

Disclosure of accounts pursuant to Article XLII of Code of Civil Procedure

July 18 2017 | Contributed by **Oblin Melichar**



Under Article XLII of the Code of Civil Procedure, any party that has a substantive claim for information against another party (which it is suing for performance) has a claim for the disclosure of accounts to mitigate serious problems with quantifying the substantive claim if the accounts could help the claimant and if the respondent can be reasonably expected to provide them.

In the first case of applying Article XLII before the Supreme Court, the article was not interpreted expansively and did not establish a new substantive claim for information about assets, disclosure of accounts or any other information. Rather, it held an obligation that already existed under civil law. Such obligation may also be derived from private agreements between parties, if one party can be excused for not knowing of the existence or the extent of the assets and if the other party can provide that information without great effort and if it is reasonable to provide such information.

In a contractual relationship, there is an obligation to disclose accounts. This applies particularly for cases where the type of contract leads to a situation where the claimant can be forgiven for not knowing about the existence and extent of assets, and where the respondent could easily provide such information and be reasonably expected to do so.

Any party which has a substantive claim for information against another party (whom it is suing for performance) has a claim for the disclosure of accounts. A claim under Article XLII is not a subsidiary claim, but is generally open to any party which has problems in quantifying a claim for performance against another party which has to provide information based on substantive law.

The appeal court used the following case law: insofar as the defendant disputed the plaintiff's claim for the disclosure of accounts, which was granted by the lower courts, this deviated from the determined facts. As a result, the contract that was the basis for the plaintiff's claim for commission (Phase 2 of the irrigation project) would have been concluded during the term of the contract if the defendant had not illegally terminated the consulting contract with the plaintiff.

Therefore, the claim for commission would have become due before the end of the term if the contract had been fulfilled as originally planned. Further, it was found that the plaintiff would have continued its activities had it not been for the illegal termination, and therefore it was not the plaintiff's fault that there was no support for the subsequent contract.

The court used the hypothetical turn of events to interpret the principal claim, which was the basis for the claim for disclosure of accounts and as a result affirmed the claim for commission. The appeal court was not wrong in coming to its decision and did not need to be corrected by the Supreme Court in the interest of predictability of court decisions. Regarding the contractual agreements between the parties (services to be provided by the plaintiff and the obligation to pay commission based on success and fees generated under the contract), no claim based on the Commercial Agents Act was necessary.

For further information on this topic please contact [Klaus Oblin](mailto:klaus.oblin@oblin.at) at Oblin Melichar by telephone (+43 1 505 37 05) or email (klaus.oblin@oblin.at). The Oblin Melichar website can be accessed at www.oblin.at.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).