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HEADLINE: EMBARGOS DE DECLARAÇÃO - CIVIL APPEAL - INDEMNITY ACTION - PRELIMINARY OBJECTION OF DEFENSE RESTRICTION - NON-OCCURRENCE - WITHDRAWALS FROM FGTS ACCOUNTS - REFUND OF AMOUNTS - EXPERTISE - ABSENCE OF REMAINING BALANCE - OMISSION, CONTRADICTION, AMBIGUITY, OR MATERIAL ERROR - NON-OCCURRENCE - REASSESSMENT OF THE MATTER - TAXATIVE HYPOTHESES PROVIDED IN ARTICLE 1.022 OF THE CPC - NOT ACCEPTANCE.

According to Article 1.022 of the Code of Civil Procedure, appeals for clarification are admissible against judicial decisions only in cases of obscurity, contradiction, or omission of matters that the judge should have addressed.

They do not serve to simply review issues already analyzed, with the aim of merely modifying the appeal, even if the intention is to pre-question the matter.

Therefore, if the judgment does not present any of the specific defects highlighted in Article 1.022 of the CPC, and the intention of the Appellant to reconsider decided issues is evident, the denial of the clarification appeals is required, even if their purpose is pre-questioning.

EMBARGOS DE DECLARAÇÃO-Civil Case No. 1.0000.22.164965-0/002 -

JURISDICTION OF SANTOS DUMONT - Appellant(s): CID DE ASSIS OLIVEIRA -

Appellee(s): BANCO SANTANDER BRASIL S/A

JUDGMENT

Seen etc., the 18th CIVIL CHAMBER of the Court of Justice of the State of Minas Gerais, in accordance with the minutes of the judgments, DECIDES TO REJECT THE EMBARGOS DE DECLARAÇÃO.

JUDGE HABIB FELIPPE JABOUR

REPORTER

(e-STJ Fl.790)

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Embargos de Declaração-Civil Case No. 1.0000.22.164965-0/002

JUDGE HABIB FELIPPE JABOUR (REPORTER)

VOTE

These are EMBARGOS DE DECLARAÇÃO filed by CID DE ASSIS OLIVEIRA against the judgment that rejected the preliminary objection and dismissed the appeal.

In their grounds for appeal, they argue, in summary, that: a) "the core of the matter under examination concerns the deposits of the Severance Indemnity Fund for Length of Service (FGTS) existing in the years 1970 to 1980 in the name of the Appellant"; b) they did not have prior access to documents that were (and still are) in the possession of the banking institution; c) "it was the legal duty of the expertise to prove by sufficient documentation whether the financial institution complied with the

legal precepts for appropriating the fund deposits owned by the Appellant"; d) the expert did not fulfill the legal duty to respond to their questions and did not attach documents to demonstrate the "reversion" in favor of the bank; e) the judgment on the merits could not have been rendered prematurely.

They request the acceptance of the Clarification Appeals to allow the completion of the expert evidence, in order to remedy the various technical and judicial omissions pointed out.

Counter-arguments presented in the document of order No. 03, for the dismissal of the appeal.

I proceed to decide.

As is well known, Clarification Appeals are not intended to review the matters debated, being admissible only in the taxative hypotheses provided for in Article 1.022 of the CPC, to:

I - clarify ambiguity or eliminate contradiction;
(e-STJ Fl.791)

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II - remedy omission of a point or question on which the judge should have pronounced ex officio or upon request;

III - correct material error.

Thus, the filing of the appeals must necessarily comply with the aforementioned legal provisions, even if for the purpose of pre-questioning, being inadmissible due to mere dissatisfaction.

Regarding the issue, the Supreme Federal Court has expressed:

"The defects must be pointed out with equidistance and, therefore, with absolute fidelity to what was decided by the Court. It is impossible for them to result, uniquely and exclusively, from the dissatisfaction of the Appellant, once disregarded in their momentary interests. Non-existent the flaws, the appeals are rejected."

(STF-AgRg-EDcl n. 134.684-1/MA, Min. Marco Aurélio, in Juris Plenum) (emphasis added)

On the subject, the following doctrinal exposition:

"Purpose. The Clarification Appeals aim to complete the decision that is silent or, still, to clarify it, dissipating obscurities or contradictions. They do not have a substitutive character of the appealed decision, but integrative or declaratory. They also serve to correct material error. As a rule, they do not have a substitutive, modifying, or infringing character on the judgment..." (NERY JÚNIOR, Nelson; NERY, Rosa Maria de Andrade. Commented Civil Procedure Code. São Paulo: Revista dos Tribunais, 2016, p. 2,277)

In this case, none of the mentioned hypotheses are verified, being addressed in the judgment, and all relevant issues for the judgment of the appeal are duly reasoned.

The Appellant expresses dissatisfaction in their grounds for appeal, pointing out the occurrence of omissions.

(e-STJ FI.792)

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As is known, the omission to authorize the presentation of this appeal occurs when the judging body fails to address any point of the request.

In accordance with Forum of Debates Enunciation No. 07 approved in the Plenary Session held at this Hon. TJMG on 26/02/2016, "a decision in which the judge expresses himself on the relevant and pertinent arguments raised by the parties is considered sufficiently reasoned."

The judge is not obliged to refute all the allegations and legal articles deduced in the records, with a succinct reasoning of the reasons for their conviction being sufficient.

As highlighted in the judgment, according to the Plaintiff/Appellant, there are remaining balances in their FGTS account.

However, they did not discharge the burden of proving the constitutive fact of their right, as provided for in Article 373, item I, of the CPC.

It is reiterated that according to the expert report, withdrawals from the FGTS parcels were made by the Plaintiff/Embargant, which is why there is no remaining balance.

Clarification Appeals are a recourse of strict procedural contours, requiring their legal prerequisites for admissibility to be present.

In the absence of omission, contradiction, obscurity, or material error, dissatisfaction whose real intent is to obtain infringing effects cannot prosper through the narrow path of Clarification Appeals.

In fact, the Appellant's intent is to re-discuss issues already decided, which is unfeasible through the narrow path of Clarification Appeals.

In this regard, this Hon. Court has judged:

"CLARIFICATION APPEALS. ABSENCE OF CONTRADICTION, OMISSION, AMBIGUITY, OR MATERIAL ERROR. REASSESSMENT OF THE MATTER.

(e-STJ FI.793)

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According to Article 1.022 of the Code of Civil Procedure/2015, the scope of jurisdiction of the clarification appeals is limited to the following questions: obscurity, contradiction, omission, or material error in the judgment. In the absence of any of the aforementioned defects, the clarifications should be rejected." (TJMG - Clarification Appeals-Civil 1.0000.19.096013-8/002, Judge Wagner Wilson, 19th CIVIL CHAMBER, judgment on 23/04/2020, publication of the summary on 30/04/2020)

"CLARIFICATION APPEALS - OMISSION - AMBIGUITY - CONTRADICTION - NON-OCCURRENCE - REASSESSMENT OF ALREADY DECIDED MATTER - IMPOSSIBILITY - MERE DISSATISFACTION - PRE-QUESTIONING. Clarification appeals are intended to remedy omission, ambiguity, or contradiction in the judgment. In the absence of the defects mentioned in Article 1.022 of the CPC/2015, they should not be filed with the intention of reassessing the lawsuit. Regarding pre-questioning, what should be demanded is only that the issue has been raised in the ordinary instance. If this occurred, there is the figure of implicit pre-questioning, which is sufficient (REsp 2.336-MG). Moreover, as provided for in Article 1.025 of the Civil Procedure Code, the elements raised by the appellant are considered included in the judgment for pre-questioning purposes, even if the clarification appeals are not admitted or rejected, if the superior court considers that there are errors, omissions, contradictions, or obscurities." (TJMG - Clarification Appeals-Civil

1.0024.12.198553-5/002, Judge José Augusto Lourenço dos Santos, 12th CIVIL CHAMBER, judgment on 07/05/2020, publication of the summary on 25/05/2020)

In the same vein, the understanding of this Chamber:

"CLARIFICATION APPEALS - ALLEGATION OF CONTRADICTION - ABSENCE OF INCONCILIABLE PROPOSITIONS IN THE APPEALED JUDGMENT - MERE CONTRADICTION TO THE INTERESTS OF THE APPELLANT. - Clarification appeals should be rejected if what the appellant calls contradiction is nothing more than opposition to the position defended, with no inconciliable propositions in the judgment appealed.