

Some considerations of the construction contract¹

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Abstract: Considering the provisions of Law 50/1991, which ranks as the construction works, works for which is necessary to obtain the building permit or the work for which such authorization is required, we believe that once the civil code have this legal definition of entrepreneurship, special leave out the general framework governed by the civil code of all construction work for which no building permit is required. We consider inadequate qualifications for closely related works (even if it is not necessary to obtain a building permit), subject to a simple contractors for works or services.

Keywords: Work in construction, building permit, beneficiary, reception work, contractual liability.

Contract for construction works

Contract work for the construction of buildings or any other buildings (traffic routes, factories, etc.) and works of installations and repairs to existing construction, including design, is the most important form of contract work.

In the case of Article 1,874 (1) C. civ., the contract of contract work for construction works, contractor shall undertake to carry out work which, according to the law, require the authorization of construction.

Civil construction, industrial construction, including those to support plumbing and tehnic machinery, agricultural or any other can be done only in compliance with the building authorization. (Article 1 (2) of Law No 50/1991 concerning the authorization of construction works, republished, with subsequent amendments and supplements]

The work of building of the contractor may take other shape of reconstruction, consolidation, changes, extension, etc. and can look at other buildings than buildings, as well as works of installations and repairs to buildings.

In accordance with Article 2 of the same decree, authorization to construct constitutes the final act by the authority of the local public administration on the basis of which is permitted execution of construction works properly by law as to the location, design, implementation, operation and after utilization of the constructions.

Written form of the contract for the construction contract is required ad probationem.

Only leagal authorized fizical or juridical persons can carry out construction work.

As obligations of the antreprenor in the construction industry are the following:

- to carry out the work under contract to the period within, and the characteristics set out in the contract (the plans and projects of execution), -
- to give to the beneficiary the complete work after checking (reception) and,
- to guaranty the beneficiary against the vices of the construction and the quality of work.

¹ This material includes ideas reflected in the work of Civil Law-Special Contracts, Legal Universe Publishing, 2011

In the case of Article 1,877 (1) C. civ., where, in the course of performance of the contract, It finds errors or deficiencies in the work of the design on the basis of which is the subject of the contract, the contractor shall be obliged to notify as soon as possible the contracting authority and the beneficiary, together with proposals for appropriate remedial measures, To the extent that they fall within the scope of his professional, as well as to require recipient to take the appropriate measures.

If the beneficiary, taking the designer authorization, does not communicate as soon as possible the measures taken to remove mistakes or shortcomings reported or if the measures taken are not appropriate, contractor may suspend execution of the works, advising as quickly as possible the beneficiary and the designer.

Responsibility for vices, the terms of guarantee against vices work shall be those laid down by special law.

We refer to the periods covered by Article 29 of Law No 50/1995, republished, with subsequent amendments and additions, namely: "The designer, the specialist certificate to verifier projects, manufacturers and suppliers of materials and products for construction, practical agent, the person responsible for the technical execution , the project supervisor, shall be responsible in accordance with their obligations for hidden vices of the building, queries arising within a period of 10 years of work at the reception, as well as after the deadline for the duration of the existence of the construction, for structural vices failure to comply with detailed rules for design and execution in force at the time of the execution of construction."

In specialized doctrine they have considered that, in relation to third parties, practical agent may be responsible for his own deeds, on the basis of Article 1,357 C. civ., and building owner shall be responsible for its ruin edifice , on the basis of Article 1,378 C. civ. The architect or engineer shall be released from liability for vices only if they can prove that they do not result from expertises and plans which they provided and, where appropriate, from a lack of due diligence in the coordination or monitoring of the work.

Contractor is exonerated only if it proves that vices resulting from shortcomings of expert advice and/ or the plans of the engineer chosen by the beneficiary. The second contractor it is not exonerated unless it proves that the vices result from the decisions of the contractor or expert reports or plans of the architect or engineer.

The contractor, the second contractor, the architect or the engineer may be exonerated from their liability if they can prove that these flaws result from the decisions imposed by the beneficiary in choice of soil or materials or in choosing subcontractors, of experts and of the methods of construction. Exemption from liability is not operating when these vices, although they could be provided during execution of the project, they have not been notified to the beneficiary.

Right to a civil action for the apparent vices begin on the date of the final reception or, as the case may be, on the vested period granted by the minutes of final reception, for overcoming found vices.

Prescription of civil actions for vices of the design work begins to run on the same time with the prescription of civil actions for vices of the works executed by contractor, unless the vices of the project works have been discovered earlier, In this case the prescription will begin to run on the date of their discovery.

Obligations of the beneficiary of the contract are the same as in the contract of common law:

- to receive the work after reception,
- to pay its price.

Obligation of payment of the price, it has some special features wich are determined by the subject of the contract.

The price may be fixed at a standard rate (via a lump sum) or on the estimate (price of estimate).

If the work has been contracted on a standard price (global), the contractor shall be obliged to carry out and to give the work in accordance with the conditions laid down in the contract and may not require any increase of payment (price), nor for the reason of raise in the price of labor or materials, Not for the reason that he would have made changes and additions to the plan initially, unless the additions and changes have been approved in writing by the beneficiary of the contract and has been amended on this occasion and the price.

The price is, however, as a general rule, established on the basis of estimate, i.e. on the basis of a provisional estimates on articles. This estimate may change during execution of the project, according to the actual price of materials and labor, as well as by adding additional works. The price is set article by article and supports variations, depending on market prices, and the total price (final) will depend on the quantity of the works actually executed.

In addition to the principal obligations, the recipient has some specific secondary obligations, which are provided for by Article 1,875 C. civ.:

a). The beneficiary shall be required to allow the constructor, as it is necessary for carrying out the work, the use of the driveways, installations of its own water supply and other utilities which are serving the building.

b). The beneficiary shall be required to obtain all the permits required by law for carrying out the work. To be able to carry out this obligation, the contractor shall be required to cooperate with the beneficiary, by providing him with the information required in their possession or that it would have to be held in considering its expertise.

In the course of performance of the contract, the beneficiary shall be entitled to have, without interfering with normal activity of the contractor, to control the situation with regards to the performance, quality and appearance of the executed work and of the materials used, as well as on any other matters relating to the fulfilment by the contractor of the contractual obligations.

The beneficiary shall communicate to the contractor its findings and instructions in writing, unless otherwise agreed.

Conclusion

At the completion of that part of the work which will be covered by further execution of other work or by fitting of items of construction, the contractor and the beneficiary shall be obliged to find themselves together the existing of the completed part of the work and its conformity with the provisions of the regulations and the provisions of the contract. For this purpose, unless agreed otherwise, he shall convene the beneficiary at the place of execution work inside a reasonable period of time of which shall be determined in accordance with practices, in relation to the nature of job and the place of it. In the case where the beneficiary has not been present at the time that has been notified in writing or any other way agreed upon by the parties, the contractor may draw up by himself the document on the findings of the work to be covered.

After the completion of the construction, it will be necessary, in accordance with the law, of the temporary reception of the work, followed by the final acceptance.

The risks pass on the beneficiary on the date of the temporary acceptance when the work has been completed. (Article 1,878 (2) C. civ].

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