

Liability of Tenants, Current and Previous Condominium Owners from The Severance Pay of Workers Employed by Gated Communities and Apartment Buildings

I. Introduction

In practice, determining the legal liability of tenants, previous and current condominium owners (hereinafter “**owners**”) for various charges included in condominium dues by managements of gated communities and apartment buildings. This matter frequently leads to disputes and challenges in practice.

Additionally, other specific charges, commonly referred to as “condominium dues” or by similar names, which fall exclusively on owners (not from tenants). The allocation of responsibility for such charges, -whether it entirely falls on the current owner or is shared between both the current and previous owners- is a matter of ongoing debate in practice.

This article aims to clarify the liability of current owners and tenants regarding the condominium dues or other similarly named claims for the severance pay of said workers in light of the relevant legislation and current court practices.

II. Liability of Tenants and Condominium Owners for Severance Pay

1. Liability of Tenants

According to Article 22 of the Condominium Law (hereinafter “**CL**”) tenants are jointly and severally liable for the condominium dues, in conjunction with owners, who are deemed liable persons for such charges in Article 20 CL. This means that tenants can also be legally pursued for the charges mentioned in Article 20 CL. However, a tenant's liability is capped at the amount of their monthly rent.

The charges covered by the aforementioned articles of CL only include expenses that are required for the routine operations and services of the gated community or apartment building. Tenants are merely customers to such services for the time they reside there and are therefore responsible for the wages of the service-providing workers. However, the

severance pay of workers, whose contract has terminated in a way that entitles the workers to a severance pay, cannot be regarded as the same because the obligation to pay the severance pay is a legal matter solely between the employer (owner) and the employee (worker), as governed by the provisions of the Labour Code. Thus, holding tenants liable for severance pay under Article 22 CL is not legally possible.

Workers cannot sue tenants residing in the property for their severance pay claims, in case their severance pays have not been fulfilled by the management of the gated community or the apartment building. The 9th Chamber for Civil Matters (CCM) adopting the same view in its ruling of File (F.) 2013/6362, Decision (D.) 2013/20936 dated 09.07.2013, by stating “*tenants and non-owner residents cannot be involved in lawsuits related to labour claims.*” Also, the 19th CCM shared the same opinion in case F. 2206/7917, D. 2007/2145 dated 06.03.2007, by declaring that labour compensations must be paid by the employer, thus exonerating the tenant in this context.

Given this legal standpoint, even if the severance pay is labelled as “condominium dues” or as other similar charges, tenants who have pre-agreed in their lease agreements to be responsible for expenses can refuse to pay the portion of these dues pertaining to the severance pay. The tenant is also entitled to seek recourse and compensation from the owner, the actual legal debtor, for any such payments made.

2. Liability of Condominium Owners

The owners are, without question, the employers of the personnel who are working in gated community/apartment buildings and thus bear responsibility for their employee’s severance pay. Therefore, it is unquestionable that an individual who has been the owner during the entire period of employment will be fully responsible for their share of the severance pay due to the worker. This share attributed to their property is calculated by dividing the total amount by the number of owners. Indeed, according to subclause (a) of paragraph 1 of Article 20 of the Condominium Law, as cited below, the aforementioned amount shall be equally distributed among the owners:

“Unless otherwise agreed upon, owners are obliged to equally contribute to the a) expenses and advance regarding the doorman, gardener, and watchman.”

On the other hand, a frequently encountered question in practice concerns the extent of a condominium owner's liability for severance pay owed to a worker who began

employment in the gated community or the apartment building before the owner's acquisition of the property, but was dismissed during their ownership. This question has been addressed in legal doctrine and judicial practice through the concept of 'workplace transfer.'

Paragraph 2 of Article 14 of the Former Labour Code (Law no: 1457) is still in effect and states:

"The seniority levels of workers are to be calculated notwithstanding if their contract were continuous or renewed periodically and by taking into account the time, they have worked in one or more different workplaces of one employer. The seniority of the worker shall be calculated based on the cumulative duration of his/her contracts under the respective employers, when the workplace is taken over by another employer."

In other words, the seniority of a worker who continues to work at a workplace that has changed hands does not reset with the transfer of the workplace; rather, it continues from where it left off.

The proportion of liability of employers for an employee's severance pay for those who worked under their management is defined in the following part of the same article:

"Both the transferring and the acquiring employers are liable for the severance pay of an employee who continues to work in the workplace post-takeover. The liability of the employer who transferred the workplace is confined to the period of the employee's tenure under their management and the wage level at the time of the transfer."

As outlined in the article quoted above, both the previous and current employers are responsible for the severance pay of the employee, to the periods during which they employed the worker. Additionally, the liability amount of the previous employers is calculated with a limitation to the wage amount that was paid to the worker at the time of the workplace transfer.

However, the person who is the owner at the time of the labour contract's termination is fully liable for the entire severance pay to the worker under the Labour Code provisions. If he pays the worker an amount exceeding their share of liability, he can seek recourse from the previous owners. This recourse is based on the same principle, with the former

owners' liability limited to their respective periods of ownership. Conversely, the owner at the time of the contract termination cannot argue in a lawsuit brought by the worker that he is only responsible for the portion of the severance pay corresponding to his period of ownership.

Indeed, this view was adopted the General Council for Civil Matters of the Cassation Court in its ruling dated 03.10.2001 with the F. 2001/18-642, D. 2001/662 by stating the following:

“In the specific case at hand, the defendant, being the owner when the doorman quit and became entitled to his severance pay, is liable for the whole claim amount against the apartment management and the insurance. The fact that a portion of the period considered for calculating the severance pay falls within the term of a previous owner does not exempt the defendant, who was the owner at the time the debt was incurred, from this responsibility. If conditions permit, they have the right to seek recourse for the portion of the severance pay corresponding to the period under the previous owner. As clearly stated in the decision of the 9th Chamber for Civil Matters of the Court of Cassation, dated 19.10.2000, with file number 2000/9377 and decision number 2000/14065, ‘According to Article 14/2 of the Labour Code No. 1475, when a workplace is transferred to another employer, the worker’s seniority is calculated based on the total period of service under different employers. Even though the previous employer is responsible for the period during which they employed the worker and the wage at the time of transfer, the last employer as the defendant is responsible for the entire period. However, they can seek recourse against the previous employers in proportion to their respective liabilities.”

The perspective adopted in the aforementioned General Assembly decision has been consistently followed in subsequent judicial practice (Cassation Court 11. CCM., F. 2001/978, D. 2001/3082 dated 12.04.2001; 12. CCM., F. 2018/3975, D. 2018/8922 dated 1.10.2018; 12. CCM., F. 2018/5841, D. 2019/2344 dated 18.2.2019; 12. CCM., F. 2018/5842, D. 2019/3373 dated 28.2.2019; 22. CCM., F. 2020/971, D. 2020/3625 dated 27.2.2020).

Conversely, if the labour contract is terminated before the transfer of property ownership (deed transfer) to the relevant owner, then said owner is not liable for the employee's

severance pay. 20th Civil Chamber articulated this matter in its decision F. 2017/2137, D. 2018/7243 dated 12.11.2018, as follows:

"In the specific case, it is understood that the doorman's labour contract was terminated on 22.09.2010, and they were entitled to severance pay as of that date. Upon examining the land registry records in the file, it was noted that the plaintiff became the owner of the condominium numbered 7 in Block A3 on 06.10.2010. The legal basis for the subject execution proceeding is severance pay claim for the services of the doorman during periods prior to 22.09.2010. Since the plaintiff was not the owner during this period, it has been concluded that he is not responsible for the aforementioned debt."

III. Conclusion

This article has examined the legal responsibilities regarding severance pay to be paid to workers of gated communities and apartment buildings. The key findings are:

- Tenants cannot be legally held responsible for the severance pay of personnel working in the gated community or the apartment building.
- Condominium owners are liable for the severance pay of a worker to a certain amount corresponding to the duration of their ownership. The liability amount of the former employer is calculated with a limitation to the wage level that was in effect at the time of the workplace transfer.
- The condominium owner at the date of termination of the labour contract is obliged to pay the entire amount of severance pay attributable to their property to the employee (management). The amount which corresponds to the period when they were not the owner but had to pay the employee can be reclaimed from the former owners, limited to the amounts they were legally obligated to pay.

Disclaimer: This article is intended to provide the reader with a general overview of its subject. Each individual case should be assessed based on its circumstances.