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The Supreme court of the Russian Federation explained: if there is no contract, this does not mean that it is impossible to collect the debt

Organization-1 performed for the Organization-2 services for the repair of the roof of the building without a contract, and then sent to the address of the Organization-2 the relevant act of acceptance of work performed, certificate of cost of works and costs. However, Organization-2 refused to sign these documents, because, in its view, the disputed work was performed pursuant to a subcontract entered into between Organization-1 and the third party, and repairs is warranty.

The courts of first and second instance twice to satisfy the requirement the Organization-1, and the court of Cassation has twice overturned their Decision.

The court of cassation cited the lack of urgency of work performed and therefore on the possibility of Organization-1 the execution of the work compliance with tender procedures, respectively, of the actual work performed in the absence of the prisoner, in accordance with the above law, the contract shall not on the side of the Organization-2 unjust enrichment.

The first and second instance came to the conclusion that the dispute applicable provisions of Federal law No. 223-FZ "On procurement of goods, works, services by separate types of legal entities", given the fact that the owner of 100% share in share Organization-2 is the Krasnodar territory. Also, the Supreme court noted that, by virtue of article 124, 125 of the civil code, creating such legal entities, the state implements a powerless authority, and that the procurement carried out by entities specified in Federal Law No. 223-FZ, the parties of these relations are equal and none of them in positions of authority in relation to the other side.

Due to the fact that, in accordance with the Federal law 223-FZ the duty of compliance of procurement activities is assigned to the customer, that is, Organization-2, the court of Cassation wrongfully put these responsibilities on the Contractor, i.e. the Organization-1.

In addition, the Supreme court noted that courts of first and second instance had correctly been taken into account by the examination, confirming execution of works on repair of a roof that is Organisation-1, not the other person, plus the repair was not a warranty in itself had for the Organization-2 consumer value. In this regard, the refusal of acceptance of work right was considered illegal. In addition, the question of the urgency of the work performed and whether it was possible to carry out these works in compliance with competitive procedures, the court of cassation did not take into account that this circumstance is an exception to the general rule when recovering the cost of work performed in the absence of a contract to be concluded in accordance with the requirements Federal Law N 44-FZ "On the Contractual System in the Sphere of Procurement of Goods, Work, and Services to Ensure State and Municipal Needs", but established to consider this dispute of this fact substantially it was not necessary and crucial. The Supreme Court pointed out that the Customer (Organization-1) independently committed illegal actions when concluding the contract in accordance with Federal Law No. 223-FZ.

Thus, the Supreme Court indicated that the Law obliges the customer, and not the contractor, to conduct the procurement procedure, and that the wrongful actions of the customer itself are not grounds for refusing the Contractor's claim. In addition, you should pay attention to the fact that the customer actually received the result, the result has consumer value.

GRATA International Saint Petersburg

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