pay in proportion to the price agreed value of work performed and the expenses incurred to complete the work, if such work and spending longer serve them. Also provided the beneficiary is entitled to pay adequate compensation, to require the teaching materials prepared and plans are about to be enforced, the laws on intellectual property rights remain applicable.

7. Conclusion

Legislation such special rules of construction contracting, the new Civil Code entered into force on November 1, 2011, it was imperative to take measures which contribute to without too much difficulty executing the Contract. These measures are, in fact, a number of new obligations accessories for both contractor and client (client also), measures that would be observed during the life of the Contract, may help to avoid the appearance of gaps in performance contract, but also to solve easier and quicker as the possible problems in contractual relations.

On the other hand, compliance with these new measures is motivated by the fact that construction contracting activity covers construction of buildings, rebuilding, strengthening extension, modification of buildings or other construction activity that occurs at very high costs.

It should be noted that the emergence of disputes arising from contracts of contract would lead to overcrowding of courts to address them, even though, before going to court, the parties have the reach and another institution to deal with them (a disputes), namely mediation, to which Romanian society but is still quite reticent.

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REGULI SPECIALE ÎN ANTREPRIZA DE CONSTRUCŢI

(Rezumat)

Noţiunea de antrepriză este generală, deoarece pe baza acestui contract se execută lucrări de constructii, lucrări de instalaţii, prestări de servicii, etc. În lipsa unor reglementări speciale sau în completarea acestora, regulile referitoare la antrepriză se

aplică şi lucrărilor de natură intelectuală precum meditaţiile, consultaţiile profesionale, etc.

Esenţa contractului de antrepriză, indiferent de lucrările realizate prin intermediul său, constă în faptul că antreprenorul se obligă faţă de client să execute o anumită lucrare şi să i-o predă acestuia din urmă, lucrarea fiind însă executată pe riscul său, al antreprenorului.

Deşi legiuitorul român a elaborat o serie de acte normative pentru domeniul construcţiilor (Legea nr.*10*/1995 privind calitatea în construcţii, Legea nr. *50*/1991 privind autorizarea executării lucrărilor de construcţii, etc.), vom analiza regulile speciale în antrepriza de construcţii prin prisma reglementărilor în materie din noul Cod Civil, intrat în vigoare în anul 2011.

Contractul de antrepriză este reglementat de noul Cod Civil în art.1851-1873, iar antrepriza pentru lucrări de construcţii în art. 1874-1880.