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The landlord may be at a disadvantage if the lease agreement does not regulate value added investments

In a recent legal case, the Court of Appeal examined the landlord's obligation to reimburse value added investments during the term of the lease.

Considering that the lease agreement in the relevant case was concluded under the „old" Civil Code (Ptk.), the provisions of Ptk. shall be applied in the case.

The tenant claimed reimbursement from the owner of the building, who was also the landlord, for value added investments made with the landlord's consent on the structure located on the leased land. However, the landlord terminated the lease due to the tenant's non-payment, making it uncertain whether the landlord is obliged to reimburse the tenant for value added investments, since the parties did not include any provision regarding such reimbursement in their agreement. The Court of Appeal pointed out that the accounting for such investments must be adjudicated within the framework of the parties' lease relationship.

By terminating the lease agreement and transferring possession of the building, the tenant no longer used (did not further amortize) the building, so the appreciation resulting from the value added investments accrued in favour of the defendant as the owner. Therefore, the tenant's claim for compensation became due upon termination. The defendant requested the rejection of the tenant's claim for compensation arising from the value added investments made with the consent of the landlord, based on the argument that the compensation for investments can only be demanded during the term of the lease agreement if the parties expressly agreed to it.

In contrast, the court relied on case law and declared that in the absence of an agreement concerning the settlement of investments, Ptk. provides a basis for the reimbursement of the wealth shift resulting from the tenant's value added investments. The conclusion of the Supreme Court's decision Pfv.21.367/2015/9. is that in case of undisputed value added investments made by the tenant, the content of the agreement between the parties is decisive for the reimbursement, and **if the parties do not settle the value increase generated by the investments (or its exclusion), the tenant can assert his claim for value increase according to the rules of unjust enrichment.**

Based on the above, the Court of Appeal concluded that although the contract does not regulate the settlement, the sections of the contract referring to the right of pre-emption and the tenant's sales opportunities imply that the contractual intent of the parties did not exclude the settlement of the investments. Moreover, the above-mentioned contractual sections indicate that the parties acknowledged and took into account that the investment on the leased property represents a financial value, which can be obtained by the landlord or another buyer in exchange for consideration, i.e. in this way, the tenant's investment will be recovered after the termination of the lease. Therefore, **the contractual will of the parties reflected in the above-mentioned provisions does not exclude but rather strengthens and justifies the settlement of value added investments by tenant.** The Court of Appeal summarized that **the defendant (landlord) must reimburse to tenant the financial benefit obtained at the expense of the tenant.**