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SOME CONSIDERATIONS REGARDING THE SALE OF ANOTHER PERSON'S THING IN THE CONCEPTION OF THE CURRENT ROMANIAN CIVIL CODE

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Abstract in original language

In the old Romanian civil regulation (the Civil Code of 1864) the sale of another person's thing was a non-regulated institution. This is why its existence or validity made the object of certain strong controversies.

The new Romanian Civil Code regulates the sale of another person's thing, both generally in art. 1230 called "The goods belonging to another person" of the 5th book "About the Obligations", the 3rd section "Concluding the Contract" paragraph 4 "The Object of the Contract", and particularly in art. 1683 called "The Sale of Another Person's Goods" of the matter of the selling contract.

Thus, art. 1230 of the Civil Code generally states that, unless the law stipulates otherwise, the goods of a third may make the object of a performance, as the debtor is forced to procure and transmit them to the creditor or, according to the case, to obtain the agreement of the third.

If the obligation is not executed, the debtor is responsible for the caused damage.

At its turn, art. 1683 paragraph 1 of the Civil Code stipulates regarding the selling contract that, when concluding it on a determined individual good, the good belongs to a third, the contract is valid and the seller is forced to provide the transmission of the property right from its holder to the buyer.

As such, the quality of holder of the seller's property right on the respective thing is not a validity requirement of the contract and the seller is only forced to provide the transmission of the property right from the holder to the buyer. This also results from the definition of the selling contract accomplished by art. 1650 paragraph (1) of the Civil Code, according to which "the sale is the contract by means of which the seller transmits or, depending on the case, is forced to transmit the buyer the property of a good in exchange for a price the buyer is forced to pay".

1. PRELIMINARIES

The Romanian Civil Code of 1864 did not regulate the sale of another person's thing1 as a consequence of the fact that it did not take over the stipulations contained in art. 1599 of the French Civil Code, according to which: "the sale of another person's thing is null, it may give place to damage-interests, when the buyer did not know that the thing belonged to another".

2. OPINIONS EXPRESSED IN THE ROMANIAN DOCTRINE AND JURISPRUDENCE

In the absence of a legal regulation regarding this situation, the Romanian doctrine and jurisprudence mainly spotlighted three opinions.

In a first opinion, the sale of another person's thing was considered as null, for the lack of cause "as a determinant psychological reason of the parties' consent, showing that there is no main and immediate purpose of the contract, namely the carrying of the property"2, a correlative obligation of the payment of the price.

It was considered still an absolutely null operation the sale-purchase when the parties knew that the thing belonged to another person, as this is speculative and it has an illegal cause[3].

In another opinion, the sale of another person's thing was considered as annullable, so relatively null, when the parties or at least the buyer was wrong, considering that the sold thing belongs to the buyer. In this case, the annullable feature was based on the error-vice of consent on the essential quality of the buyer[4].

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[1] The sale of another's thing refers to the situation of alienating a determined individual thing. In case of the things of gender or future things, there is not this problem as another person's thing may not be sold and the property is not transmitted when concluding the contract, but when individualizing the work.

See, Francisc Deak, Civil Law Treaty. Special Contracts, Juridical Universe Press, Bucharest, 2001, p. 55;

2 D. Alexandrescu, Theoretical and Practical Explanation of the Romanian Civil Law, volume VIII, Bucharest, 1925, p. 93. Even the judicial practice has sometimes decided in this sense. See, for example, the Supreme Court, civil decision no. 1120/1966 in Decision Collection, 1966, p. 93.

3 Matei B., Cantacuzino, Elements of Civil Law, All Press, Bucharest, 1998, p. 620.

[4] In this case, the seller is wrongly considered by the buyer as being the owner of the respective good. See, Deak Francisc, Civil Law, The Theory of the Special Contracts, Didactic and Pedagogic Press, Bucharest, 1963, p. 14;

In a third opinion, they considered that the sale of another person's thing is valid when the parts know that the thing is not the seller's property and when he forced himself to procure it subsequently to the buyer[5]. In this case, there was the problem of the resolution of the sales contract based on the seller's responsibility for guarantee for eviction to the buyer. At the same time, the buyer may demand the resolution of the contract for the non-execution of the seller's obligation to transfer the property on the sold thing[6].

3. REGULATING THE SALE OF ANOTHER PERSON'S THING IN THE NEW ROMANIAN CIVIL CODE

The new Civil Code accomplishes a both general and particular express regulation.

The general regulation is stipulated by art. 1230 of the Civil Code whose marginal title is: "The Goods Belonging to Another" and that states that, unless the law stipulates otherwise, the goods of a third may make the object of a performance and the debtor is forced to procure and transmit them to the creditor or, depending on the case, to obtain the agreement of the third. If there is no execution of the obligation, the debtor answers for the cause prejudices.

The particular regulation is registered in art. 1683 of the Civil Code called "The Sale of Another Person's Thing".

Thus, according to paragraph 1, of this article, if, when concluding the contract on a determined individual good, this belongs to a third, the contract is valid, and the seller is forced to provide the transmission of the property right from the holder or by the buyer.

As such, in the current regulation, the quality of holder of the property right on the thing that is to be sold is not considered as an essential demand for the contract validity and the seller only has the obligation to provide the transmission of the property right from the titular to the buyer.

The possibility to transmit in future the property right is also considered by the definition of the sales contract.

Thus, art. 1650 paragraph (1) of the Civil Code stipulates that the sale is the contract by means of which the seller transmits or, depending on the case, is forced to transmit to the buyer the property of a good in exchange for a price the buyer is forced to pay.

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[5] R. Codrea, *Consequences of selling another's thing when at least the buyer ignores that the seller is not the owner of the sold good*, I. Lulă, *Discussions Referring to the Controversial Problem of the Juridical Consequences of the Sale of Another's Goods*, in Law no. 3/1999, p. 65-68;

[6] C. Toader, Eviction in Civil Contracts, All Press, Bucharest, 1997, p. 55-58;

We consider that this obligation instituted by the above mentioned article is a result. The way we may accomplish it is stated in art. 1683, paragraph 2 of the Civil Code that stipulates that: "The seller's obligation is considered as being executed, either by gaining the good by it, or by ratifying the sale by the owner, or by any other direct or indirect means that procure to the buyer the property on the good."

According to paragraph (3) of the above-mentioned article, even if it does not result the contrary from the law or from the will of the parties, then the property is carried from the buyer since gaining the good by the seller, or since the ratification of the sales contract by the owner.

If the seller does not provide the transmission of the property right to the buyer, this last one could ask for the resolution of the contract, the return of the price and also, if it is the case, damages-interests.

The new Civil Code also regulates the situation when a co-owner sells the good of the common property, even if, when concluding the contract, he only had a share of the property right on it.

In this case, when a co-owner sells the good, the common property and subsequently, it does not provide the transmission of the property during the entire good by the buyer, and this last one could require – beside damages-interests, at his choice, to be the reduction of the price proportionally with the share – a part it had not gained, or a resolution of the contract if they had not buy if they would have known that the property of the entire good would not be gained.

The way of establishing the damages-interests the seller dues to the buyer, if there is not settled the transmission of the property right on the sold good, is established according to the stipulations of art. 1702 and 1703 of the Civil Code where we refer in art. 1683 paragraph (6) of the Civil Code.

Thus, art. 1702 of the Civil Code, called "Extension of the Damages Interests" show that they contain:

The value of the fruit the buyer was forced to return to the one who defeated him;

The judgement expenditures accomplished by the buyer in the process with the one who defeated him, and also in the process of calling the seller in the guarantee;

The expenditures and concluding and executing the contract by a buyer – the suffered losses and the non-accomplished gains by the buyer because of the eviction.

Also, the seller is kept to return to the buyer, or to make it return by the one who manages all the expenditures for the works accomplished

related with the sold good, either the works are autonomous[7], or they are added, but in this last case, only if they are necessary or useful.

If the seller has known the eviction cause when concluding the contract, his is debt to return to the buyer the expenditures made for its accomplishment and, depending on the case, the raise of the voluptuous works.

If the buyer knew when contracting the contract that the good did not entirely belong to the seller, he may not ask the return of the expenditures regarding the autonomous or voluptuous works, whereas it is considered that he has made these expenditures in order to increase his comfort on its personal risk.

Finally, when the partial eviction does not attract the resolution of the contract, the seller should return to the buyers a part of the price, proportional to the value of the part it was evicted by and, if it is the case, to pay only Debts – interests[8].

4. CONCLUSIONS

The New Civil Code, by regulating the sale of another person's work, are allowed to cut certain controversies expressed across the time in the special literature and practice. At the same time, it consecrates the possibility to dispose more largely of another person's goods.

The new regulation refers to the determined individual good and not the goods of gender.

We consider that the regulation is too succinct and incomplete. Thus, it does not specify the term where the seller should provide the transmission of the property to the buyer, it contains no stipulations validating the fraud sale of another person's goods, and neither the way they register the respective goods in the territorial book.

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[7] According to art. 578 paragraph (1) of the Civil Code, the autonomous works are the buildings, the plantations and other independent works accomplished on an immobile.

[8] For establishing the extension of the damages-interests, we correspondingly apply the stipulations art. 1702 of the Civil Code.