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Iryna Berestova,
Doctor of Law, Professor, Honored Lawyer of Ukraine, Leading Researcher at the Laboratory of Protection of Subjective Rights of the Department of Private Law Problems, Academician F. H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of Nationality Academy of Law Sciences of Ukraine, 23-a, Rayevsky str., Kyiv, Ukraine, postal code 01042, erevna@ukr.net
ORCID: *orcid.org/0000-0001-6345-3566*

Liudmyla Maistrenko,
Lawyer, Honored Lawyer of Ukraine, Deputy Managing Partner of Attorney Association "ULC", 106, Velyka Vasylkivska str., Kyiv, Ukraine, postal code 03150, ludmila.maistrenko@gmail.com
ORCID: *orcid.org/0000-0003-3631-483X*

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THE COURT'S ASSESSMENT OF THE SUBJECT MATTER AND GROUNDS OF A CONDITIONAL CLAIM FOR THE APPLICATION OF THE *JURA NOVIT CURIA* PRINCIPLE

Abstract. ***The purpose*** of the article is to develop ways to ensure effective protection of a person's property right by the courts by means of judicial evaluation of the subject matter and grounds of the conditional claim for application of the principle *jura novit curia*.

The ***scientific methods*** used in the article are formal-logical, case-study method, systematic, dialectical method, method of complex analysis, etc.

Results. Conditions of conditional claim as the circumstances on which the claim is based (except for the lack of a legal basis for the acquisition or preservation of property) are more common grounds of all claims (contractual, restitutionary, vindication, tort), which are most often mixed with conditional. All other claims (contractual, restitutionary, vindication, tort) arise from different legal relations regulated by different rules of law, from special institutions of civil law, which have their own specifics and features. That is, each of these claims, not so much for qualification as for a correct decision on the merits, must have its own, different from the general, basis. It is this, which is specific to each type of claim, that enters into the subject of proof in each particular case. For a vindication claim, this is, in particular, the presence of individually-defined property, which has been preserved by the defendant in the same form. For a contractual claim this is the existence of a specific contract, the fact of its conclusion, validity, its terms. For restitutionary it is the fact of invalidation of the contract, the fact of transfer of each party to the other performance under this contract. For a tort – the corpus delicti of civil law, in particular, the presence of wrongdoing in the actions of the acquirer.

Conclusions. Taking into account the specifics of the conditional legal relation the court is able without prejudice to the adversarial and dispositive civil proceedings to apply the principle of *jura novit curia* ("the court knows the laws") and independently qualify and decide the claim on the merits exactly as a conditional one in the case if the claimant stated the claim as contractual (restitutionary), vindication, tort). But within the limits of the grounds of claim stated by the plaintiff himself and according to the circumstances proved by the plaintiff the court will find that the legal basis for the acquisition of property by the acquirer is absent, given that there are no contractual, restitutionary, vindication or tort legal relations between the parties. However, a diametrical conclusion of the court must be reached if the plaintiff has stated the claim as conditional and on the grounds of the claim has determined, inter alia, the terms of conditionality and refers to the absence of a legal basis for the acquisition of the property by the defendant. In such a case, as a general rule, the court

cannot, even with reference to the principle of *jura novit curia* ("the court knows the laws"), resolve such a claim on the merits by recharacterizing it, for example, as a contractual one, and applying the rules of contract law.

Key words: conditional obligations, conditional claims, subject of action, cause of action, *jura novit curia* ("the court knows the laws"), procedural actions of the court, change of action, effective way to protect the right.

1. Introduction

Consideration of the topic of condiction from the perspective of solving applied problems that arise in judicial and legal practice in handling and resolving conditional claims predetermines several key issues that require rethinking in the following: 1) the specific conditions, the presence of which serves to conclude that it is necessary to apply to the court for the protection of the violated right with conditional claims; 2) its role in the procedural mechanism for protecting the property rights of persons; 3) reviewing the legal nature of obligations to acquire, retain property without sufficient legal nature in the substantive aspect; 4) determination of the conditions when the court applies the rules of substantive conditional law independently according to the principle of *jura novit curia*, although the plaintiff did not refer to them, and when such application is inadmissible. The practical relevance of clarifying this issue is determined by the development of ways to ensure *effective protection* of civil law (including property) by the courts. One of the steps to achieve this is the attempt to introduce into practical litigation the doctrine of *jura novit curia*, which in jurisprudence is simultaneously called a principle, a presumption or an axiom of civil litigation.

Analysis of the legal positions of the civil and economic jurisdiction of the Supreme Court (hereinafter – SC) allows us to identify the most generalized understanding of the principle *jura novit curia* ("the court knows the law"), formed by practice: "When considering a case, the court must indeed provide the correct legal qualification of the parties' relations, which, however, cannot be applied by the court to resolve the dispute on the merits in the absence of the plaintiff's respective claims in the case, because another approach by the court would violate the principle of dispositiveness of judicial process and the legitimate expectations of both the plaintiff (who applies exactly with a certain legally grounded claim) and the defendant (which, in objecting to the claim, argues exactly on the grounds and justifications that are given by the plaintiff in the case)". The Grand Chamber of the Supreme Court (hereinafter referred to as the GC of the SC) has also delved into the explanation of *jura novit curia*, observing that the principle of *jura novit curia* ("the court knows the law") applies in the procedural law, which is that: 1) the court knows the law; 2) the court independently searches the law of the dispute without regard to the reference of the parties; 3) the court independently applies the law to the factual circumstances of the dispute (*da mihi factum, dabo tibi jus*). The active role of the court in civil proceedings is manifested, in particular, in the independent qualification by the court of the legal nature of the relations between the plaintiff and the defendant, the choice and application to the disputed legal relations of the relevant rules of law, full and comprehensive clarification of the circumstances on which the parties refer as a basis for their claims and objections, confirmed by evidence, which were examined in a court session. Thus, in resolving a dispute, the court, within the limits of its procedural functional powers and within the limits of the claims, establishes the content (the legal nature, rights and obligations, etc.) of legal relations of the parties arising from the established circumstances, and determines the legal norm to be applied to these legal relations (Supreme Court, 2021a).

The purpose of the article is to develop ways for the courts to provide effective protection of a person's property right through the court's evaluation of the subject matter and grounds of a conditional claim in order to apply the principle of *jura novit curia*.

Research methods used in the article: formal-logical, case-study method, systemic, dialectical methods, method of complex analysis, etc.

Clarification of theoretical aspects and practical implementation of the main provisions of the civil law institute of acquisition, preservation of property without sufficient legal basis in the sphere of non-contractual obligations was the first comprehensive scientific research of one of the authors of this article (Berestova, 2004; Berestova, Bobryk, 2006). Conclusions once formed in the dissertation, subsequent author's publications and commentary of Chapter 83 of the Civil Code of Ukraine (Berestova, 2014), can be found in the legal positions of the Supreme Court. In turn, clarification of the nuances of the application of the institute of condiction by the courts, determining the conditions and rules for distinguishing these claims from vindication and restitution claims, claims for damages, has periodically become

a subject of scientific attention by the second of the authors of the article – now a practicing lawyer (Romaniuk, Maistrenko, 2014). The return of both authors to the modern rethinking of the topic of such a legal institution as condiction in this article is due, firstly, to the marked spread of its application associated with the formation of a certain gap in law enforcement practice in understanding the legal nature of condiction as a way to protect property rights and, secondly, the lack of comprehensive scientific and practical studies on the peculiarities of implementation of the conditional claim in the substantive aspect, combined with the procedural features of domestic proceedings, in particular, the principle of dispositiveness. Also to applied aspects of the subject of condiction, in particular, N.Yu. Filatova (Spasybo-Fatieieva, 2020, p. 420) and to some extent A.V. Potapenko (Potapenko, 2021), who studied the issue of court determination of an effective method of protection of the right and revealed the procedural features of the doctrine of *jura novit curia*, including in conditional obligations, addressed.

Previously unsettled issue. However, no detailed scientific attention on the part of scientists-theorists and practitioners to the problem of application of the principle of *jura novit curia* in conditional claims by the court in terms of compliance with the subject matter and grounds of the claim filed exactly as a conditional, which determines the relevance of this article.

2. The principle of *jura novit curia* in choosing an effective method of protecting property rights

Reflecting from the angle of choice of an effective way to protect the right, we should agree with A.V. Potapenko, who notes that according to the principle of *jura novit curia* ("the court knows the laws") the court independently carries out legal qualification of disputed legal relations and applies for decision exactly those rules of substantive law, the subject of which is the corresponding legal relationship, which does not lead to a change in the subject of action and/or the method of protection selected by the plaintiff. In this case, the requirements for the court to apply an effective method of protection of a violated, unrecognized or disputed private right or interest, not contrary to the law, will first be assessed by the court *in terms of its compliance with the subject matter and grounds of the claim* (Potapenko, 2021, pp. 107–108).

Here it should be recalled that the correct definition in the statement of claim of the subject matter and grounds of the claim still causes difficulties in law enforcement, as evidenced by the practice of the SC, which is forced to respond to such problems with its legal conclusions. It is appropriate for the study to mention the legal conclusion of the SC that the *subject matter of an action* is a certain substantive claim of the plaintiff against the defendant, in respect of which the plaintiff asks for a judicial decision, mediated by the appropriate mode of protection of rights or interests. *The causes of action* are the circumstances by which the plaintiff substantiates his claims for protection of rights and a legally protected interest. At the same time, *the legal basis of the claim* is the regulatory and legal qualification of the circumstances, specified in the statement of claim, by which the plaintiff substantiates his claims.

As you know, according to Article 13 of the Civil Procedural Code of Ukraine, the court shall hear cases not otherwise than at the request of a person filed in accordance with this Code, within the limits of his claims and on the basis of evidence submitted by parties to the case or claimed by the court in cases provided for by this Code. A participant in the case shall dispose of his rights on the subject matter of the dispute at his discretion.

The court *can not exceed* the limits of the claims and in violation of the principle of optionality *independently choose the grounds and subject matter of the claim*, as repeatedly and consistently emphasized the Supreme Court of Ukraine (Supreme Court, 2019a; Supreme Court, 2019c; Supreme Court, 2019d; Supreme Court, 2019e; Supreme Court, 2020a; Supreme Court, 2020b).

However, it is the latter components (subject matter and cause of action) that are often confused by both plaintiffs applying to court and the courts when considering civil disputes. More often mistakes are made in the causes of action.

Although such confusion is equally possible between conditional claims and vindication, restitution or those arising from tort, the most frequent and particularly noticeable, as practice shows, such confusion occurs between disputes arising from groundless acquisition, preservation of property without sufficient legal basis and disputes arising from contracts/quasi-contracts (conclusions), especially if the transactions have defects of various kinds (form, content, etc.).

It should be noted that the Supreme Court consisting of a panel of judges of the Economic Court of Cassation in the judgment in case №910/18389/20 noted that changing the subject matter of the claim means changing the substantive claim with which the plaintiff has appealed to the defendant, and changing the grounds of action is a change in the circumstances on which the plaintiff's claim is based (Supreme Court, 2021c). Given this, the problem of con-

fusion of legal disputes of this kind can lead not only to an erroneous resolution of the dispute by the court on the merits, but also to an "involuntary" violation by the court of the principle of dispositiveness of proceedings, if the court, formally applying the doctrine of *jura novit curia*, independently changes the subject and/or grounds of action (more such threat concerns changes in the grounds of action). Such mistakes are more and more frequent because the principle of *jura novit curia* actually "divides" the court's attention to the arguments of one and the same party to the case (the plaintiff) into two diametrical points: on the one hand, it is the legal grounds for the claim, which are not mandatory for the court (because the court itself knows the law and itself chooses the required rule of substantive law), and on the other hand, it is the circumstances, which the same plaintiff is referring to. These are the grounds for action, and the court has no right to go beyond them to resolve the dispute.

3. Conditional and related claims in SC findings: common and different

In analyzing the legal nature of condiction and the issues of correlation and distinction between conditional and related claims, two recent rulings of the Supreme Court deserve attention, whose conclusions force us to look at the conditional claim and the conditions under which the court may refuse to satisfy this claim not only from the perspective of an erroneous determination of the nature of the disputed legal relations, but from a different angle: in terms of the good faith conduct of the victim *up to the time* when he paid the funds or transferred the property to the acquirer, even if indeed without justification.

Thus, on August 4, 2021 the Supreme Court of Cassation Civil Court (hereinafter – CCC of the SC) adopted a ruling on case № 185/446/18, in which, quite revolutionary for the doctrine and for the first time in judicial practice, obliged the courts, when deciding conditional claims, to consider and evaluate not the conduct of the acquirer, but the victim in the conditional obligation, and directly connected the victim's conduct with its consequences in the form of the court's conclusion on whether his conditional claim is satisfied or not (Supreme Court, 2021b).

Under the circumstances of this case, the plaintiff brought a conditional claim against the defendant for withholding money unreasonably received. The claim is motivated by the fact that after meeting the defendant they had friendly relations and plans to conduct joint business activities, and for some time he carried out periodic transfers of funds to the current account of the defendant in separate payments totaling 1 330 000,00 UAH. These funds were transferred to the defendant to start a joint business (purchase of goods, etc.). Because he trusted the defendant, the agreed terms of doing business together were not set out in a written contract. The plaintiff stated that he became aware that the defendant abused his trust and took possession of his funds without any intention to conduct joint business, and spent the received funds for personal needs (enlarged her breasts, bought a car and an apartment), so he asked to recover the funds as unreasonably received by the defendant. The defendant denied and explained that they had a close relationship with the plaintiff as man and woman, she perceived this relationship as family, they planned to live together and for this purpose looked for and bought an apartment, she introduced her daughter and friends to the plaintiff. The plaintiff gave her many gifts. Getting her breasts enlarged, buying her a car and an apartment for her was his initiative. She also opened a bank account at the plaintiff's suggestion and he deposited the funds, which they spent together. Plaintiff provided the funds that are the subject of the suit voluntarily; she perceived them as funds that he was spending on her because they share a family relationship. In this case, the appellate court denied the claim. The CCC of the SC accepted the appeal in essence, but the motive part of the appeal court's decision was redrafted, stating, inter alia, the following: "Interpretation of Part 1 of Art. 1212, 1215, part 1 of Art. 267 of the Civil Code of Ukraine shows that in determining whether the funds acquired without merit should be taken into account, the acts of civil legislation should be consistent with <...> *funds are not refundable if the aggrieved person knows that he or she has no obligation (no duty) to pay the funds, but makes such payment because said person behaves inconsistently if he or she subsequently demands a refund of the funds paid*" (Supreme Court, 2021b).

Making the following conclusions on the application of Art. 1212 of the Civil Code in conjunction with Art. 3 of the Civil Code, the Supreme Court in its decision of August 4, 2021 noted that the plaintiff, transferring funds to the defendant, which the parties jointly spent, knew that between them there is no obligation (no obligation), and therefore the behavior of the plaintiff contradictory (i. e., the injured party freely and without mistake agreed to the occurrence of disadvantageous consequences). In the case there are no grounds to satisfy the conditional claims. Legal conclusions of the CCC of the SC of Ukraine stated in the above decision are unusual and interesting from the point of view of practical application

of Art. 1212 of the Civil Code of Ukraine by the courts.

But do these conclusions affect the legal nature of condiction as a type of non-contractual obligation, a legal institution? *According to the authors, they do not*. Thus, the legal nature of the condiction as a legal institution remains unchanged – it is a non-contractual obligation arising from the acquisition or preservation of property without a sufficient legal basis. The grounds for these obligations have a wide range: they can arise from actions as well as from events, and from the actions of both parties to the obligation and third parties, from actions both planned and accidental, both lawful and unlawful. There also remains the same conclusion that for the qualification of the obligation as conditional it does not matter the legal behavior of the victim and whether the property left the possession of the owner by his will or against his will, whether the acquirer is bona fide or bad faith. Note: this (in particular, the behavior of the victim) does not affect the determination of the nature of the disputed relationship as a conditional one.

The conduct of the victim has a direct impact not on the nature of the legal relationship and not on the content of the obligation, but on the conditional claim as an element in the mechanism of judicial protection of property rights. That is, the victim's conduct alone does not change the conditional obligation, does not create any legal basis for the enrichment of the acquirer, and does not make the conditional obligation any different (contractual or restorative, etc.). But the victim's claim, based on a conditional obligation, comes before the court in the form of a conditional claim. And it is the result of the court decision conditional claim (satisfaction or denial of satisfaction), judging by the legal opinion of the Supreme Court in its decision of August 4, 2021, already directly depends on the behavior of the victim by virtue of the interdisciplinary principle of good faith (Article 3 of the Civil Code of Ukraine) as a rule of direct action and implementation by the court doctrine *contra factum proprium* (prohibitions of conflicting behavior).

For an analysis of the conditions affecting both the qualification of the obligation as conditional and the result of the court's decision on the conditional claim, it is also interesting to see one of the recent rulings adopted by the CCC of the SC on January 19, 2022 in case № 202/2965/19 (Supreme Court, 2022). Thus, in this case № 202/2965/19 the causes of action are quite similar to those in case № 185/446/18. But the objections to the claim are different. The plaintiff in this case № 202/2965/19 also brought a conditional claim for recovery of the defendant's unreasonably received funds. The claim is motivated by the fact that he, a citizen of the United States, during his stay in the trip met with the defendant, they developed friendly relations and the defendant offered him to buy in Ukraine on favorable terms, which can be rented and receive rents. He agreed to the offer and transferred $ 65,000 in cash to his bank account with the purpose of the payment being purchase of the apartment. However, the defendant then refused to provide him with the documents for the purchased apartment and did not return the money. The defendant, in turn, defended herself against the suit, claiming a contractual relationship between her and the plaintiff and referring to the fact that the plaintiff had given her the money as a gift.

In evaluating this conditional claim, taking into account the defendant's objections, which were limited to a reference to the existence of contractual relations between the parties, the Supreme Court noted the following. "The general rule of part 1 of article 1212 of the Civil Code of Ukraine narrows down the application of the institute of unjust enrichment in obligatory (contractual) relations: the received by one of the parties to an obligation is subject to return to the other party from art. 1212 of the Civil Code of Ukraine only if there is a sign of groundlessness of receipt of such performance. The legal basis for enrichment must be understood as a certain economic purpose for the provision of property, legitimized by the relevant legal fact, or based directly on the law. The simultaneous presence of these two elements: the correspondence of the enrichment to the economic purpose of providing property and the legitimizing legal fact (the rule of law) that legitimizes this purpose, is necessary for the enrichment of one person at the expense of another to be considered fictitious and legitimate. Depending on the form in which the lack of a legal basis that gives rise to the obligation to return the property is expressed, we can distinguish, in particular, such a type of unjust enrichment as enrichment, the legal basis of which was absent from the beginning (*ab initio sine causa*). Such can include, for example, the transfer of property under failed transactions (including under contracts that have not been concluded). In this case, there is enrichment, although by the will of the victim, but not based on a legitimate legal fact. Such enrichment arises from the transfer of property as performance under a contract which has not been concluded. <...> The court must assume that the basis for receiving any property gratuitously from another person must be unequivocal and explicit on the part of the person making such a transfer. Consequently, acting reasonably and in good

faith, each participant in civil relations must assess whether the receipt of any property from another person creates certain civil obligations for the recipient himself, including the return of what was received without just cause. Civil law serves the purpose of ensuring the stability of civil turnover, the criterion for ensuring this is, as a general rule, the receipt by all participants in civil relations only what is due, that is, what a person is entitled to fairly and reasonably expect to receive" (Supreme Court, 2022).

As we see, in this Ruling of January 19, 2022 in case № 202/2965/19 the Supreme Court continued its well-established practice in terms of determining the conditions for distinguishing between conditional and contractual claims, as well as developed the application of interdisciplinary principles of good faith to resolve the merits of conditional claims) and extended this principle not only to the behavior of the victim, as it was in case № 185/446/18, but also to the behavior of the acquirer, observing that any person, acting lawfully, must be aware of whether there is any just basis for her receiving certain funds (material goods). In that case, the courts upheld the claim and recovered money from the defendant from the plaintiff. The SC agreed with the existence of grounds for satisfaction of the claim (as opposed to the outcome of case № 185/446/18, where it agreed just with the denial of the claim), noting that such a reasonable and equitable basis for acquiring the funds in dispute, the defendant neither existed at the time of receipt, nor subsequently such grounds did not arise.

In addition, it should be noted that the Supreme Court in Case № 202/2965/19 also stated that, as a general rule, all participants in civil relations should receive *only what is due, that is, what a person is entitled to fairly and reasonably expect to receive*. According to the authors, this conclusion is extremely important, because it is intended to somewhat ridiculous previous conclusion (about taking into account only the behavior of the victim) and directs the enforcement of Art. 1212 of the Civil Code of Ukraine in such a direction that the refusal of the court to satisfy the conditional claim only because of the behavior of the plaintiff (the victim) should be the exception rather than the rule. This is the right approach, because the essence of the conditional obligation is absolutely unjust enrichment of the acquirer and the doctrine does not endow condiction with such a mandatory element as the good faith of the victim. It follows that the general purpose of a conditional claim is to protect the violated property rights of the victim, so the denial of such protection must be extraordinary and based on more serious grounds to consider the victim's conduct to be unconscionable.

Analyzing the above, it can be seen that the conditional obligation, by virtue of its inherent specific characteristics, has much in common with, in particular, the tort obligation, the restitution obligation, the contractual/quasi-contractual obligation, and the vindication obligation. As a result, it is evident that it is not uncommon for these claims to be commingled when brought in court, mostly as to the cause of action. For example, a plaintiff has transferred money under a contract that is defective in form, and believes that this makes the defendant's acquisition of money without merit and files a conditional claim. Or conversely, the plaintiff alleges that he handed over money without entering into a contract, but because he intended to enter into one, he grounds the claim on contractual grounds and the standards of penalties inherent in contract law.

4. The Court's Action in Conditional Claims on the Application of the Principle of *jura novit curia*

The foregoing demonstrates that the court's conduct in such cases is becoming increasingly important, given the court's obligation to apply the principle of *jura novit curia* ("the court knows the law"). Recall that the principle of *jura novit curia* ("the court knows the laws") obliges the court not to pay attention to the norms of law indicated by the plaintiff in the claim, but to carry out its own legal qualification of disputed legal relations and independently choose those rules of substantive law, the subject of which are the relevant legal relations. At the same time, the court is obliged by virtue of Art. 13 of the Civil Procedural Code of Ukraine to ensure the dispositiveness of civil proceedings and has no right to go beyond the grounds and subject matter of the claim, which noted the plaintiff. In addition, the court, carrying out judicial proceedings, is also limited by such principle as the adversarial principle (Art. 12 of the Civil Procedural Code of Ukraine) and the rules of evidence, which prohibit the court to collect evidence relating to the subject matter of the dispute on its own initiative (part 7 of Art. 81 of the Civil Procedural Code of Ukraine).

Under such circumstances, the question arises: from the procedural point of view, is it possible for the court to independently qualify a claim as conditional and consider it essentially as conditional, if it (the claim) is declared by the plaintiff as a contractual (restitutionary, vindication, etc.)? Conversely, is it permissible for a court to qualify a contractual (restitutionary, vindication, etc.) claim asserted by a plaintiff as a conditional claim and decide that claim on its

merits as a conditional claim? Will such actions by the court be consistent with the rule of necessity for the court to apply an effective method of protection of the violated right, and will these actions be effective procedurally in view of the court's duty to obtain a change in the subject matter of the claim and/or the method of protection chosen by the plaintiff?

Answering this question, it should be recalled that every claim, regardless of its type, and regardless of the plaintiff's references to the rules of substantive law, has its own content and must contain its grounds – that is, the circumstances and facts, which the plaintiff substantiates his claims (Part 3 of Art. 175 of the Civil Procedural Code of Ukraine). At the same time, the cause of action directly depends on the type of legal relationship from which the dispute arose and for which the plaintiff is suing.

Grounds of action (content of the claim) actually reflect the content of legal relations. The grounds for the claim also form the subject matter of the proof, what are the circumstances that support the claims, or are otherwise relevant to the case and to be established when making a court decision (Art. 77 of the Civil Procedural Code of Ukraine). That is, the causes of action do not exist in an abstract way. They are inextricably linked to the subject of proof, and the subject of proof is individual, specific to each case and is just as inextricably linked to those legal relations from which the dispute arose.

For example, in cases of division of property of spouses who are registered as married (legal relations regulated by Articles 60, 61, 69 of the Family Code of Ukraine), in general, do not apply to the causes of action and are not subject to prove the plaintiff neither the circumstances confirming the cohabitation of the parties, no circumstances of their common household, etc. The grounds for such a claim are the circumstances of the marriage (the date of its conclusion and dissolution) and the acquisition of property by the spouses during this period. These circumstances are proved accordingly. And on the contrary, in similar legal relations – the section of the property of a woman and a man living together as a family without registration of marriage (art. 74 Family Code of Ukraine), the grounds of the claim quite different – they are just the circumstances that were not the basis of the previous case: the circumstances indicating that the parties lived together, the presence of common rights and obligations as spouses, the conduct of their common household. This example confirms that the causes of action and the subject matter of proof in two different lawsuits will be different because they arise from different legal relationships. Given this, there are no universal causes of action applicable to claims in all legal relationships without exception and the existence of which in itself allows the court to independently qualify legal relationships and decide the merits of any claim exactly and only as the court sees it, without regard to the position of the plaintiff.

The above gives us grounds to conclude that the principle of *jura novit curia* ("the court knows the law") is not always applicable in all cases without exception and is not that universal mechanism which by itself is able to provide effective protection of the violated right of the plaintiff who filed a claim, but erred in the legal qualification of legal relations from which the dispute arose.

If, however, we analyze the conditional claim and those most similar to it (contractual, restitutionary, vindication, tort) in terms of the court's application of the principle *jura novit curia* ("the court knows the laws"), we come to the following conclusions.

A conditional claim arises solely from a conditional obligation, a non-contractual obligation to return property unreasonably acquired or unreasonably retained. Given the specific nature of legal relations arising from condiction, to qualify a claim as conditional, it will be sufficient to establish the presence of such circumstances (conditions) as: a) acquisition or preservation of property by one person (acquirer) at the expense of another (victim); b) harm in the form of reduction or non-increase of property from another person (victim); c) the conditionality of the increase or preservation of property on the part of the acquirer by a decrease or no increase on the part of the injured party; d) the absence of a legal basis for the said change in the property status of these persons.

These conditions are objective. They either exist or they do not. Moreover, these very conditions (except for the lack of a legal basis) as the circumstances on which the claim is based, are to a greater extent the basis of all claims (contractual, restitutionary, vindication, tort), which are most often mixed with conditional. For all these claims, both the circumstances of reduction of property from the injured party at the expense of its increase from the acquirer and the existence of property losses (harm) for the injured party, and the conditionality of increasing or storing property on the side of the acquirer by reduction or lack of increase on the side of the injured party are proved. In fact, the main significant feature that distinguishes these claims from conditional is the presence or absence of a legal basis for changing the property status of the victim, and the main condition for qualifying a claim as conditional is that the legal relations between the parties

are not regulated by special institutions of civil law. That is, a conditional claim can be qualified if we apply the method of comparing legal relations "according to the residual principle": if under the circumstances of a particular claim legal relations (at least in the presence of general signs) still do not contain those specific features that are inherent exclusively restorative, or vindication, or contractual, or tort, then such legal relations – are not regulated by special institutions of civil law and must be recognized as conditional.

5. Conclusions

Given the specifics of the conditional legal relationship, the court is able, without prejudice to the adversarial and dispositive nature of civil proceedings, to apply the principle of *jura novit curia* ("the court knows the laws") and independently qualify and decide the claim on the merits exactly as conditional in the case where the claimant stated the claim as contractual (restitutionary), vindication, tort), but within the limits of the claimant's grounds of action and according to the circumstances proved by the claimant, the court will find that there is no legal basis for the acquirer's acquisition of the property, given that there are no contractual, restitutionary, vindication or tort legal relations between the parties. However, a diametrical conclusion should be reached if the plaintiff stated the claim specifically as conditional and the grounds of the claim defined, in particular, the conditions of condiction and refers to the absence of a legal basis for the acquisition of property by the defendant. In such a case, as a general rule, the court cannot, even with reference to the principle of *jura novit curia* ("the court knows the laws"), decide such a claim on the merits by re-characterizing it, for example, as a contractual claim and applying the rules of contract law.

The conditions of the conditional claim as the circumstances on which the claim is based (other than the lack of a legal basis for the acquisition or preservation of property) are to a greater extent common to all claims (contractual, restitutionary, vindication, tort), which are most often mixed with the conditional claim. All other claims – contractual, restitutionary, vindication, tort – arise from different legal relations regulated by different norms of law, from special institutions of civil law, which have their own specificity and peculiarity. That is, each of these claims, not so much for qualification, but for the correct decision in essence, must have its own, different from the general, basis. Moreover, it is this, specific to each type of claim, that is included in the subject matter of proof in each individual case. For a vindication claim, it is, for example, the presence of individually identified property, which has been preserved by the defendant in the same form. For contractual it is the existence of a specific contract, the fact of its conclusion, validity, its conditions. For restitutio it is the fact of invalidation of the contract, the fact of transfer of fulfillment under this contract by each party to the other. For a tort – the corpus delicti of a civil offense, in particular, the presence of illegality in the actions of the acquirer.

Taking this into account, the court, when considering a claim filed as conditional, may establish, for example, the existence of a legal basis for the acquisition of funds or other contract, namely, the fact of a contract between the parties. A strong inference is drawn that it is not the right of a court not only to classify a claim as contractual, but also to deny (or grant) it based on substantive contract law, even with reference to the principle of *jura novit curia* ("the court knows the laws"). This is because the application of the principle of *jura novit curia* ("the court knows the laws") may be applied in the above case only to state the court's conclusion that the plaintiff has misclassified the claim in order to justify by the court in a decision the dismissal of the claim solely on the basis of the wrong way the plaintiff has chosen or to justify by the court the dismissal of the claim due to the lack of merit of the conditional claim.

The principle of dispositiveness imposes on the court the obligation to resolve the dispute within the bounds of the cause of action that is determined by the plaintiff (i. e. within the circumstances by which the plaintiff substantiates his claims) in the manner provided for by the civil procedural law. The court is bound by the subject matter and scope of the plaintiff's claims (in particular, the decision of the Supreme Court of February 19, 2019 in case № 824/399/17-a (Supreme Court, 2019b)), so it has no procedural authority to independently determine the factual grounds of action, to inform the parties and "impose" the plaintiff to "support" other, defined by the court, grounds of action, independently to seek evidence to confirm or refute these self-defined by the court circumstances (the grounds of action). The principle of *jura novit curia* refers not to the factual but only to the legal causes of action and consists in the power of the court to choose the legal rule to be applied to the factual causes of action: that is, to those circumstances with which the plaintiff substantiates his claims. Therefore, the court is not entitled to decide a claim filed as conditional as a contractual claim in substance, to establish the presence or absence of the grounds characteristic of a contractual claim, and to apply in such a case the rules of substantive contract law,

because a contractual claim differs from a conditional claim in its grounds and subject of proof, and the plaintiff does not give or prove such grounds (which are necessary just for a contractual claim).

If, under such conditions, the court decides on the merits of the claim not as conditional but as contractual, and dismisses the claim because its grounds are not proven to be contractual, this would obviously violate the principle of dispositiveness in the sense that the court would actually substitute the grounds for the claim, going beyond the grounds of the claim. In addition, given paragraph 2 of Art. 186 of the Civil Procedural Code of Ukraine, this will generally deprive the plaintiff the opportunity to protect their rights and reapply to the court with a properly qualified claim – a contractual, which has already correctly specify the grounds of action, define the subject of proof and prove all the circumstances necessary to satisfy a contractual claim, because there will be a court decision taken between the same parties, the same subject matter and on the same grounds (contractual – because that is how they qualified the court).

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Ірина Берестова,
доктор юридичних наук, професор, заслужений юрист України, провідний науковий співробітник лабораторії захисту суб'єктивних прав відділу проблем приватного права, Науково-дослідний інститут приватного права і підприємництва імені академіка Ф. Г. Бурчака Національної академії правових наук України, вулиця Раєвського, 23-а, Київ, Україна, індекс 01042, erevna@ukr.net
ORCID: *orcid.org/0000-0001-6345-3566*

Людмила Майстренко,
адвокат, заслужений юрист України, заступник Керуючого партнера Адвокатського об'єднання «ULC», вулиця Велика Васильківська, 106, Київ, Україна, індекс 03150, ludmila.maistrenko@gmail.com
ORCID: *orcid.org/0000-0003-3631-483X*

ОЦІНЮВАННЯ СУДОМ ПРЕДМЕТА ТА ПІДСТАВ КОНДИКЦІЙНОГО ПОЗОВУ ДЛЯ ЗАСТОСУВАННЯ ПРИНЦИПУ *JURA NOVIT CURIA*

Анотація. ***Метою статті*** є розроблення шляхів забезпечення судами ефективного захисту майнового права особи шляхом оцінювання судом предмета й підстав кондикційного позову для можливості застосування принципу *jura novit curia*.

Наукові методи, використані у статті, – формально-логічний, case-study системний, діалектичний, метод комплексного аналізу тощо.

Результати. Умови саме кондикційного позову як обставини, на яких ґрунтується позов (крім відсутності правової підстави набуття чи збереження майна), є більшою мірою спільними підставами всіх тих позовів (договірного, реституційного, віндикаційного, деліктного), які найчастіше змішуються з кондикційним. Усі інші позови (договірний, реституційний, віндикаційний, деліктний) виникають із різних правовідносин, що врегульовані різними нормами права, зі спеціальних інститутів цивільного права, які мають свою специфіку та особливість. Тобто кожен із цих позовів не так для кваліфікації, як для правильного вирішення по суті повинен мати власну, відмінну від загальних, підставу. Саме ця специфічна для кожного виду позову підстава входить до предмета доказування в кожній окремій справі. Наприклад, для віндикаційного позову це, зокрема, наявність індивідуально визначеного майна, яке збереглося у відповідача в тому самому вигляді; для договірного – наявність конкретного договору, факт його укладення, дійсності, його умови; для реституційного – факт визнання недійсним договору, факт передачі кожною зі сторін одна одній виконання за цим договором; для деліктного – склад цивільного правопорушення, зокрема наявність у діях набувача протиправності.

Висновки. З огляду на специфіку кондикційних правовідносин суд спроможний без шкоди для змагальності та диспозитивності цивільного процесу застосувати принцип *jura novit curia*

(«суд знає закони») і самостійно кваліфікувати та вирішити позов по суті саме як кондикційний у тому разі, якщо позивач заявив позов як договірний (реституційний, віндикаційний, деліктний). Однак у межах наведених самим позивачем підстав позову та згідно з доведеними саме позивачем обставинами суд установить, що правова підстава набуття майна набувачем відсутня, причому між сторонами немає ні договірних, ні реституційних, ні віндикаційних, ні деліктних правовідносин. Проте діаметрального висновку суду варто доходити в тому разі, якщо позивач заявив позов саме як кондикційний і підставами позову визначив, зокрема, умови кондикції, а також посилається на відсутність правових підстав набуття майна відповідачем. У такому разі суд за загальним правилом не може, навіть із посиланням на принцип *jura novit curia* («суд знає закони»), вирішувати такий позов по суті, здійснивши його перекваліфікацію, наприклад, у договірний та застосовуючи норми договірного права.

Ключові слова: кондикційні зобов'язання, кондикційні позови, предмет позову, підстава позову, *jura novit curia* («суд знає закони»), процесуальні дії суду, зміна позову, ефективний спосіб захисту права.

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