How to prove your case in court without original contract 1/15/24

PwC Legal lawyer
Edvarts Pauls Indars

All kinds of things happen in life, for example the original document has gone missing. A person used to hold the signed original of a contract that was entered into ten years ago and is still valid. It was scanned at some point in time and retained in readable form but for some reason is no longer available.

If there is a dispute over the contract, the person considering litigation could have doubts as to whether the inability to present the original contract to the court will make it impossible to prove the case. However, if the person holds evidence of the execution and contents of the contract, he still has a chance to achieve a favourable outcome.

In civil disputes the parties have opposite interests and opinions, and each party seeks to satisfy the court that certain legal relationships and relevant facts exist or do not exist. This can only be achieved with evidence and proof.[1]

Section 92 of the Civil Procedure Code (CPC) states that evidence in a lawsuit is information that gives the court a basis for determining the existence or non-existence of facts that are relevant to the adjudication of the case.

CPC section 93(1) states that each party must prove facts that serve as the basis for his claims or objections. The burden of proof is on the claimant, who has to prove an infringement, and this can only be done on the basis of evidence.[2]

Civil procedure theory considers written evidence to be the most important.[3] CPC section 110 states that written evidence is information on facts that are relevant to the case and this information has been recorded in documents, other writings and relevant recording systems (audio/video tapes, diskettes, etc.) with the help of letters, figures and other written characters or technical means.

A common form of written evidence is information recorded in a document, including contracts and agreements executed in writing which the parties submit to the court to prove the creation, modification or termination of a legal relationship.

However, not all information that is committed to writing and submitted to the court will be assessed as truthful and usable as written evidence. The court assessment depends on a number of factors, including the legal validity of the written record of information.

CPC section 111(2) states that written evidence must be submitted in its original form or as a duly attested derivative (i.e. a copy or an excerpt). Where part of a written document or any other writing is sufficient for establishing facts relevant to the case, then an excerpt may be submitted to the court. Section 111(4) states that if written evidence is submitted in the form of a derivative, the court has the power to request that the original document be submitted or presented at the reasonable request of the parties or on the court's own initiative if this is necessary for establishing the circumstances of the case.

So, while the parties may submit attested derivatives, the court has the power to request the original

document, for example if another party has called the court's attention to doubts about the legal validity of a document whose copy has been submitted. At the same time, the party's inability to produce the original document should not lead the court to ignore the derivative (copy) submitted.

Firstly, the court cannot evaluate the document only formally but it has the power to point out its failings and classify the contract as written evidence only and not as a legally valid document.

Evidence submitted in this form, too, will have to be evaluated by the court in conjunction with other materials, not in isolation.[4]

So, where the original document is not available, the party who sought to prove a particular fact with that document should attempt to prove his case using other means of proof recognised in civil proceedings, such as witness statements and explanations. Any document created on the basis of the missing contract, such as an invoice giving the name and date of the contract, or a payment order requested from the bank that refers to the contract, could serve as valuable evidence. With the help of such indirect evidence, the court could be satisfied that the parties had entered into the contract and carried out acts arising from their contractual rights and obligations. In evaluating other submissions in conjunction with the derivative of the contract, the court could recognise the contract as admissible written evidence that proves the existence of the transaction with particular contents.

It's worth noting here that in civil relationships the parties to a legal transaction mostly have discretion to determine the form of the transaction. If the law permits this, the parties may enter into an oral agreement, which may be the basis for rights and obligations as well as for the claim to be litigated, because a dispute arising from an unwritten agreement, too, is to be resolved in court.[5]

Of course, in such cases an agreement in writing cannot be submitted to the court because there never existed one but this does not mean the contents and existence of the agreement cannot be proved. As with a missing written agreement, the party wishing to prove something will have to use other evidence as described above.

Secondly, the court must not interfere by dictating what ways and means a party should use for proving his case.[6] So, if a party is unable or even unwilling to present the original document as evidence, he reserves the right to submit other evidence. At the same time, the court must evaluate all the evidence submitted that is relevant to the circumstances of the dispute under the principle of equal force of evidence prescribed by CPC section 97.[7]

It's important to note that a derivative of a document is legally valid only if the original is legally valid.[8] This means an attestation of an invalid document will not validate the original, although this attestation can be used to certify information included in the invalid document. For example, it may be attested that the parties had drafted an agreement with particular contents, which did not become legally valid, and thus prove their intentions existing at that time, or it may be attested that the parties made their legal relationship subject to a contract that is not legally valid and were acting tacitly as if the contract were valid.

In other words, an attested yet invalid contract, too, may be submitted to the court as written evidence, but the court will evaluate it critically and not as a document. The person submitting the contract will have to rely on other evidence to prove the attested written information, for instance to prove that the other party was acting as if the document had been valid. On the other hand, an unsigned contract that was never validated will not become legally valid merely through its unilateral attestation, and the person might end up failing to prove his case without other relevant evidence.

[1] A. Licis: Litigation and evidence. Professor K. Torgans' scientific edition. Riga: Court House Agency, 2003, page 62

[2] A. Licis: Litigation and evidence. Professor K. Torgans' scientific edition. Riga: Court House Agency, 2003, page 29

[3] Commentaries on the Civil Procedure Code. Chapter I (parts 1–28). Second updated edition. Prepared by a team of authors. Professor K. Torgans' scientific edition. – Riga: Court House Agency, 2016, page 374

[4] Ruling SKA-176 of 7 June 2005 from the Administrative Division of the Supreme Court

[5] E. Kalnins: Written form as a condition for a cause of action under a contract. *Jurista Vārds*, 15.04.1999, No. 14 (121)

[6] V. Bukovskis: Civil procedure textbook – Riga: Author's edition, 1933, page 233

[7] D. Ose: Evidence and proof in civil proceedings. Doctoral work. Riga, University of Latvia, 2013, page 25

[8] Ruling SKC-143/2021 (C30281315) of 5 February 2021 from the Civil Division of the Supreme Court