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THE PRINCIPLE OF GOOD FAITH AS AN ELEMENT OF THE LEGAL MECHANISM FOR STIMULATING THE DEBTOR TO PROPER EXECUTION OF OBLIGATIONS AND GUARANTEEING CREDITORS' INTERESTS: ANALYSIS OF JUDICIAL AND ARBITRATION PRACTICE

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Introduction: *from June 1, 2015 came into force the Federal Law of the Russian Federation dated 8 March 2015, No. 42-FZ (hereinafter – Law No. 42-FZ) «On Amendments to Part One of the Civil Code of the Russian Federation», providing a number of innovations in legal regulation of contractual relations.* ***Purpose:*** *to address the problem, important for the development of Russian civil law, connected with revealing the principle of good faith as an element of legal mechanism for stimulating the debtor to proper execution of obligations and guaranteeing interests of creditors on the basis of the latest court and arbitration practice analysis.* ***Methods:*** *the following methods were used in the course of research: a general scientific dialectic method, universal scientific methods (analysis and synthesis, induction and deduction, comparison, abstraction, formal logical, systemic-structural), methods specific to legal science (a comparative legal method, systemic interpretation, a method of legal modeling).* ***Results:*** *a number of fundamental questions concerning optional obligations have not received proper authorization in the civil law doctrine. Main vectors for further development of good faith principles in legislation and law enforcement activity have been specified.* ***Conclusions:*** *the criteria of good faith of contractual law participants and their correct practical application will certainly promote to the establishment of optimal balance of the creditors' and debtor's interests, which is an essential guarantee for the maintenance of business cooperation, as well as for prevention of legal conflicts. It will also help to satisfy interests of property turnover participants. The principle of good faith needs further implementation into the special norms of the Civil Code since it is one of the essential guarantees for the realization of subjective civil rights.*

Keywords: principle of good faith; principle of promotion of the parties; mechanism of stimulating the debtor to proper execution of obligations; proper execution of obligations; good faith criteria

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ПРИНЦИП ДОБРОСОВЕСТНОСТИ КАК ЭЛЕМЕНТ ПРАВОВОГО МЕХАНИЗМА СТИМУЛИРОВАНИЯ ДОЛЖНИКА К НАДЛЕЖАЩЕМУ ИСПОЛНЕНИЮ ОБЯЗАТЕЛЬСТВ И ГАРАНТИРОВАНИЯ ИНТЕРЕСОВ КРЕДИТОРОВ: АНАЛИЗ СУДЕБНО-АРБИТРАЖНОЙ ПРАКТИКИ

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Введение: *с 1 июня 2015 года вступил в силу Федеральный закон Российской Федерации от 8 марта 2015 г. № 42-ФЗ «О внесении изменений в часть первую Гражданского кодекса Российской Федерации», предусматривающий целый ряд новаций в правовом регулировании обязательственных правоотношений.* ***Цель*** *заключается в решении имеющей значение для развития российского гражданского права задачи – раскрытии принципа добросовестности как элемента правового механизма стимулирования должника к надлежащему исполнению обязательств и гарантирования интересов кредиторов на основе анализа новейшей судебно-арбитражной практики.* ***Результаты:*** *сформулированы основные выводы, касающиеся закрепления в действующем законодательстве принципа добросовестности, и обозначены основные направления дальнейшего развития начал добросовестности в законодательстве и правоприменительной деятельности.* ***Методы:*** *общенаучный диалектический, универсальные научные методы (анализ и синтез, индукция и дедукция, сравнение, абстрагирование, формально-логический, системно-структурный), специально-юридические методы (сравнительно-правовой, метод системного толкования, метод правового моделирования).* ***Выводы:*** *критерии добросовестности участников обязательственного права и их корректное практическое применение, безусловно, будут способствовать установлению оптимального баланса интересов кредитора и должника, что является необходимой гарантией поддержания делового сотрудничества, предотвращения юридических конфликтов и достижения наиболее полного удовлетворения интересов участников имущественного оборота. Принцип добросовестности нуждается и в дальнейшем поступательном внедрении в специальные нормы ГК РФ, поскольку является одной из существенных гарантий реализации субъективных гражданских прав.*

Ключевые слова: принцип добросовестности; принцип содействия сторон;
механизм стимулирования должника к надлежащему исполнению обязательств;
надлежащее исполнение обязательств; критерии добросовестности

Introduction

The close attention of the legal experts to specific juridical technical methods of accepting the good faith principles in the legislation and its regular potential has become the trend of the modern civil science.

The independent researches of the good faith principle and its functional yield associated with the structural, law-enforcing and law-replacing functions of the principle, were not performed until recently.

About the sectoral principle of good faith

Federal Law dd March 8, 2015, No. 42-FZ (hereinafter referred to as Law No. 42-FZ), "About Introducing Changes into Part 1 of the Civil Code of the Russian Federation"[1], came into effect on June 1, 2015, providing for a number of innovations in the legal regulation of the legally binding relations. Let us turn our attention only to one of the novelties introduced by this law – the general sectoral good faith criteria in respect to the law of obligations.

It is important to note that the RF Federal Law dd December 30, 2012, No. 302-FZ, "About Introducing Changes into Chapters 1, 2, 3 of Part 1 of the Russian Federation Civil Code (hereinafter referred to as Law No. 302-FZ)[2], that came into effect on March 1, 2013, brought the long-awaited changes into the civil legislation: it settled a general principle of the good faith, introduced the presumption of good faith of the participants of the civil relations and set a rule of applying the methods of the civil rights protection in cases when the rights are exercised knowingly from bad faith.

For example, the good faith principle was presented in Item 3 of Article 1 of the Russian Federation Civil Code (hereinafter referred to as the RF CC)[3] in the following manner: "When establishing, practising and protecting the civil rights and when executing the civil duties, the participants should act in good faith".

The presumption of good faith itself, is normatively settled in Item 5 of Article 10 of the RF CC: "The good faith of the participants of the civil relations and the reasonableness of their activities are perceived to be".

This norm legitimizes the presumption of good faith of the participants of the civil relations, which relieves the participants of the civil legal relations from the necessity to prove their good faith and reasonableness of their activities. This duty is imposed on the bodies and persons who dispute the reasonableness of the actions and the good faith of the civil legal relations participants.

Item 2 of Article 10 of the RF CC introduces a rule of applying the methods of the civil rights protection in case of their knowingly incorrect exercising: "in case the civil rights are exercised knowingly in bad faith", the court, "taking into account the character and the consequences of the abuse, rejects the person's claim for protecting his rights fully or partially, and also applies other measures defined by the law".

It is known that the mentioned changes are the result of the successive bringing the provisions of the Concept for the Civil Legislation Development[4] to life. The Concept contains numerous indications of the necessity to reinforce the role of the good faith principle with due regard to the positive experience of foreign countries.

It should be noted that the principle of good faith was widely used in the court practice of the Russian civil law even before March 1, 2013.

For example, the reviewed principle is formalized in RF Federal Laws "Concerning Advertising"[5], "On Securities Market"[6], "Concerning Competition and the Restriction of Monopolistic Activity on Goods Markets"[7], "Concerning Joint Stock Companies"[8] and etc.

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[1] Official website of the legal information. Available at: http://www.pravo.gov.ru. (accessed 09.03.2015).

[2] The same (accessed 31.12.2012).

[3] *Civil* Code of the Russian Federation. Part One: Federal Law of the Russian Federation dd November 39, 1994, No. 51-FZ (as amended on January 31, 2016) / Official website of the legal information. Available at: http:// www.pravo.gov.ru (accessed 01.2016)

[4] *About the Improvement* of the Civil Code of the Russian Federation: Edict of the President of the Russian Federation dd June 18, 2008, No. 1108 (revised June 29, 2014) // Collection of Laws of the Russian Federation. 2008. No. 29, Part 1, art. 3482.

[5] *Concerning Advertising* Federal Law of the Russian Federation dd March 13, 2006, No. 38-FZ (revised March 8, 2015) // Collection of Laws of the Russian Federation. 2006. No. 12, art. 1232.

[6] *On Securities Market*: Federal Law of the Russian Federation dd April 22, 1996, No. 39-FZ (revised July 13, 2015) // Collection of Laws of the Russian Federation. 1996. No. 17, art. 1918.

[7] *Concerning Competition* and the Restriction of Monopolistic Activity on Goods Markets: Law of RSFSR dd March 22, 1991, No. 948-1 (revised July 2, 2006)// Gazette of the Congress of People's Deputies of the RSFSR and the Supreme Soviet of the RSFSR. 1991. No. 16, art. 499.

[8] *Concerning Joint Stock* Companies: Federal Law of the Russian Federation dd December 26, 1995, No. No. 208-FZ (revised June 29, 2015) // Collection of Laws of the Russian Federation. 1996. No. 1, art. 1.

Besides, the principle of good faith was settled in the regulations of the Praesidium of the Supreme Arbitration Court of the Russian Federation (hereinafter referred to as the RF SAC). Thus, in the regulation of the RF SAC Presidium dd September 11, 2012, No. 3378/12[1], it was stated that granting a juridical protection to a person who continuously committed illegal acts leading to the infringement of rights of the indefinite range of persons, and who was aware of the illegal character of his actions, does not comply with the principle of the good faith activities of the participants of the civil transactions and the balance of the public and the private interests.

However, as it is reasonably noticed in the juridical literature, the "sound juridical grounds" appeared now for applying this principle.

Principle of good faith of the obligation parties in the court arbitrage practice

The principle of good faith was rather often used by the courts earlier on when solving the disputes. For example, in one of the cases reviewed by the arbitration court of the Povolzhsky region, one can find a statement that within the framework of performing an agreement of transportation, the consignor, being guided by the conditions of the contract-application signed by both the parties and containing the drivers' passport details, truck models and identification number, when handing the cargo over to the driver, acted in good faith and reasonably, because the mentioned applications contained the drivers' passport details and the truck identification numbers, and the consignor checked the passport details of the driver and made sure the identification number was correct.

And in the situation, when the forwarded cargo was lost and did not arrive to the consignee, the courts levied the lost cargo damages against the consignor, not taking into account the fact that the drivers who performed the disputed transportation were not the representatives of the consignor. The argument was dismissed by the court authorities with reference to Item 3 of Article 307 of the Russian Federation Civil Code, because it was the consignor who was liable for the loss of the cargo and was to compensate for damages to the consignee as per Article 15 of the Russian Federation Civil Code[2].

As we see from the analysis of this law enforcement act, the Arbitration Court of the Povolzhsky Region did bot agree with the position of the defendant, with reference to Item 3 of Article 307 of the RF CC.

The civil science doctrine often faces complaints that the civil legislation does not contain a legal definition of the "good faith" notion. For this, the good faith notion is largely viewed through the prism of specific civil law institutions (for example, the institutions of the acquisitive prescription, the abuse of rights, the vindication).

For example, as it it noted in the juridical literature, "the transport operator who sells the tickets on the overbooking conditions, can hardly be viewed as the transporter in good faith. It is known that the good faith is understood in the legal legislation objectively and subjectively. In the first instance, the good faith requirement means proper behaviour in the situation of legal uncertainty. In the second case, it is understood as the involuntary ignorance of this or that circumstance which, when started, leads to various juridically meaningful consequences. There is no good faith in the transport operator's behaviour neither in the first case nor in the second one. The actions of the operator on concluding a contract that knowingly provides for its non-fulfilment, and also on refusal to follow the obligations on the overbooking conditions, can be qualified as the abuse of rights" [7, p. 13].

In accordance with Item 1 of the Regulation of the Plenum of the Supreme Court of the Russian Federation, dd June 23, 2015, No. 25, in case the misconduct of one of the parties is discovered, the court, depending on the circumstances of the case and taking into account the character and the consequences of the misconduct, rejects the person's claim for protecting his rights fully or partially, and also applies other measures for protecting the interests of the second party and other persons from the misconduct of the other party" (Item 2 of Article 10 of the RF CC)[3].

[1] Regulation of the RF SAC dd September 11, 2012, No. 3378/12 [Web-source]. Access from reference legal system "ConsultantPlus"

[2] Judgement on the Case by the Arbitration Court of the Privolzhsky Region dd March 1, 2016, No. F06-5050/2015 on case A12-29394/2015 [Web Source]. Access from reference legal system "ConsultantPlus"

[3] About Applying Some of the Provisions of Paragraph 1 of Part One of the Russian Federation Civil Code by Courts: Regulation of the Plenum of the Supreme Court of the Russian Federation dd June 23, 2015, No. 25 // Bulletin of the Supreme Court of the Russian Federation, 2015, No. 8.

The large-scale reform of the civil legislation that added to the introduction of essential changes, in particular, into Part 1 of the RF CC, had a significant impact on the right of obligation in the whole. For example, Law No. 42-FZ amended Article 307 of the RF CC with Item 3 stated as follows: "When establishing and fulfilling an obligation, and after the obligation discharge, the parties are to act in good faith, taking into account the rights and the legitimate interests of each other, jointly providing the necessary assistance for reaching the purpose of the obligation, and also giving the necessary information to each other".

As of today, i. e. a year after the mentioned norm came into force, we can speak about the first results of reforming the right of obligation, first of all – on the basis of the law enforcement practice analysis.

Thus, an illustrative example is the case reviewed by the arbitration court of Moscow, about recovering the debt and the forfeit under the agreement for paid services, in accordance to which the complainant was to render services to the defendant on developing the business-plan of the investment project realization. The ready business-plan in Russian was the final product to be received under the agreement.

When studying the mentioned case, the courts found that while concluding the agreement, the parties had defined the order of rendering the services in a definite way, including: the primary providing of the defendant with a preliminary business-plan with no signature of the complainant's authorized person and with no official stamp of the complainant, for the purpose of its approval, with the subsequent forwarding of the final business-plane duly signed and stamped to the dependant by the complainant, although identical to the primary business-plan but with all the defendant's comments properly addressed.

The complainant forwarded the preliminary business-plan to the defendant's electronic mail address, received the delivery confirmation, and having not received the written objections within 5 days stipulated by the contract, sent the final business-plan on paper accompanied by the acceptance act and the invoice which was not signed by the defendant, and the second payment for the services rendered by the complainant was not made.

With this, the technical specification stipulated that the business-plan should have been developed as of a given date. Later, the defendant, several months after the complainant fulfilled his obligations under the agreement, forwarded a letter to the complainant saying that the received business-plan was not up-to-date and needed to be updated.

The complainant pointed it out that the services on updating the already developed business-plan are not included into the cost of the services, and the plan updating for another reporting date means performing new calculations, changing the finance model, making the analysis of the newly introduced project documents, all that leading to the increase of the work scope and shifting the deadline for rendering services. With this, the complainant updated the business-plan, what was proved from the email conversation, and forwarded it to the defendant via an e-mail message. In reply, the defendant did not send his objections, did not sign the acceptance act and did not pay.

In accordance with Item 3 of Article 307 of the RF Civil Code, when establishing and fulfilling an obligation, and after the obligation discharge, the parties are to act in good faith, taking into account the rights and the legitimate interests of each other, jointly providing the necessary assistance for reaching the purpose of the obligation, and also giving the necessary information to each other.

The complainant demonstrated due care and circumspection, acted in good faith when fulfilling the obligations, and took all the necessary and reasonable measures to follow his obligations against the agreement[1].

In our opinion, the court, fully upholding the claim of the complainant, correctly applied the norms of the substantive law. The analysis of the proposed casus allows for the conclusion that giving the up-to-date information by the parties within the agreed terms is incredibly important. For example, in this case, all the possible actions were taken by the complainant aimed at the timely providing the defendant with the necessary information: forwarding the preliminary business-plan in digital format, forwarding the final business-plan on paper, updating the business-plan at the defendant's request. At the same time, one cannot ignore the bad faith behavior of the defendant who did not forward the written justified objections to the complainant concerning the draft business-plan project; there were no comments or objections received from him after

[1] *Judgement* of the Ninth Arbitration Court dd October 1, 2015, No. 09AP-36743/2015 on case A40-24447/2015 [Web Source]. Access from reference legal system "ConsultantPlus".

the business-plan was updated, the defendant did not sign the acceptance act or make a payment.

In spite of the popularity of the good faith principle researching, the juridical doctrine does not contain a systematic image of the good faith criteria. Therefore, the study of the criteria of the good faith of the participants of the obligation law is of a special interest. The necessity of their research is driven not only by the needs of the obligation law theoretical basis, but also by the practical importance of the more efficient application of the researched principle for the purpose of the civil commerce improvement.

As it is reasonably stated in the Letter of the Russian Federal Consumer Rights Protection and Human Health Control Service, Item 3 of Article 307 of the RF CC "amends and develops the principle of the originally presumed good faith of the civil relations, which is generally described in Article 10 of the RF CC"[1].

Criteria of the good faith behavior of the parties of the obligation

The analysis of Item 3 of Article 307 of the RF CC allows for the following important conclusions. The good faith criteria of the behavior of the obligation law participants are:

– respecting the rights and legitimate interests of each other;

– rendering necessary assistance to each other;

– providing necessary information.

The Science Advisory Council of the Federal Arbitration Court of the Ural Federal District explained the good faith principle application through a specific example.

In accordance with Item 2 of Article 327 of the RF CC, a voluntary depositing of money or securities to a notary by the debtor means the obligation fulfilment.

According to Item 3 of Article 307 of the RF CC, when establishing and fulfilling an obligation, and after the obligation discharge, the parties are to act in good faith, taking into account the rights and the legitimate interests of each other, jointly providing the necessary assistance for reaching the purpose of the obligation, and also giving the necessary information to each other.

In consideration of the foregoing, when depositing the money, the debtor is to provide the creditor with the exhaustive information necessary on receiving the fulfilled obligation except for the cases when giving such information is associated with disproportionate expenses for him or with the search for the addressee.

In case the debtor takes back the money or securities that had been deposited by him earlier to a notary or to a court, the obligation fulfilment is declared void[2].

It is deemed that the analysis of the given recommendations shows that the good faith principle, and in particular – one of its components, the mandatory forwarding of the information by the parties to each other, – has not only theoretical but also applied importance, because it gets its informative contents also through the other norms of the obligation law.

For example, A. G. Arkhipova proposes the following criteria of the "good faith" as applied to the relations resulting from the insurance contract:

"a) the obligation of the insurer to act in good faith when concluding the agreement, in particular – the obligation to inform the insured about the apparent and known to the insurer mismatch between the proposed insurance coverage and the needs of the insured; to warn the insured about the cases of the claim denial stipulated in the contract but not obvious to the insured, about the withdrawal from the insurance coverage;

b) the obligation of the insured not to give false information to the insurer when reporting the insured event, and during the period of the event investigation;

c) the obligation of the insurer to arrange proper (all-round and balanced) investigation of the claimed insured event;

d) the obligation of both the parties to act in good faith when collecting documents which are the basis for the compensation decisions (or denial decisions), in particular – avoiding preparing the acts of examination, evaluation and etc., with the result already known to the party that orders the preparation of the corresponding documents;

e) the obligation of the parties to forward the requested information to each other after the insured event occurrence: on the part of the insured – about the reasons and the consequences of

[1] About the Russian Federation Civil Code Changes effective since June 1, 2015: Letter of Russian Federal Consumer Rights Protection and Human Health Control Service dd May 5, 2015. Available at: http://rospotrebnadzor.ru (accessed 05.04.2016).

[2] *The Issues* of Law Enforcement in Civil Cases under the Jurisdiction of the Arbitration Courts: Recommendations of the Science Advisory Council of the Federal Arbitration Court of the Ural Federal District (following the results of the meeting held on June 10, 2015 in the city of Izhevsk) // Ekonomicheskoye Pravosudiye v Uralskom Okruge. 2015. No. 3.

the insured event, on the part of the insurer – about the course of the investigation, including the obligation of the insurer to preliminarily inform the insured about the discovered circumstances that allow the insurer to deny the claim of reduce the compensation sum;

f) the obligation of the insured (beneficiary) to refrain from the knowingly unreasonable (knowingly over-estimated) claims to the insurer, and the obligation of the insurer to refrain from unreasonable and unmotivated decisions of the claim denial" [1, p. 34].

Rendering the necessary assistance as one of the good faith criteria of the obligation party

Let us turn our attention to such a criterion as rendering the necessary assistance to each other. T. V. Bogacheva should be supported in her opinion that that "the principle of the parties' assistance in contractual obligations is especially noticeably characterized by performing additional acts by the parties that are not covered by the contract but are being dictated by a specific current situation" [2, p. 10]. Indeed, the necessary assistance is not only and not so much the strict observation of the obligation conditions, as showing the needed initiative by the obligation parties who should be guided by the principles of justice and reasonableness first of all.

It is interesting to note that some of the scientists, interpreting the provisions of Item 3 of Article 307 of the RF CC, speak about establishing the principle of business cooperation [3, p. 44], the principle of solidarity, the principle of the parties' assistance during fulfilling the obligations, by the legislator.

No doubt that some of the fundamentals of the cooperation such as the mandatory requirements addressed to the civil process participants, are manifested in specific norms of the RF CC. For example, in accordance with Item 1 of Article 959 of the RF CC, the insured (beneficiary) is to promptly inform the insurer about the meaningful changes in the circumstances that became known to him after the insurance contract was concluded, in case these changes can significantly change the insurance risks. Besides, the information letter by the Praesidium of the RF SAC says that failure to fulfil the cooperation obligations under the agreement for construction by one of the parties can be taken into consideration when defining the liability for failure to fulfil the contractual obligation[1].

As per the felicitous remark by V. A. Khokhlov, "the obligational regulation model is based not so much on the opposition of the creditor's and the debtor's interests, as on the unity and the mutuality of the result which is to be obtained (in this sense, phrase "opposite party" as applied to the obligation, needs to be recognized as an archaism)" [9, p. 188].

V. V. Kulakov is absolutely right defining the law principles as the "quintessence of the centuries-old regulation of the specific sphere of the public relations" [6, p. 50]. With this, it is important to mention that the value of the civil law principle is in its adequacy to the modern economical relations.

Providing the necessary information as one of the good faith criteria of the obligation party

We believe that amending the civil legislation with the criterion of providing the necessary information as the criterion of the good faith behaviour of the obligation party, has a great law-enforcement value with the account for the meaning of the information in modern civil relations. A timely receipt of the information that correctly shows the state of things is one of the necessary conditions for the efficient law realization.

For example, A. A. Chumakov proposes to include the following component into the contents of the bad faith definition: "providing the party with incomplete of false information (including non-disclosure of the circumstances that due to the contract character, are to be reported to the other party)" [10, p. 77].

Sharing the same opinion, A. G. Karapetov makes it prominent that "...by way of assurance, one of the party provides the other party with the information having significant importance and stimulating the latter to conclude the contract on specific terms.... The corresponding information can be provided by way of assurances given before the contract is concluded (for example, in the investment memorandum or the memorandum of mutual understanding), can be directly included into the text of the contract or be given during the contract execution.

[1] *Review* of the Practice of Settling Disputes on the Contracts for Construction: Informational Letter of the Praesidium of the Supreme Arbitration Court of the Russian Federation dd January 24, 2000. No. 51 // Official Gazette of the RF SAC. 2000. No. 3.

It does not matter how the information is given. It is not allowed to give false information and to cheat the partner" [4, p. 56].

Respecting the rights and the interests of each other is the most general rule of behaviour in the society. That is why, when the specific norms are not sufficient, it is necessary to turn to the principle of social justice.

Let us address the analysis of the court arbitration practice, where the good faith principle defined in Item 3 of Article 307 of the RF CC, has already received its sequential application, in particular – in the decision of the Ninth Arbitration Appeal Court.

The parties concluded a contract for the extra expense insurance of the tourists for the period of travelling, in accordance to which the insurant forwards the list for the insured covering the reporting month to the insurer. With this, the form of the register suggested the presence of the insurant's (defendant's) representatives' signatures and the stamps of the insurant.

The contract provided that the total insurance premium is paid by the insurant (defendant) against the invoice prepared in accordance with the approved register of the insured persons. Both the documents were missing, and the defendant denied his involvement in preparing the registers and the invoices. There is no evidence in the materials of the case proving that the defendant avoided signing the registers or avoided receiving the invoices, and that the defendant acted in bad faith within the framework of the insurance contract.

According to Item 3 of Article 307 of the RF CC, when fulfilling an obligation, the parties are to act in good faith, taking into account the rights and the legitimate interests of each other, jointly providing the necessary assistance for reaching the purpose of the obligation, and also giving the necessary information to each other.

Having signed the insurance contract under the definite terms, the complainant and the defendant were to follow these terms in accordance with the regulations of Item 1 of Article 420, Item 1 of Article 421, Item 1 of Article 929, Item 3 of Article 307 of the RF CC.

Keeping that in mind, the appeal court found that the evidence available in the case materials do not allow to reliably establish the fact of the defendant's debt to the complainant for paying the insurance premium, as well as the size of it. The registers of the insured are presented not by the insurant but by the insurer, while the register of the insured persons is the principal document to be the basis for defining the specific size of the insurance premium.

As it follows from the insurance contract, the insurance premium is paid against the invoice prepared by the insurer. There is no evidence in the materials of the case, proving that the invoice was forwarded to the insurant (defendant). With the described circumstances, there are no legal grounds for recovering the amount claimed from the defendant[1].

As we see from the analysis of the represented case, the parties had the obligation legal relations resulting from the contract of the property insurance, one of the conditions of which was forwarding the registers of the insured persons covering the reported month by the insurant to the insurer. As the forwarded register was the basis for the insurer's checking the correctness of the size of the total insurance premium for the reported month, the parties had agreed upon the serious requirements for the register's form – the presence of the signatures of the insurant's and the insurer's representatives and the legal persons' stamps.

The court found that the registers presented by the complainant do not comply with the form settled in the contract, because they were not signed by the insurant, i.e. by the defendant. Consequently, the insurer did not have any opportunity to check the correctness of the insurance premium size, as he did not have the information necessary for that. It appears that the complainant failed to follow the requirements of Item 3 of Article 307 of the RF CC, acted in bad faith within the framework of the legal relations between the parties, did not provide the defendant with the information necessary for him, all that resulting in rejecting the claim. One has to agree with the decisions of the appeal court guided by the arguments given above.

Conclusions

Summarizing all the above mentioned, let us say the following. The Russian Federation Civil Code is a real "economic constitution" of Russia, that requires regular renewal for the purpose of its updating and appropriate compliance with the changing public relations. Achieving the mentioned target is possible only on the condition of the corresponding

[1] Decision of the Ninth Arbitration Appeal Court dd October 13, 2015, No. 09AP-35355/2-15 on case No. A40-48482/15 [Web Source]. Access from reference legal system "ConsultantPlus".

doctrinal conceptualization of the legislation changes being introduced. Only the correct understanding of the contents of the good faith principle, and in particular – the criteria of the good faith behaviour, – will allow to efficiently use the civil legal norms covering this principle and avoid the contradictory court practice.

It is generally recognized that the negative tendency of the good faith principle application is the widening of the judicial discretion that can lead to a situation when the court decisions will be unpredictable. We think that amending the civil legislation with the good faith criteria as applied to the obligation law is capable of solving the mentioned problem.

We shall also note that the proposed criteria were earlier developed in the doctrine on the basis of summarizing the international and the national law-enforcement practice, this proves that the legislation development is progressing in the right direction and will allow the court practice to base itself on the civil law science for the period of formation.

The obligation law participants good faith criteria and their correct practical application will certainly add to establishing the optimal balance of the creditor's and the debtor's interests, being a necessary guarantee for supporting the business cooperation, preventing from juridical conflicts and resulting in the maximum possible satisfaction of the interests of the property turnover participants.

The good faith principle needs the further successive introduction into the special norms of the RF CC, as it is one of the meaningful guarantees of the subjective civil rights realization.

The enforcement of the solidarism imperative in the sphere of contractual relations is the indication of the further socialization of the civil law of Russia.

References

1. *Arkhipova A. G. Doktrina uberrima fides v strakhovanii i ee voploshchenie v rossiyskom prave* [The Doctrine Of Uberrima Fides in Insurance and Its Embodiment in the Russian Law]. *Vestnik grazhdanskogo prava* – Civil Law Review. 2015. Issue 4. Pp. 7–35. (In Russ.).
2. *Bogacheva T. V. Printsipy vzaimnogo sodeystviya storon i ekonomichnosti v dogovornykh obyazatel'stvakh: avtoref. dis. … kand. jurid. nauk* [The Principles of Mutual Assistance of The Parties and Efficiency in the Contractual Obligations: Synopsis of Cand. jurid. sci. diss.]. Moscow, 1982. 24 p. (In Russ.).
3. *Bogdanov D. E. Novelly grazhdanskogo kodeksa RF s pozitsii kontseptsii dobrosovestnoy posledovatel'nosti v deystviyakh i zayavleniyakh* [Amendments to the Civil Code of the Russian Federation in Terms of the Concept of Conscientious Sequence in the Actions And Statements]. *Zakonodatel'stvo i ekonomika* – Law And Economics. 2016. Issue 2. Pp. 44–49. (In Russ.).
4. *Karapetov A. G. Zavereniya ob obstoyatel'stvakh i usloviya o vozmeshchenii poter' v novoy redaktsii GK RF* [Assurance of Circumstances and Provisions for Loss Recovery in the New Version of the Civil Code of the Russian Federation]. *Zakon* – Zakon. 2015. Issue 6. Pp. 43–56. (In Russ.).
5. *Kuznetsova O. A. Pryamoe (neposredstvennoe) deystvie printsipov grazhdanskogo prava* [Direct (Immediate) Application of Civil Law Principles]. *Notarius* – Notary. 2006. Issue 1. Pp. 37–40. (In Russ.).
6. *Kulakov V. V. O roli printsipov grazhdanskogo prava v pravovom regulirovanii obshchestvennykh otnosheniy* [About the Role of Civil Law Principles in Legal Regulation of Social Relations]. *Nauchnye vozzreniya professora G. F. Shershenevicha v sovremennykh usloviyakh konvergentsii chastnogo i publichnogo prava (k 150-letiyu so dnya rozhdeniya): sb. materialov mezhdunar. nauch.-prakt. konf. (g. Kazan', 1–2 marta 2013 g.) / pod red. D. Kh. Valeeva, K. Ronchki, Z. F. Safina, M. Yu. Chelysheva.* [Scientific Views of Professor G.F. Shershenevitch in the Current Context of Convergence of Private and Public Law (to the 150th birth anniversary): Proceedings of Intern. Science and Practice Conf. (Kazan, March 1–2, 2013); ed. by D. Kh. Valeev, K. Rocki, Z. F. Safin, M. Y. Chelysheva]. Moscow, 2014. Pp. 50–52. (In Russ.).
7. *Kulakov V., Filippova S. Poigraem v perevozku* [Let's Play a Transportation Game]. *EZh-Yurist* – EJ-Lawyer. 2015. Issue 44. Pp. 13–20. (In Russ.).
8. *Problemy realizatsii printsipov prava v predprinimatel'skoy deyatel'nosti / V. K. Andreev, L. V. Andreeva, K. M. Arslanov i dr.; otv. red. V. A. Vaypan, M. A. Egorova.* [V. K. Andreev, L.V. Andreeva, K. M. Arslanov et al. Problems of Implementation of the Law Principles in Entrepreneurial Activity; resp. eds.: V. A. Vipan, M. A. Egorova]. Moscow, 2016. 340 p. (In Russ.).
9. *Khokhlov V. A. Obshchie polozheniya ob obyazatel'stvakh: ucheb. posobie.* [General Provisions On Obligations: Textbook]. Moscow, 2015. 288 p. (In Russ.).
10. *Chumakov A. A. Vedenie peregovorov po novym pravilam: novelly Zakona № 42-FZ* [The Negotiation on New Rules: Amendments to

Law № 42]. *Zakon* – Zakon. 2015. Issue 6. Pp. 77–82. (In Russ.).
11. *Herbots J.* Contract Law in Belgium. Deventer, Boston, 1995. 181 p. (In Eng.).
12. *Marianne, M. Jennings.* Business: Its Legal, Ethical and Global Environment. Cengage Learning, 2010. 684 p. (In Eng.).
13. *Markesinis B.S., Lorenz W., Dannemann G.* The German Law of Obligations. Vol. 1. The Law of Contract and Restitutions: A Comparative Introduction. Oxford, 1997. 487 p. (In Eng.).
14. *Marsh P. D. V.* Comparative Contract Law. England, France, Germany. Hampshire, 1996. 331 p. (In Eng.).
15. *Pescatore G.* Die sogenante alternative Obligation. Marb., 1880. 280 p. (In French).
16. *Petersen L. L., Orgaard N.* Danish Insolvency Law. Copenhagen, 1996. 94 p. (In Eng.).
17. *Principles* of European Contract Law. Part I and II; ed. by Ole Lando, Hugh Beale. The Hague, London, 2000. 83 p. (In Eng.).
18. *Samuel G., Rinkes J.* The English law of obligations in comparative context. Nijmegen, 1991. 177 p. (In Eng.).
19. *Towards* a European Civil Code; ed. by A. S. Hartkamp, M. W. Hesselink, E. H. Hondius, C. E. du Perron, J.B.M. Vranken. London, 1994. 345 p. (In Eng.).
20. *Zimmermann R.* The Law of Obligations. Roman Foundations of the Civilian Tradition. Deventer, Boston, 1992. 246 p. (In Eng.).

References in Russian

1. *Архипова А. Г.* Доктрина uberrima fides в страховании и ее воплощение в российском праве // Вестник гражданского права. 2015. № 4. С. 7–35.
2. *Богачева Т. В.* Принципы взаимного содействия сторон и экономичности в договорных обязательствах: автореф. дис. … канд. юрид. наук. М., 1982. 24 с.
3. *Богданов Д. Е.* Новеллы Гражданского кодекса РФ с позиции концепции добросовестной последовательности в действиях и заявлениях // Законодательство и экономика. 2016. № 2. С. 44–49.
4. *Карапетов А. Г.* Заверения об обстоятельствах и условия о возмещении потерь в новой редакции ГК РФ // Закон. 2015. № 6. С. 43–56.
5. *Кузнецова О. А.* Прямое (непосредственное) действие принципов гражданского права // Нотариус. 2006. № 1. С. 37–40.
6. *Кулаков В. В.* О роли принципов гражданского права в правовом регулировании общественных отношений // Научные воззрения профессора Г. Ф. Шершеневича в современных условиях конвергенции частного и публичного права (к 150-летию со дня рождения): сб. материалов Междунар. науч.-практ. конф. (г. Казань, 1–2 марта 2013 г.) / под ред. Д. Х. Валеева, К. Рончки, З. Ф. Сафина, М. Ю. Челышева. М.: Статут, 2014. С. 50–52.
7. *Кулаков В., Филиппова С.* Поиграем в перевозку // ЭЖ-Юрист. 2015. № 44. С. 13–20.
8. *Проблемы* реализации принципов права в предпринимательской деятельности / В. К. Андреев, Л. В. Андреева, К. М. Арсланов и др.; отв. ред. В. А. Вайпан, М. А. Егорова. М.: Юстицинформ, 2016. 340 с.
9. *Хохлов В. А.* Общие положения об обязательствах: учеб. пособие. М.: Статут, 2015. 288 с.
10. *Чумаков А.А.* Ведение переговоров по новым правилам: новеллы Закона № 42-ФЗ // Закон. 2015. № 6. С. 77–82.
11. *Herbots J.* Contract Law in Belgium. Deventer. Boston, 1995. 181 p.
12. *Marianne M. Jennings.* Business: Its Legal, Ethical and Global Environment. Cengage Learning, 2010. 684 p.
13. *Markesinis B. S., Lorenz W., Dannemann G.* The German Law of Oligations. Vol. 1. The Law of Contract and Restitutions: A Comparative Introduction. Oxford, 1997. 487 p.
14. *Marsh P. D. V.* Comparative Contract Law. England, France, Germany. Hampshire, 1996. 331 p.
15. *Pescatore G.* Die sogenante alternative Obligation. Marb, 1880. 280 p.
16. *Petersen L. L., Orgaard N.* Danish Insolvency Law. Copenhagen, 1996. 94 p.
17. *Principles* of European Contract Law. Part I and II. / ed. by Ole Lando, Hugh Beale. The Hague, London, 2000. 83 p.
18. *Samuel G., Rinkes J.* The English law of obligations in comparative context. Nijmegen, 1991. 177 p.
19. *Towards* a European Civil Code; ed. by A. S. Hartkamp, M. W. Hesselink, E. H. Hondius, C. E. du Perron, J. B. M. Vranken. L., 1994. 345 p.
20. Zimmermann R. The Law of Obligations. Roman Foundations of the Civilian Tradition. Boston, 1992. 246 p.