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CONDITIONAL CLAIM

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ABSTRACT

Various methods are used to protect individual rights and freedoms. The most common of these methods is that individuals defend their rights by filing lawsuits. The types of claims used in the civil protection of personal rights include repressive and negative claims, as well as conditional claims. A conditional claim is considered as a person's claim to return money or property. The grounds, procedure and conditions for filing a claim for the return of property acquired dishonestly are relevant today.

In Roman law, a claim of condiction was filed to claim wealth obtained without the participation of Assos. Roman lawyers had to make up unreasonable wealth in three parts, depending on the subject of the claim:

be made by mistake or otherwise held accountable for an action that does not need to be paid;

in exchange for the return of something that was given in advance (that is, intended to perform an action or terminate an action;

as a result of enrichment on other grounds. The following grounds were required for the implementation of these relations: amount, money, equivalent, material to be transferred to another person;

the presence of a state without prior debt; in a situation where it is difficult to correctly understand what is wrong, make a mistake;

transfer of property interests to another person;

the fact that the goal and the foundation were not realized led to unjustified wealth. These circumstances, in turn, led to the emergence of obligations [1].

In civil law, obligations are divided into three institutions, namely: institutions of contractual obligations, tort obligations and institutions of conditional obligations. To clarify more clearly, according to the current Civil Code, the basis for the occurrence of obligations is divided into two types: contractual obligations and obligations arising outside the contract. There are also two obligations to those who arise outside the contract, that is, obligations that arise from harm, and obligations that arise as a result of creating unreasonable wealth [2]. The condition arises due to the unjustified acquisition, enrichment of property or property rights



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Creating unjustified wealth is a situation that is prohibited by law, but it is a practice that occurs in our daily lives. Unjustifiably acquired wealth is considered wealth acquired by a person who owns property at the expense of another person, the victim or the plaintiff, or who acquires it in exchange for the preservation of property. Digitalization of our life and economy in society has made everyone a participant in civil law relations related to the use of new technologies. Improper use of a number in the process of paying for a mobile phone or other types of services through an electronic payment system, making a payment leads to an unjustified increase in the welfare of an individual. Wealth acquired through property savings is obtained as a result of owning property saved as a result of using the creditor's property. For example, if a construction company performs construction work at the expense of the customer's materials, the property spent on the work performed, saving the customer's construction materials and not returning them to the customer, is unjustifiably acquired wealth by the construction organization [3].

In the same way as the following, cases of unjustified enrichment are also considered: a pledge of money, which is issued on the basis of an oral preliminary agreement on the purchase of a house, is a condition under which a loan is issued by an oral agreement, but the borrower does not return the funds;

advertise a service or product by installing an unauthorized advertising banner, without approval, in a private house or an enterprise building on the street;

income received in exchange for applying an incorrect tax deduction; there are no obligations of the taxpayer to the budget for the overpayment paid on the tax.

It is known that, according to the requirement of article 182 of the current Civil Code, the basis for the emergence of property rights is labor activity; it is considered that it consists of such grounds as entrepreneurship and other economic activities in the field of property use. A natural or legal person has acquired the right of ownership on these grounds established by law. But in case of cancellation of these grounds in court after the expiration of the term, its owner is a subtext of unjustifiably acquired wealth, and the acquired property is unjustifiably acquired wealth. The obligations to unreasonably increase wealth vary from state to state, but the basic principles are the same - increasing wealth at the expense of a second person.

An unreasonable increase in wealth can occur in a situation that does not depend on an individual, for example, due to natural phenomena. For example, as a result of the wind, the characteristic of one peasant was added to the profitability of the second peasant, but the second peasant did not have such a goal, which means that the acquisition of unreasonable wealth is generated outside the will of man, that is, due to a natural phenomenon [4].

Before analyzing the consolidated claim, we need to briefly analyze the concepts of responsibility and requirements. One of the most basic areas of civil law is the area of the law of obligations. According to him, one person is forced to perform any actions in favor of the second person, that is, to transfer property, pay money, provide



services, perform work or restrain himself from a certain action. And the creditor has the right to demand the fulfillment of obligations. One of the most important elements of an obligation is its subtext, object and content. The subjects of responsibility are those persons who bear a certain type of obligations and have certain rights. An obligation is the creditor's right to demand in a relationship and, accordingly, it is the object of the obligation when the debtor is directed to what his duty is. Through the right of obligation, many relations are regulated in society, such as the transfer of property from one person to another, the provision of various services through service enterprises, etc. The right to an obligation can be divided into two sections, namely general and special rules. Obligations are divided into contractual and non-contractual types. Scientists divide commitments into positive and negative meaningful commitments. For example, this is a positive obligation if the performance of a certain action is obligated to the debtor, and the other party (the creditor) has the right to demand (purchase, sale, lease of property). Such an obligation is a negatively significant obligation if the debtor has the right to demand that the creditor refrain from actions, the obligation to avoid committing a certain action [5]. The scope of obligations is considered to be very broad, but we will not analyze it completely and return to the main issue. Let's analyze the claim a bit before condition finds out about the claim. Since our legislation does not contain much information about this, we also rely on German legislation.

As a general rule, both parties to a transaction terminated by a court (Article 167 of the Civil Code of the Russian Federation) are obliged to return what they received. For example, an equipment lease agreement was concluded, but the deal was terminated in court. The first party returns the equipment, while the second party returns the property that it owns under the contract. If the property is not returned in kind, its value will be paid in monetary terms. If necessary, specialists will be involved to assess the property or the market value of the property will be calculated. Again, the return can be one-sided. This option, if the transaction is concluded with deception, the use of force and intimidation with other malicious intentions, in such cases, the return of property as part of the recovery is carried out unilaterally. For example, there is such a rule in the Civil Code: if, due to the actions of the creditor, the debtor could not fulfill or properly fulfilled its obligations, the creditor has no right to claim damages.(Article 416 of the Civil Code). There are cases when the courts do not recover, although they cancel the transaction, the property is not subject to restitution. For example, if the transaction was intentionally carried out for an illegal purpose, the state will receive a reward in its favor (Article 169 of the Civil Code of the Russian Federation). There are two schemes: if both parties deliberately violate the law, then everything they receive under the contract is assimilated in favor of the state. If only one party fulfilled the obligation, then it had to pass from the second to the first. If the violation of the law was carried out only on one side, then it is returned to the property of the other



party. This is an example of one-sided restoration.

Below we will get acquainted with the opinion of scientists on the justification and conditioning of claims. For a long time, one of the most intractable problems associated with the institution of unjustified enrichment in the theory and practice of civil law remains the problem of its compliance with other requirements stipulated by law aimed at restoring the violated property sphere of participants in civil relations. turnover. Sometimes the conditions for the occurrence of these requirements may coincide with the conditions for the occurrence of obligations arising from unjustified enrichment, as a result of which it is possible to cross the scope of their application. Such a situation is possible with the use of accusation and justification.

In order to consider the relationship between the requirements of conditioning and vindication, it is necessary to determine the specifics of these requirements. According to M.V. Telyukina, the main difference between claims for condication and vindication claims is that a vindication claim is a property right, while a claim for condication is a legitimate method of defense [6].

V.A. Belov, differentiating claims, calls the following differences between a vindictive claim and a conditional claim: a specific object, specific content, clear grounds for refusing to satisfy the owner, who is a bona fide buyer.

The author takes into account the following characteristics, that is, the composition of the physical object, since the justification can only be stated by the owner of the thing, who is deprived of the right to own it, to the owner who is not its owner. In

other words, from owner to owner. And this tetris is slightly different in the claim of the condicon. As V.A. Belov noted, the owner of the claim of the condicon is a person who has lost ownership of the property or suffered from the deprivation of his other legitimate property interests [7]. And the owner of the obligation corresponding to this requirement is a person who unreasonably owns the property that has preserved it. It is difficult to agree with this opinion, since illegally acquired or stored property cannot become the property of an illegal owner. According to the prosecution, it would be more correct to say that the defendant is the illegal owner of the property.

According to A.V. Klimovich, the description of possession as illegal in this case may require some explanation: if everything is clear at the time of justification (the property is required from someone else's illegal possession by the owner himself), then in the case of a court verdict, the property will be seized [8]. It should be borne in mind here that the acquirer has become a legally unjustified owner, which makes it possible to call him an illegal owner. The author's point of view on the transfer of property to the recipient's property in the conditions is controversial. Despite the fact that the property is actually at the disposal (use) of the recipient, he cannot be considered the owner of this property due to the fact that there are no legal grounds for the emergence of ownership rights.

In our opinion, the position of A.V. Klimovich is also controversial, since a control situation may arise when an illegal buyer receives something, but he has no right to own it. The owner of the property who does not have it, even if the property



rights of an unreasonably rich person appear, does not lose ownership of it and does not cease to be the owner, since an unreasonable buyer owns the property without legal grounds. But it must be recognized that even if the ownership right arises from an illegal buyer, such powers are not based on the norms of law. As for the object or subject of a claim for damages, it can be seen that the absolute majority of civilists tend to believe that it can only be individually, but something definite can happen. For example, according to A.P.Sergeev and Y.K.Tolstoy, we are faced with the following statement: it is possible to very clearly define the boundary between a court decision and justification: if the plaintiff claims property belonging to the right of ownership from the defendant's illegal possession, then vindication takes place if the property is declared, which is determined by common characteristics and is not separated from the common property.

The above allows us to draw the following conclusion: the owner, who has the right to the property, makes a claim against the property during the vindication. This conclusion creates serious problems. In our opinion, the owner of the property

deprived of ownership of it can be returned legally, on the basis of a court verdict, the property belonging to an illegal buyer on the basis of property rights. According to V.P. Mozolina, the requirement for justification is aimed at returning to the owner the right to own a separately defined thing, in the case of unjustified enrichment, the requirement for its return implies the return not of the same property, but of an equal number of the same things. Such an interpretation may violate the rights of the victim if, in the case of unjustified enrichment, he wants to return exactly the property that he lost. Therefore, the object of unjustified wealth creation can be separately defined objects. V.E. Epifanov, considering the problem, says that if the disputed property cannot be individualized, and the real user has no grounds for obtaining it, then the rules of unjustified enrichment should be applied to the disputed relationship, and not a claim for damages. We believe that this opinion is quite justified, since it is somewhat difficult to apply a vindication claim against species-specific objects or objects that are much more difficult to distinguish from each other.

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