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Peculiarities Of Legal Status Of Civil Legal Communities In Housing Legal Relations*

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Abstract. *This article represents and defines the concept and legal nature of the status of "civil legal communities" in a special socially significant sphere - housing legal relations, with the purpose of further effective application of this legal category in lawmaking and law enforcement activities.*

The general methodological basis was formed by the general scientific (dialectical) method of cognition, comparative-legal, logical methods that allowed considering the problems of legislation development in the sphere of establishing the legal status of a special subject of housing legal relations.

We revealed the peculiarities of interbranch legal regulation of relations connected with the establishment of their legal status. We considered the approaches of Russian and foreign law enforcement practice on ensuring the protection of interests of the owners of multi-apartment buildings, their interests and some other aspects.

We made some attempts to formulate the concept of civil legal communities in the housing sphere, determine their legal nature, and find the ways to resolve existing theoretical and practical problems.

Keywords: Civil legal communities, owners of multi-apartment building, multi-apartment building, maintenance of common property, decision of the meetings.

Introduction

The legal entities are traditionally distinguished as entities designed to express the interests of a certain community of individuals in a clearly defined system of coordinates of the subjects of law. They are the collective subject of law endowed with the necessary tools for carrying out the activity objectives and expressing the private interests of their founders and participants. Meanwhile, the reality and requirements of civil turnover "demonstrate" the presence of subjects united by a common goal or condition, therefore forming a special formation, a "team" that does not fit, however, into the customary general theoretical understanding in the legal field. It is this fact that explains the appearance of legal consolidation of this phenomenon - the category of "civil legal society" in the updated version of the Civil Code of the Russian Federation.

This transformation was a response to the need to produce long-overdue changes. However, this formation is noted as existing only in several norms of the basic civil law and only within the framework of invalidating the decisions of such formations. In the same context, we gave a general understanding of this phenomenon based on the meaning of para. 2 of Art. 181.1 of the Civil Code of the Russian Federation. This is a group of persons authorized to take decisions at the meetings with which the law relates civil legal consequences binding on all persons entitled to participate in such a meeting, as well as on other persons, if it is

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established by law or derived from the relationship substance.

At the same time, Art. 181.1 of the Civil Code of the Russian Federation does not define the civil legal community, does not name its characteristics, but only fixes an open list of communities, referring to them the participants of a legal entity, creditors in bankruptcy, and co-owners. From this textual filling of the norm it follows that, at a minimum, it is possible to single out the civil legal communities of participants of a legal entity, co-owners and creditors in bankruptcy.

Taking into account the developing principle of autonomy of the will of co-owners of multi-apartment buildings (hereinafter referred to as the "MAB") and the list of issues, which has been significantly increased in the recent past and resolved by them through the coordination of their wills, the need for studying the civil legal communities of the co-owners of real estate (apartment buildings) receives great importance in the housing sphere.

Given the obvious urgency and prevalence of this phenomenon, the set of problems encountered in judicial practice, as well as the "vital" issues about this formation in the housing law have not been resolved neither in theory nor in law. Moreover, a direct interpretation of current legislation makes it possible to raise the issue by the verge of the very possibility of considering the MAB co-owners as a community.

Methods

There are some issues of managing the multi-apartment buildings absolutely in all countries of the world, if more than one owner (in own separate premises) resides in them. And this necessarily affects the regulatory material. Here it should be noted that the same design, in view of the wide distribution of housing leased, is also relevant for tenants who are legally entitled to solve certain issues of the general content of property of the whole building.

Foreign experience demonstrates a considerable scatter in the understanding and design of such formations. In general, the concept of "unification of homeowners" has become a kind of generalizing concept of various legal forms of housing cooperation existing in other countries. For example, such as: Planning Unit Developments (PUD), Condominium Associations, Housing Cooperatives in the USA and Canada; syndicates in France; apartment public companies in Finland; of multi-apartment building co-owner associations (MABCOA) in Ukraine; homeowner associations (HOA) and housing and construction cooperatives (HCC) in Russia law.[1]

However, despite such a significant extension of the legal entity's structure in the housing sector in foreign countries, it should be noted that the rule-making and law enforcement practice in the countries of the German-speaking legal circle of the Romano-German legal family reveals a tendency of the MAB co-owners to separate into a special group of participants in civil legal relations, with the

[1] G. Buchda *Geschichte und Kritik der deutschen Gesamthandlehre,* Marburg, 2005, p. 294. ***, *European Condominium Law,* Cambridge, Cambridge University Press, 2015; B. Schneider, *Das schweizerische Miteigentumsrecht*, Bern, 1973, p. 209.

attribution of the status of either a legal entity (Austria) or a quasi-legal person (Germany, Switzerland). The association of co-owners, which does not have the status of a legal entity, is called a legal community. The concept of "legal community" is not defined in the German Civil Code or the Swiss Civil Code, although these legal acts operate on them.

Thus, in order to develop an approach to the provision of housing and communal services, Russia can also apprehend the international experience, tested in decades, in this context.

Results and discussion

The civil legal community is different from other subjects of law in the absence of a legal personality of this person inherent in other collective formations (for example, legal entities), therefore the community is characterized by a lack of legal capacity, inability to act as a plaintiff and defendant in court, etc. Therefore, at the moment the legal material does not represent any clear understanding of the very nature of this category, and, therefore, the concept of the civil legal community is rather conditional, taking into account also the fact that para. 1 of Art. 181.1 of the Civil Code of the Russian Federation does not make the list of community members closed. In this context, the community participants are the bearers of rights and obligations themselves. However, according to the provisions of the Housing Code of the Russian Federation, an essential set of rights and duties is vested with the general meeting of the MAB residents, the decision is made only in case of coordinating the wills of several subjects.

This kind of theory includes the theory of membership, the essence of which is that the common unified law can be implemented only through the community creation .[2] The community is an independent bearer of law, therefore it has legal capacity.[3] The legal community participants can only have the rights that are separate from this community.[4] Thus, participation in the community of owners is considered as the right to membership.

A. Sanger, highlighting the basic idea of the theory of membership, noted that "there is no division of law both in the community of shared and joined owners. A community is a subject of joint, full right. The right of a co-owner is not identical with common law, that is, the co-owner is not the owner".[5]

However, the theory of membership is more relevant for such collective subjects of law as legal entities, essentially specially and voluntarily initiated and created subjects of law. While the civil legal community of owners (officially mentioned in the Civil Code of the Russian Federation) is actually a forced combination of various subjects, since the decision on the common property

[2] G. Buchda, G, *Geschichte und Kritik der deutschen Gesam thandlehre*, Berlin, p. 294.
[3] F. Fabricius, *Relativitat der Rechtsfahigkeit*, Bern, 2005, p. 139.
[4] N.Hilger, *Miteigentum der Vorbehaltslie feranten gleichartiger Ware,* Gottingen, Schwartz, 1983. p. 61.
[5] A. Saengler A, *Gemeinschaft und Rechtsteilung*, Giessen, 1913, p. 117.

maintenance is possible only with the coordination of the wills of all participants, its form is the community structure mentioned above.

The generally recognized distinctive features of the community from legal entities are the lack of legal capacity, the inability to act as a plaintiff and a defendant in court, as well as the fact that certain co-owners are responsible to third parties .[6]

The concept of "civil society" is actively used (and mentioned above more than once) with respect to the owners of apartments located in the same building in theory and practice. In fact, it is already a "popular stamp". But is everything so smooth in this case?

The Civil Code of the Russian Federation indicates that the community is formed by the real estate co-owners. A simple analysis of current legislation demonstrates that the MAB (namely, they are most often associated with the studied quasi-subject formations) is "deprived" of the legislator's attention: it does not give the MAB concept at all (with one not very successful exception), and does not either define its legal status. Consequently, it is not an object of law (especially immovable), and the apartment owners, making it up, cannot be the "co-owners" according to the Civil Code of the Russian Federation. It is impossible not to make a reservation that the Housing Code of the Russian Federation establishes their share ownership in respect of the MAB common property, but further the same regulatory document grants the community a competence related to the management of the whole MAB, and not a part of it, intended for the maintenance of all residential real estate.

We believe, in the context of this work, that we first of all need to understand the legal regime of the MAB. The study of special works gives us an idea of the categorical "scattering" of theories on the issue stated.

We support those researchers who rationally point out that if an object (building) is "split up" into other objects (premises), the building preservation as a single (whole) object is automatically excluded (Tsydenov;2010. p. 220). This approach is also used in court cases: according to para. 8 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated July 23, 2009 No. 64 "On Some Issues of the Practice of Considering Disputes on the Rights of Premises Owners to the Common Property of the Building"[7], "if the building owner decides on the allocation of one or more of the building premises, then the building ownership as a whole ceases because of the loss of property legal regime. If one person becomes the owner of all premises in the building, it has the right to elect the legal regime of the building as a single object". Based on these arguments, a number of authors insist on a complete MAB exclusion from the list of objects of law.

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[6] U. B. Filatova, "Civil Legal Community of Co-Owners: Comparative Legal Research," in *Russian Justice*, II (2015), p. 18 - 20.

[7] ***, "Esolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated July 23, 2009 No. 64 "On Some Issues of the Practice of Considering Disputes on the Rights of Premises Owners to the Common Property of the Building," in *Bulletin of the Supreme Arbitration Court of the Russian Federation*, IX (2009).

Legally, this postulate, of course, is true, however, it is clear to any sane person that the MAB is a tangible and existing subject of material world, an autonomous structure, a building. Moreover, the Housing Code of the Russian Federation repeatedly refers to the MAB as an independent object of law.

The position expressed in the Concept of the Development of Civil Legislation on Immovable Property (Concept of Development of Civil Legislation on Real Estate // Legal Reference System "ConsultantPlus") is also interesting. The building becomes a set of structures after premises isolation, according to the authors of the Concept: "Bearing and enclosing structures, interfloor overlapping, roof, foundation, engineering equipment, as well as so-called common areas (stairs, corridors, halls, etc.), connecting several rooms with each other or with the external boundaries of the building" (Proceedings of the Conference "Improvement of Legislation Regulating Real Estate Turnover". Concept of Development of Civil Legislation on Real Estate). In fact, according to the idea of its authors, the building still continues to exist as an object "from a technical point of view", and ceases to exist only from a legal point of view.

In fact, this position is intermediate, since if we are guided only by the position according to which the MAB does not exist as an object of civil law, we can also assert that there are no (constructive) elements of this apartment building .[8] The consequence of this approach is the conclusion about the insignificance of transactions aimed at the reconstruction, overhaul of the MAB, due to the absence of the latter in legal nature. The lack of such a legal framework as the common property of the apartment building was addressed by.[9]

Without going into further needs, it should be noted that the MAB should be recognized as an independent object in particular, it should be an independent and autonomous object of management (we will examine this category in more detail below) for the convenience of regulatory regulation. This is indirectly confirmed by the Housing Code of the Russian Federation.

The validity of such a position can also be confirmed by a purely practical argument. Virtually, constructively any residential and non-residential premise is only a space, "air" between constructive elements of the building, that is, the MAB itself. It is impossible to ensure the proper state of these components with complete lack of attention to the condition of residential and non-residential premises.

However, bringing the MAB to "the forefront" as an object does not mean that we offer to completely eliminate the importance of premises as the objects of law. We believe that it is necessary to adhere to the concept of "coexistence" of the building's and premises' conveyance. In this case, any building (including MAB) is not deprived of the status of the object of civil rights - the real estate object, but

[8] S. P. Tsydenov, "Multi-Apartment Building as a Complex Real Estate Object," in *Leningrad Legal Journal*, II (2010), p. 212-225.

[9] E. A. Sukhanov, E.A. (2006). "On the Notion and Types of Real Estate Rights in Russian Civil Law," in *Journal of Russian Law,* XII (2006), p. 48.

acquires a special characteristic - becomes the summary, the aggregate of premises and the OISP. In this sense, the MAB can be characterized in terms of the term of "complex real estate object" used in civil literature, which is now called (but in fact the same) a "single real estate complex" (Art. 133.1 of the Civil Code of the Russian Federation).

This rule establishes that: "A real estate object participating in the turnover as a single object may be represented by a single immovable complex - a set of buildings, structures and other things that are inseparably linked physically or technologically, including line objects (railways, power lines, pipelines and others), unified by designation, or located on the same land plot, if the ownership of the aggregate of these objects as a single property object in general is registered in the Unified State Register of the Real Estate Property".

As we can see, the MAB falls under this definition completely, excluding the sign of the presence of mandatory state registration. Elimination of this discrepancy with respect to the entire housing stock is not a realistic task, both for time and material costs.

Summary

Thus, the circle of participants of civil legal communities is open, the most common are the housing co-owner communities within a single building.

Moreover, the Housing Code of the Russian Federation has already prepared a sufficient basis for establishing a legal status of the community, at least through the enumeration of their rights and obligations. However, it is impossible to be the co-owners of a non-existing legal entity.

It seems that in this case the legislator can apply known techniques of legal method: in addition to the theory of fiction with respect to the legal existence of the MAB, it is necessary to supplement Article 15 of the Housing Code of the Russian Federation with the concept of MAB (recognizing it as an independent object of law), and to indicate that the rules of Art. 133.1 of the Civil Code of the Russian Federation should be applied in this case, unless otherwise follows from the law or the relationship substance.

Only in this case an object, real estate owned by the apartment owners will be legally present. It is also difficult to determine the object, the field of activity of the community itself without it. Turning to foreign experience, it should be borne in mind that this approach is supported by a significant number of law and order and mediates the successful implementation of these relations.

Conclusions

Recognition of a certain kind of legal personality and legal consequences of the decisions of such non-personable civil society communities in the legislation corresponds to the existing needs of theory and practice, but the development of the scientific basis for developing an understanding of the essence of civil legal communities is at an early stage. The solution of this task will contribute to further improvement of the regulatory framework in this area, the solution of complex issues in the common property management, the mechanism for coordinating the

will of owners of residential and non-residential premises within a single real estate object, the establishment of a unified understanding of the essence and features of representation in relation to such formations.

Carrying out a full and comprehensive further study will allow drawing up the conclusions on the essence and components of the legal status of civil legal communities, as well as identifying the existing problems in the legal regulation of relations in this area, which leveling will ensure timely and full-fledged protection of the rights of ordinary citizens.