

Commercial Property - Austria

Corporate entities may claim compensation for discomfort

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The Supreme Court recently handed down a decision concerning the disruption of a tenant's business by severe construction work carried out by the landlord. The court held for the first time that corporate entities are also entitled to claim compensation for discomfort in connection with construction work.

Facts

The tenant operated a four-star hotel in the leased premises. The landlord undertook extensive refurbishment works, including the removal of intermediate ceilings and the roof. The operation of the hotel was severely disrupted, as the landlord had not informed the tenant of the start date or schedule for the construction works. In addition to constant building noise and other disturbances, the water was repeatedly turned off without prior notification, leaving the hotel's breakfast and bathroom facilities inoperative. The construction company did not provide dust curtains to prevent or at least reduce the dust entering the hotel. The works commenced at 7:30am, including on Saturdays, Sundays and public holidays. The hotel lost many of its regular customers, guests refused to check in to pre-booked rooms or left early and the hotel was eventually delisted from a travel guide.

Decision

Under Austrian tenancy laws, tenants are generally obliged to tolerate maintenance or refurbishment works carried out by their landlord with regard to the structural parts of the house. In turn, the landlord must pay compensation for any financial losses suffered by the tenant, such as for replacement of a damaged inventory, cleaning, additional advertising and for loss of revenue. Moreover, the landlord must ensure that the works are carried out with the least possible impact on the tenant's interests, where reasonable. If the landlord fails to protect the tenant's interests, it must pay compensation for the discomfort caused, in addition to any financial damages suffered by the tenant.

In the present case the tenant was a limited partnership. Under previous case law, it was not clear whether corporate entities were entitled to claim damages for discomfort or only physical persons. The landlord therefore refused to pay compensation for discomfort.

The Supreme Court held that corporate entities also hold personality rights and therefore, in certain cases, are entitled to claim compensation for immaterial damages caused to their officers. This concept should also be applied in tenancy law. Therefore, the tenant was entitled to claim compensation for discomfort.

While the first instance court had awarded €15,550 in damages - arguing that €50 for each of the 311 days of construction work seemed adequate - the Supreme Court disagreed with this formula, arguing that only those disturbances that resulted directly from the landlord's breach of its duty to take all reasonable measures to reduce the impact on the tenant's interests entitled the tenant to claim compensation. Where such disturbances are common and inevitably connected with construction work, the tenant is not entitled to compensation. Moreover, the compensation should not be calculated on a daily basis, but rather be awarded in an amount which - as the court put it - "roughly seems appropriate".

Comment

Unfortunately, the decision gave no indication of what the court deemed to be a roughly

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appropriate amount; it did not issue any guidelines on how to calculate such compensation.

The court was undoubtedly of the opinion that in the present case the tenant was not entitled to the full €15,550, as certain disruptions are common and inevitable. Given the overall cost of the refurbishment carried out in the building, the compensation for discomfort is likely to be a very marginal cost factor for the landlord and will not influence it in its decision on how to organise the building project. The damages for discomfort will thus be consolation for the tenant, but will not induce the landlord to take tenants' interests into consideration when planning construction work.

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