



Clandestine employment and entitlement to contractual fees - Employment Law

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - www.grprainer.com/en conclude: In the case in question, a law suit was filed for payment of the remaining amount of the agreed-upon contractual fee. The defendants built four row houses. In the course of this, the plaintiff was given an order for electrical installations by signing a confirmation of the plaintiff's order with a lump-sum amount for the work performed by one of the defendants. The confirmation also contained the addition, "5000 EUR settlement according to arrangement?•. Thus, the defendant in question also paid the plaintiff part of the contractual fee.

After the work was completed, the plaintiff sent the defendants two invoices. The defendants told the plaintiff they would offset the plaintiff's bill with a damage claim. The plaintiff argued that apart from the lump-sum contractual fees, a cash payment of 5000 EUR had been arranged for without an invoice, and that in particular, the undersigned defendant had been authorized.

The Regional Court disallowed the counter claim, but only part of the action. The Regional Court allowed the plaintiff the contractual fee from the confirmation of the order. The Court argued that the defendants were joint debtors and that this was a case of a power of attorney regarding apparent authority.

The non-signing defendant appealed the decision of the Regional Court, arguing that it had not become a party to the contract, and that there was no apparent authority. It argued that it had nothing to do with the construction, and that in particular there had been no power of attorney, and by signing the confirmation of the order, the other defendant had only wanted to confirm receiving of the order.

The OLG explained that no effective work contract had resulted and that there was no entitlement to a contractual fee. The non-signing defendant had not become a partner to the contract for lack of a power of attorney and for lack of apparent authority.

The Court also explained that the work contract was null and void because of violated a legal prohibition, namely the provisions of the Act to Combat Clandestine Employment. The parties had made an agreement to pay "under the table?•. The OLG did not think it plausible that the signature under the confirmation of order had only confirmed receiving the order. The actual plan had been to evade payment of sales tax.

There was also no entitlement to any reimbursement of expenditures or entitlement to earnings.

Under certain circumstances it can be useful to consult a competent lawyer with experience in contract law when contracts are formulated.

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Pressekontakt

GRP Rainer LLP Lawyers Tax Advisors

Herr Michael Rainer
Hohenzollernring 21-23
50672 Cologne

grprainer.com/en
press@grprainer.com

Firmenkontakt

GRP Rainer LLP Lawyers Tax Advisors

Herr Michael Rainer
Hohenzollernring 21-23
50672 Cologne

grprainer.com/en
press@grprainer.com

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Anlage: Bild

