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CONSEQUENCES OF A REINSURANCE CONTRACT IN THE EVENT THAT ONE OF THE PARTIES FAILS TO MAKE PAYMENT

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ABSTRACT

This research focuses on the notion of contractual liability in situations where third parties are engaged in the fulfillment of contractual duties. While carrying out their contractual responsibilities, the party obligated to perform may enlist the assistance of others to carry out some or all of their obligations to the contracting party. When specific conditions are met, the party assumes responsibility for the third party's actions under the contract and becomes liable for any errors the third party makes in performing its contractual duties. Contractual liability to third parties refers to the legal responsibility that arises from a contract involving someone who was not an original party to it. This liability stems from the obligations defined in the contract and must be carried out or fulfilled accordingly.

KEYWORDS: Contract, Legal, Obligations, Third Party, Agreement.

INTRODUCTION

The legal enforceability of the contract will adhere to the terms specified in the agreement. This is where both parties are obligated to do what they have agreed upon in the contract, and failure by any party to do the same may force the other party to do what it has agreed to do. Under such instances, any loss incurred by the other party due to non-performance of the contract will be on the party at fault (1). In case a contractor does not fulfill the agreement as stipulated in the contract, they are likely to face legal implications. This lack of adherence could involve either partial or complete failure to fulfill obligations, or a delay in doing so. If the other party experiences losses due to this breach, the contractor in question is required to provide

compensation. The basic tenet of liability holds that those who cause harm to others must provide restitution. Nonetheless, there exists an exemption to this tenet in instances where the party responsible for the harm is acting on behalf of others who are engaged in meeting the obligation. These "others" are third parties who are not directly connected to the recipient but maintain a direct connection to the debtor. They have been contracted by the debtor to carry out the agreed-upon obligations.

Belhaj, an Arabic author, wrote a comprehensive analysis of the general principles of obligations as outlined in the Algerian civil code. This work is part 1 of a series and was published by the university publications office in Algeria in 1999. The analysis

spans pages 264-266. In a practical sense, a contractor is capable of transferring its entire or partial contractual duties to another contractor. This could entail a business owner reassigning the specified tasks in the contract to a different business owner. This principle also extends to scenarios involving sub-contractors and other instances in which additional contractors are tasked with fulfilling the original agreement. If the borrower appoints an intermediary to fulfill the duties set forth with the lender, that intermediary shall perform the duty on behalf of the borrower. In the event that these third parties engage assistants or commit a mistake in the agreement while fulfilling the obligation, the liability will be held by the borrower.

The legal obligation for actions conducted by intermediaries is deemed a distinct type of legal obligation under the agreement. Certain requirements must be met in order for this duty to be fulfilled. Upon satisfaction of these requirements, responsibility for the intermediary's conduct is ascertained, and the indebted party bears liability for any faults arising from the intermediary's execution of assigned duties. "In accordance with Article (798/1) of the Jordanian Civil Law, delegation of the whole or a portion of the task to another entrepreneur is allowed, provided that the contract does not expressly preclude such delegation and that the nature of the work does not require personal involvement."

Article 784, Section 2, of the Jordanian civil law states that the property owner's liability is not exclusive to the actions of the lessor or his agents, but also encompasses any harm arising from a legal claim made by another tenant or by any individual authorized by the lessor. In her unpublished doctoral dissertation from Ein Shams University in Egypt, Hanaa Khairi Ahmad Khalifeh explored civil responsibilities related to contract law in 2009, specifically on page 61. Examining this subject holds considerable scientific importance, both in theory and in practical application. Understanding the requirements for outside parties to meet their contractual duties is crucial, and this necessitates obtaining details from the borrower about their behavior and the necessary conditions. Hence, we shall address this research through the following: To begin with, it is important to define the term "third parties". Secondly: Conditions for Legal Liability in Contracts for Acts Performed by Non-Contracting Parties

CLARIFICATION OF THE CONCEPT OF A THIRD PARTY

In general usage, a third party is defined as a person or entity involved in a particular matter but not directly represented in an insurance contract or a judicial decision. The legal definition of a third party, however, has been the subject of extensive debate and

divergence within legal scholarship, particularly regarding its scope and application across different legal contexts. As a result, two principal schools of thought have emerged. According to the first approach, a third party is any individual who has no legal relationship – whether present or prospective – with the contracting parties. This understanding is reflected in "Article 1165 of the French Civil Code" and is supported by scholars such as Colin and Capitant, who restrict the concept of a third party (or intermediary) to persons entirely external to the contractual relationship. They maintain that the concept of an intermediary only applies to those who have no connection to the contract.

Glossary of definitions, classification (extra)

Al-Lassasmeh, Abdel Aziz, Seizure by individuals in compliance with the civil procedure code, as referenced in *Manara Magazine*, volume 13, issue 8, 2007, p. 69 Alkhater, Sabri Hamd, and additional authors explore the overarching principles of obligation in their work "Study in the general theory of commitment," found within the Legal Library. This is the initial release of the book, released in 2001, with pertinent information on page 51. The alternative approach encompasses the specific heir, the universal heir, and ordinary creditors within the category of third parties, provided that the effects of the contract remain unchanged. Under this approach, the exception applies to individuals who have neither expressly nor implicitly intended to participate in the contract as either creditors or debtors. Accordingly, the specific heir is regarded as a third party with respect to the contract, subject to certain exceptions arising from other considerations (1). It may therefore be stated that, in relation to the contract, a third party, as outlined by a related rule, is someone who was not originally been involved in the contract nor represented in it, and is not a direct or indirect successor to the contracts (2).

The Jordanian civil code contains a statute of limitations that governs contracts over a period of about two decades, known as equivalent contract effects. This rule stipulates that individuals who were not parties to the contract are not entitled to benefit from it, meaning that they do not gain any rights or incur any obligations under it. Therefore, the designated third party in this scenario is a person not initially part of the agreement. In cases of fictitious third parties, the meaning applies to those who engage in behavior that is not genuine. Article 368 section 1 of the Jordanian civil code outlines two categories of individuals: the creditors of the contractors and the personal heirs (private successors) of each. Alsanhoury, Abdelrazaq, an expert in

elucidating civil law, Authoritative references, Volume one, Section one, Third iteration, Dar Alnahda Alarabia, Egypt, 2005, p746. Alkhater, Sabri Hamd, as cited in the previous reference from 2001, page 26. Article (110) of the Jordanian Civil Law stipulates that an individual who enters into a contract with themselves is obligated to comply with the legal provisions.

The private successor is the individual who inherits or acquires the right to ownership of a particular item or property, just like the purchaser, grantee, creditor, or mortgagee did with the original owner. The external party discussed in this context is a party not associated with the creditor. These are persons appointed by the debtor to carry out the obligation on the debtor's behalf, provided that the obligation is contractually delegated to the third party. Failure to fulfill this assignment will result in the third party being considered foreign to the debtor's liability, similar to a sub-lessee who takes the place of the original lessee (1).

According to Article (798) of the Civil Code of Jordan, it is mandated that The business owner has the choice to assign some or all of the duties to another business owner, as long as there is no restriction in the contract against it or if the work requires the assistance of another person. The responsibility of the initial entrepreneur is present prior to the employer. Article 684 of the aforementioned law specifies that the lessor is not responsible for overseeing the work performed by them or their associates, but this guarantee does encompass any damages caused by a legal action initiated by another tenant or any person authorized by the lessor.

It is evident from these provisions that external parties assume the contractual liability and take the place of the debtor in fulfilling the contractual requirement. This includes instances such as the sub-lessee stepping in for the original lessee and the contractor taking the place of the original contractor. Aljbouri, Yassin provided a concise overview of the Jordanian civil law in the first section of his publication, "The brief explanation of the Jordanian civil law," which was released by Dar althakafa in Amman, Jordan in 2006. This information can be found on page 408, specifically in paragraph 814. It is evident that in cases of unintentional contractual obligations, the creditors of the third party are responsible for fulfilling the contractual obligation if the third party breaches the contract. This occurs when the third party was associated with the debtor to fulfill the contractual obligation on their behalf.

Instances in which the actions of an individual or entity may result in legal liability pursuant to a contractual arrangement. In order for third party

liability to exist, there are four fundamental conditions that serve as the foundation for this responsibility. These conditions are essential in distinguishing third party contractual liability from standard contractual liability. First, a valid contract must exist between the debtor and creditor. Second, the debtor must assign the third party to fulfill the contractual obligation. Third, the debtor must independently select their assistants without any intervention from the creditor. Finally, the fourth condition is that the third party must have committed a contractual error that resulted in harm to the creditor. These key points will be further detailed in the following discussion.

The actual presence of an agreement between the party owing a debt and the party to whom the debt is owed.

To ensure the act of a third party to result in contractual liability, it is necessary to have an enforceable agreement between the debtor and the creditor. If there is no valid contract, then there is no legal accountability. To form a binding agreement and ensure its enforceability between the debtor and the creditor, several conditions are necessary, according to standard contract rules (1).

As stated by the Jordanian Civil Code - Article 87, a contract is formed when one party makes a verbal or written offer that is accepted by the other party, creating a mutual agreement that demonstrates the intention to enter into a legally binding contract. This results in an obligation for each party to fulfill their responsibilities to the other. This article clarifies that, according to Jordanian law, a valid contract must include consent, a specific subject matter, and a lawful reason for the contract.

First Section: Approval

Consent is the verbal or written agreement that signifies the will of the contractor, and if consent is lacking, it can lead to the company's failure. Satisfaction cannot be achieved if the contractors are not in agreement regarding the evaluation of the allocation or the object of the contract (2). This key component is pivotal and fundamental to the agreement. It should be based on the mutual agreement of the contracting parties and must be unambiguous, accurately reflecting the terms of the agreement. The individual or entity entering into the contract should be entirely competent to give their consent willingly and without any indications of coercion, incompetence, legal incapacity, or mental illness, as well as being of legal age (3).

Hanaa Khairi Ahmad Khalifeh, Civil obligations, Previous citation, P. 63 Younes, Ali Hassan, Business Enterprises, Dar Alfekr Alarabi, Egypt, 1966, Page 21.

Salama, Rola Nael, and Hatab, Rasha. "The legal characterization of the investment management agreement in the Amman international market." *Journal of Legal Studies, Faculty of Law and Sharia, University of Jordan*, Issue 43, 2013. Furthermore, it is imperative that this approval be genuine and devoid of any unacceptable influences on the will, as outlined in the civil code of Jordan (specifically duress, deception, or misunderstanding). Confirming the demonstration of involvement and approval in dual manners: The manner in which individuals enter into agreements as described by the Jordanian Civil Code, Article 93, is that "the declaration of intent must be in writing, orally, or through customary conduct. It must be clear and unambiguous, and the actual exchange of consent is necessary."

Section (95) of the identical legislation pertains to the alternative method of conveying agreement through silence. This section asserts that "Nothing should be inferred from silence, but silence in response to a request carries significance and is deemed valid (2)". Please refer to articles 93 and 95 of the Jordanian Civil Code, Law No. 43 of 1976. Abed, Loay Kareem's published research in the *Diali Journal* in 2011, issue 53, page 67, explores the legal foundation of the administrative contract and its significance in enabling the public authority to fulfill its obligations.

Section 2: Content of the agreement

The contract is the legal procedure through which the rights and duties of the parties involved are established. It is necessary for the contract to be present, realistic, designated, or suitable for designation, and can be executed. Specifying the location of the contract or describing it in a distinct way is essential for ensuring its legitimacy. This condition is considered to be crucial for the validity of the contract. The content of the agreement concerns the actions outlined within the agreement, which must be lawful and achievable. Failure to meet these requirements would render the contract invalid. The content of the contract is broad and serves as the foundation and primary purpose of the contract, with variations based on nature of the contract. It could involve financial transactions such as buying or selling, contractual benefits such as leasing of assets, or services such as employing individuals.

Abed, Loay Kareem, as mentioned in the previous citation on page 67. Shafeeq, Mehzen, concise In the field of commercial law, *Alnahda alarabya* for publication, Egypt, 1967, page 161.

Section 3: Reason for the agreement

The presence of agreement between the parties involved and the presence of the object of the contract

are not adequate for the full execution of the contract. An essential element is the rationale for entering into the contract and the purpose for entering into this agreement. Should the contract lack this purpose, it will be considered invalid. (1). The rationale for the agreement is regarded as a fundamental element in forming the contract. Based on the Jordanian Civil Code, sections 65 and 66, the agreement must be present and lawful, and must not lead to unlawful gains. Additionally, it must be enforceable and not contradict public norms, while also providing a lawful advantage to its predecessors.

If the conditions that must be met prior to the execution of the contract are not fulfilled, the contract will be considered null and void. In this case, the contractor will not be entitled to seek compensation for failing to fulfill the obligations outlined in the invalid contract. It is essential for contractual liability to adhere to all elements of the contract. An invalid contract will have no impact on the fulfillment of obligations, and the contractor cannot demand its execution. Any compensation for damages incurred due to contractual liability must be sought through the rules of tort liability. Abed, Loay Kareem, citing the previous source, page 43. The publication "Civil and Secular Liability" by Hussien Ammer and Abdelrahim Ammer was released in 1978 by Dar elmaaref in Aleskandareyaa and is located on page 48.

In his 1995 publication by Dar alnahda in Egypt, Alshami, Mahamad Hassan examines the notion of accountability in civil liability, as discussed on page 299. The issue at hand is whether the contractual authorities can be held accountable for the actions of a third party prior to entering into the contract. The basic rule provides that the provisions of the contract itself determine the obligations arising therefrom. Accordingly, contractual liability arises only upon the conclusion of the contract and does not extend to the negotiation stage or to the period following the full performance of contractual obligations. A party intending to conclude a contract may, however, undertake certain preparatory acts prior to its formal execution. In some instances, the nature of the contract may require the debtor to enter into ancillary contracts in order to perform the principal obligation, even where the creditor is not a party to, or does not perform, those subsidiary agreements. The legal stance on liability in these situations has varied depending on whether it is considered contractual or not (2). The researcher asserts that, in this context, the liability is based on negligence, due to the absence of a formal contract.

Hence, the legal responsibility for the actions of external parties is only established when an agreement is in place. Therefore, the absence of a

contract results in no contract-based liability (3). The true obligation under the contract can only be invoked through a valid contract between the parties involved. Helmi, Wafaa Ahmad. Violation of contractual obligations by external parties or engagement. Master's dissertation. University of Egypt, 2008, p. 46. Helmi, Wafaa Ahmad, cited in the previous reference on page 48. Hanaa Khairi Ahmad Khalifeh, as cited earlier on page 63.

If the agreement has not been finalized, for instance, one party would suffer during the negotiation phase or there was not any room for contractual obligations, and the contractual responsibilities would not hold if the agreement was not initially between the authorized person and the affected party. As an illustration, one party offers services to the other out of goodwill or politeness, such as in the case of providing free transportation. (1). The benefit here is that the contractual responsibility for actions carried out by a third party after the contract is completed does not apply. Once the contract is over, the responsibility also ends, and the creditor only has recourse to the tort liability of the matter. Legal practice and the law have recognized that there are specific instances where accountability following the termination of the contract might be considered an extension, where liability regulations are applicable rather than tortious liability rules. This extension requires the consent of both parties and must be clearly outlined in a contract clause stating that the effects of the contract post-termination are regulated by the contract. "Ali, Felaly. Obligations and Compensation Actions, Part 2. Published by Dar Mofem, Algeria, 2002, p. 18."

Designating a third party with legal standing to fulfill the obligation in its entirety or in part.

The debtor is required to provide information about any third parties who have been assigned to fulfill part or all of the obligation. These third parties are individuals or entities contracted by the debtor to fulfill the responsibility and maintain a direct connection to the debtor based on a previous contract. If these requirements are not met, the third parties will be deemed separate from the debtor's responsibilities (1). The individuals or entities covered by the debtor's agreement include the following two parties. In cases of subleasing, the principal tenant remains liable for any misconduct committed by third parties (subtenants) in the performance of the sublease under the Jordanian Civil Code. The Code further provides that the lessor is not responsible for guaranteeing the acts performed by the lessee or the lessee's representatives. However, this exemption does not extend to damage arising from legal claims brought

by other tenants or by persons authorized by the lessor. Aljbouri, Yaseen, as mentioned previously on page 408. Sultan, Bahtour Anwar. (Year). The comprehensive theory of responsibility. Source of obligation. Published by Dar Aljamaa in Eskandareya. Page 257. The liability of the entrepreneur who has undertaken to perform the contractual obligations is governed by Article 798 of the Jordanian Civil Code, which provides that: "1. The contractor may assign all or part of the work to another contractor, unless the contract expressly prohibits such delegation or the nature of the work requires the contractor's personal performance." The responsibility of the initial business owner predates that of the employer.

The creditor shall not interfere in selecting third parties.

To establish the debtor's legal responsibility for the actions of third parties as well as the obligation to face the consequences, it is contingent upon the failure to fulfill the assigned obligations, either wholly or partially. The debtor must have autonomously selected their assistants, without any interference from the creditor in the selection process. In the event that the creditor plays a role in the selection or approval of a third party, the contractual liability does not come into effect. Should the chosen third party commit a contractual mistake and the involvement of the creditor result in the establishment of an independent contractual agreement between the creditor and the third party entity, this establishes a separate relationship between the creditor and the initial debtor (1). Aljbouri, Yaseen, as cited earlier on page 408.

Hence, when assuming legal liability under contract for the actions of a third party, the responsibility for such party is borne by the debtor if they fail to fulfill the obligation. The debtor must make their own decisions independently of the creditor's wishes, and if the creditor intervenes, they will also be held accountable alongside the debtor (1). The involvement of the creditors in this decision creates a direct legal agreement between the creditor and a third party. Even though this situation is defined, it can be challenging in certain instances of contractual accountability for the conducts of third parties to establish whether or not there was an intentional intervention in the selection of third parties. In a medical liability scenario, for instance, a hospital that hires a physician to carry out a procedure for a patient may not have clear control over the selection of an anesthesiologist. The physician might be assigned by the government, and the hospital may not have the ability to choose a different one. "Aljbouri, Yaseen, as mentioned earlier on page 409"

Abu Alnaja, Hassan, *Third Party Contractual Obligations*, Dar althakafa, Egypt, 1989, Page 82.

Breaching a contract with a third party

The debtor is not held responsible for the fault that they are being asked about. Instead, the responsibility lies with the third-party contractor entrusted with fulfilling the obligation, either partially or entirely. If the error is related to the part that was delegated to this third party, the debtor may still be responsible should the third party engage in a breach of contract during the execution or performance of the obligation, or if there is a delay in fulfilling the obligation. This applies, for instance, to the responsibility of an entrepreneur towards their subcontractor, likewise the obligation of a tenant towards their sub-tenant. The concept of contractual liability for third parties involves a situation where a contractual obligation is not fulfilled, not because of the debtor's actions, but as a result of the actions of a third party authorized by the debtor to carry out the responsibility. This concept involves three distinct roles: the debtor responsible for fulfilling the contract, the creditor who is harmed by the non-fulfillment, and the intermediary employed by the debtor to carry out the obligation.

Should the debtor opt to have a third party perform the responsibility that has been agreed upon with the debtor, the debtor will be solely responsible for any contractual errors made by the third party while carrying out the obligation. Alnajar, Abdallah Mabrouk, *Administrative and non-administrative duties*, published by Dar alnada alarabya in Egypt in 2002, page 157. Aljbouri, Yaseen, as mentioned in the preceding citation on page 412. As a result, if a third party causes harm during the execution or implementation of a contract, or fails to meet the required standards of diligence and safety, then they can be held responsible for the fault. In this case, the debtor assumes liability for the actions of the third party tasked with completing the contractual requirement. In a situation where the debtor's liability is established by third parties, they may be accountable either through contractual liability if they were responsible for implementing the contract, or through delictual responsibility if the implementation was legally entrusted to them (1). Assistance under the principles of contractual liability, cannot be sought for by the affected party if the third party does not meet these responsibilities, as they are not a part of the contract and can only seek redress based on the party

bearing the responsibility for the employees' actions (2). Belhaj, Alarabi, as cited earlier on page 278. Hanaa Khairi Ahmad Khalifeh, as cited previously on page 66.

CONCLUSION

In conclusion, the examination of this study shows that the legal liability for the actions of others represents a departure from the standard principle that individuals are only responsible for their own actions and not those of others. This liability has been established legally with the intention to provide the claimant with the entitlement to pursue reparation. This research has yielded a number of findings and recommendations.

RESULTS

The term "third party" pertains to an individual who was not initially part of the contract, but has been aided by the debtor in carrying out the legal commitments. In the event of void contracts being breached, the liability is void as well. Furthermore, the debtor has the freedom to select their assistants independently, with no involvement or approval from the creditor. Should the creditor not participate in choosing third parties, or gives approval, the contractual liability is not applicable. Furthermore, where the debtor, pursuant to the agreement or applicable legal provisions, appoints a third party to perform the contract, contractual liability does not arise in the absence of fault. The debtor's responsibility for the acts of third parties is confined to the period during which the contract remains in force. It does not extend to events prior to the contract's conclusion or after its termination, as there is no contractual obligation during these periods. Therefore, liability for the actions of third parties does not apply outside of the contract timeframe.

RECOMMENDATIONS

The researcher suggests that the Jordanian lawmaker include a provision that enumerates the various categories of third parties who may be questioned by the debtor regarding their errors as outlined in the contract. The researcher recommends that the legislator include a written statement outlining the conditions of responsibility for the conducts of intermediaries.

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