

SUMMARY

Key Words: unauthorized construction, annex, acquiring property rights, immovable property, unauthorized structure, extrajudicial demolition, landlord and the tenant, Town Planning Code, Land Code, building regulations and rules, appeal to the court, landowners, property developers.

Subject matter: Features of ownership recognition of unauthorized construction

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Relevance of the research topic. The realities of recent years indicate that the topic of ownership recognizing of unauthorized construction is not fully disclosed in court and studied by scientists. It is directly related to the lack of clear legislative regulation of this issue. The relevance of the topic is due to the fact that unauthorized construction affects the economic interests of society, in addition to individual citizens and legal entities interests, because violation of planning rules and regulations hinders the normal economic development of the state. In addition, unauthorized construction concerns the interests of citizens ' lives safety, because building Code violations and technical regulations can lead to people's death. Considering unauthorized construction as a legal phenomenon, we can conclude that it combines two absolute contradictions: on the one hand, it is a tort, on the other hand, it is one of the grounds for acquiring property rights. Until September 1, 2015, buildings that were not authorized by the lawmakers, they were considered exclusively as immovable property. The relevance of this research arose as a result of legal vacuum formation around the topic of unauthorized construction. This uncertainty must be resolved in the interests of both the land owner and the person who carried out the construction. This fact contributed to determining the relevance of our research.

The purpose of the work: analyze the features of ownership recognition of unauthorized construction.

Objectives:

- analyze the history of formation and development of unauthorized construction norms;
- to reveal the concept and the types of unauthorized construction;
- describe the characteristics of unauthorized construction;
- to identify the recognition features of ownership of unauthorized construction by the court;
- identify perspectives for legislation in the field of unauthorized construction.

Theoretical and practical significance of the research. The theoretical significance of the work is that its conclusions, suggestions, recommendations generalize and complete scientific knowledge about the features of ownership recognition of unauthorized construction. Practical significance of the work is that he findings of the research can be used in teaching such subjects as civil law and housing law.

Results of the study:

1. In 2019 recent changes in the Federal Act of 03.08.2018 №339-FA «On amendments in the Civil Code of the Russian Federation” and in article 22 of the Federal Act» On the Enactment of the section 1 of the Civil Code of the Russian Federation" were made. At the same time the amendments were made to the Land Code and Town Planning Code of the Russian Federation. These Codes regulate that legal issues which concern the legal position of illegally constructed objects, their right to legitimize such unauthorized construction and control the ownership. Prior to the amendments to the Federal Act of 03.08.2018 №339-FA «On amendments in the Civil Code of the Russian Federation» there was no unified system of unauthorized construction control in Russia, namely, there were no fixed requirements for unauthorized construction, methods of demolition. It should also be said that citizens did not have the right to protect an unauthorized structure from extrajudicial demolition, without paying damages.

2. The process of simplifying the registration of unauthorized construction began in 2006, the country amnesty clearly facilitated the rights acquisition to such structures, meanwhile amendments were made to article 222 of the Civil Code. The Federal Act of 30.06.2006 N 93-

FA "On amendments to certain legislative acts of the Russian Federation on the issue of registration citizens' rights to certain real estate objects under the simplified procedure" made it possible for citizens to put unauthorized constructions into operation, not only through an appeal to the court, which significantly simplified the procedure for legalizing rights, so there is no longer a need to go to court if there is no conflict.

3. According to article 263 of the Civil Code of the Russian Federation, the owner of land has the right to build, demolish, rebuild structures and buildings of different types, as well as give the right to the same actions to other people. According to the law, the following rules must be observed: requirements for the land destination; norms and standards for the construction; limitation by the agreement terms, in case of transfer of the right to third parties use.

4. Unauthorized structures are often built on someone else's land property in the Russian Federation without obtaining permission from the landowner. There are frequent cases of construction and reconstruction of rented premises without obtaining landowner written permission. Such situations occur due to the trivial ignorance of the regulating mechanisms for this issue in Russian legislation, both from the landlord and the tenant. All of it seems complicated, both for landlords and tenants.

5. Points of article 222 of the Civil Code of the Russian Federation allow put into operation unauthorized structures that were built some time ago, with norms and standards violations of Town Planning Code and Land Code. The initiator of unauthorized structures has got a possibility to prevent demolition, being legal according to rules of article 222 of Civil Code, in the case of direct participation in the construction of the tenant.

6. The study showed that the situation unfolds in this way: the tenant obtains the right to use the land according to the executed rental agreement, he understands that he is dealing with unauthorized building, then upgrades or completes a part of it, then his unauthorized actions are fixed, then the landowner gives evidence to the municipal authority, and after that specialists are engaged in resolving the current situation.

7. Observing the paragraphs of article 222 of the Civil Code, we see that the landowner may to reimburse the cost to the tenant, then legalizing unauthorized construction. The tenant receives the amount of money from the landowner that he spent in the process of construction, after that the landowner gets the opportunity to introduce this unauthorized construction into operation. The safety of unauthorized structures is the main factor to focus on. Having legal and informational support from specialists for legalizing is an integral part of the process, constructing an unauthorized building for private use.

8. As a result of our research, we have found that the most reliable way is an independent private consultation of a certified professional in this field of knowledge. After all, only a competent, well-educated specialist who is aimed at achieving results for his client and clearly understands the intricacies of Russian legislation, can provide high-quality and fast services.

9. By the results of carried out research, we can sum up that unauthorized construction is an immovable property that was built without obtaining a special written permission for its construction. If there is no conflict of interest with the landowner, building unauthorized construction, it is allowed to legalize it, but in court. Non-judicial procedure is not established in fact by the Russian Federation legislation, there are no articles, regulating this process, in the Civil Code of the Russian Federation. The crucial problem of Russian legislation on the issue of legalizing the process of obtaining the right to building unauthorized constructions is a permanent increasing number of controversial issues that arises on the basis of a conflict of interests between landowners and property developer of unauthorized constructions, in the absence of norms that are legally fixed, and the absence of a strictly regulated division of authorities powers that put such unauthorized constructions into operation.

Recommendations:

1. Article 222, paragraph 1, of the Civil Code of the Russian Federation should be specified the object of unauthorized construction and the second feature of unauthorized construction: "Unauthorized construction is a dwelling house, other building, structure, annex, the unfinished

construction or other immovable property created (reconstructed) on a land plot which not designated for these purposes in the manner prescribed by law, or created (reconstructed) without permission in accordance or with substantial violation with Town Planning Code.

2. We propose combination of the second and third paragraphs of article 222 into one, but the essence of unauthorized construction will not be changed. In the law, it can be expressed this way: " ... or created (reconstructed) in violation with Town Planning Code and other building regulations and rules." The required permissions are contained in the specified norms; their absence means a violation of these norms. Article 222, paragraph 2, of the Civil Code, which describes the undesirable consequences of unauthorized construction, is uncontroversial, hence any clarification is not required.

3. There is a gap in the legislation regarding the legalization of other unauthorized constructions types, these rules must be included in article 222 of the Civil Code of the Russian Federation, or in Town Planning Code, or in Land Code. Accordingly, article 222 of the Civil Code of the Russian Federation can be supplemented with this paragraph: "Recognition issues of property rights to unauthorized construction in violation of construction norms and standards are regulated in accordance with Town Planning Code and Land Code."