



The contractual responsibilities of third parties in the Jordanian law

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Abstract

This study deals with the conditions of the contractual liability of the act of third parties (others). In the framework of implementing the contractual obligations, the debtor may use people who replace his place in order to implement whole or part of the obligations he committed towards the contractor. If the conditions are fulfilled the contractual responsibility of the third party's actions is fulfilled and the debtor becomes liable for the fault of the third party which was used in implementing his obligations towards the contract.

Keywords

Contractual liability, third party, Contract, Obligations, Implement/execution

Introduction

The binding power of the contract shall be in accordance with the provisions of its contract. Which means that each party must fulfill their obligations, if either party breaches its obligations or delays in their implementation, he could be forced to do so by moving the contractual liability for the contract in kind and the debtor shall be liable for damages caused to the creditor as a result of non-fulfillment of the obligations arising from the contract¹

The contractual basis for liability is a breach by a contractor of an obligation arising out of the contract. The breach is the failure to perform the obligation in whole or in a part, or in the delay in execution. The other contractor shall suffer detriment as a result of such breach thereafter the responsible contractor is liable to compensate for such detriment.

¹ Belhaj, Arabic, general theory of obligations in the Algerian civil code, part 1, university publications office, Algeria, 1999, p 264-266

The general rule on which liability is based is that any person who caused detriment to others must be obliged to compensate; however, there is an exception to this rule where the debtor is asked for the actions of others who have been used in the implementation of the obligation. These others are counted by third parties during the implementation of the obligation. These others which we are talking about are foreign parties from the creditor but have a direct relationship with the debtor. They are assigned by the debtor under an agreement to fulfill the contractual obligations.

In practice it can happen that one contractor may assign another to replace the implementation of its contractual obligations to the contractor in whole or part such as a entrepreneur entrusting another entrepreneur to execute of the work undertaken in the contract with the contractor². As well as the condition of the sub-tenant³. And other cases in which other contractors are assigned to implement its commitment.⁴

If the debtor assigns a third party to implement the obligations contracted with the creditor the third party will execute the obligation to the debtors account. If these third parties commit assistants or substitute a contract error during the execution responsibility will lie on the debtor.

The contractual liability for the act of third parties is considered to be a distinctive type of contractual liability. This description requires special conditions that must be met for this responsibility to be fulfilled. If these conditions are met, the third-party liability is realized, and the debtor becomes liable for the mistake of the third party that was used to execute his obligations.

The study of this subject is of great scientific importance, both theoretical and practical. The importance of this study lies on the knowledge of the third party who asks the debtor about his action and what are the condition's that must be met for the performance of the contractual duties of third parties.

Therefore, we will discuss this study through the following:

1. Definition of third parties
2. Conditions of contractual liability for the act of third parties.

1. Definition of third party

According to the comprehensive meaning dictionary the third party is others which become a party in this case and this other is not represented in the judgment or contract of insurance.⁵

In jurisprudence, the meaning of third party is one of the concepts that provoked controversy and grant controversy, it can be in a particular subject which

2 Article (798/1) from the Jordanian civil law "entrepreneur may assign another entrepreneur to execute a part or whole work if there is no condition that is forbidden that in the contract or the nature of work requires to be done by him).

3 Article (784/2) from the Jordanian civil law "The Lessor shall not be limited to the works issued by him or his followers, but shall extend to any damage based on a legal reason issued by any other tenant or from any person who has received the right from the lessor"

4 Hanaa Khairi Ahmad Khalifeh, Civil responsibilities within the contract family, Unpublished Ph.D., Ein Shams University, Egypt, 2009, P 61

5 Dictionary of meanings, section (others)

is different from what is intended in another subject.⁶ Two main directions have emerged to determine who is the third, in this regard the third party is a person who has no direct relationship with any of the parties to the contract neither in the present nor in the future. Article (1165) of the French civil code. This trend is consistent with both (Colin and Capitan), and they have the meaning of the third party limited to the foreigner on the contract which is completely strange from both ends. They see that the concept of third party is limited to others who are completely strange to the contract.⁷

The second approach involves the private successor, the general successor and the ordinary creditors in the concept of third parties in cases where the effect of the contract is not affected. In this case, the exception is anyone who did not explicitly or implicitly wish to become a creditor or debtor under the agreement. Which is believed that the origin in the private successor is a third party and the exception that comes out to the sects of others.⁸

Of all the foregoing it may be said that the third party in accordance with a relative rule following the contract may be defined as a person who was not a party to the contract or represented therein and was not a public or private successor to the contracts.⁹

In the Jordanian civil code, there is a rule of limitations governing the contact over the two decades or so called equivalent contract effects of the contract. This rule means that whoever was not a party to the contract does not benefit from it in the sense that it does not acquire a right under it or harm it. This means that the intended third party in this case is someone who was not a party to the contract.¹⁰ While the meaning of the third party in fictitious cases is who truly earns a different of fictitious behavior. Article (368/1) of the civil code mentioned two groups of gentiles, the creditors of the contractors and the private successor of each.

The private successor is the successor to the predecessor in the right in rem on a certain thing or in the ownership of something specific as the buyer and the grantee and the creditor and the mortgagee.

The third party in this study is a foreigner from the creditor. They are those who have been used by the debtor to execute the obligation which has a direct relationship with the debtor and must be assigned to the third party by the debtor under an agreement. If such a commission is not fulfilled the third party shall be considered as a foreigner to the debtor's liability such as the sub-tenant which replaces the original tenant.¹¹

6 Al- lassasmeh, Abdel Aziz, Interception of others in accordance with the code of civil procedure, Manara magazine, folder 13, number 8, 2007, p 69

7 Alkhater, Sabri Hamd, Others from contract, Study in the general theory of commitment, Legal library, First edition, 2001, p 51.

8 Alsanhoury, Abdelrazaq, Mediator in explaining the civil law, Commitment sources, Part one, Folder one, Third edition, Dar Alnahda Alarabia, Eygpt, 2005, p746.

9 Alkhater, Sabri Hamd, Previous reference, 2001, p 26.

10 Article (110) from the Jordanian Civil law stated " whoever commits a contract of his own to himself is bound by the provisions of law.

11 Aljbouri, Yassin, The brief explanation of the Jordanian civil law, First part, Dar althakafa for publication, Amman, Jordan, 2006, P 408, Paragraph 814

Article (798) of the Jordanian Civil Code stipulates that

1. The entrepreneur may assign all or part of the work to another entrepreneur only if there is no contrary in the contract or the nature of the work requires to be done by him.
2. the liability of the first entrepreneur exists before the employer."

As well article (684) of the same law stated that "the lessor shall not be ensuring that the work that is issued by him or his followers, but this guarantee shall extend to any harm incurred based on a legal reason issued by another lessee or by any person entitled to the right from the lessor."

It is clear from these articles that it is the "third parties" involved in the contractual liability are who replace the debtor in the execution of the contractual obligation, such as the sub-tenant who replaces the original lessee and the entrepreneur replacing the original entrepreneur.

It is also clear that the "third party" in the unintentional contractual obligation, whose creditors are liable to the contractual obligation as a result of breach of contract by the third party, the third party to which the debtor was associated to replace him in the implementation of his contractual obligation.

2. Conditions of contractual liability for the act of third parties.

For the existence of the third parties liability for the act there must be four basic conditions that can be considered as pillars of this responsibility. The availability of these condition's is very necessary to distinguish the contractual liability for the third party from the normal contractual liability. First condition is to have a valid contract between the debtor and creditor. Cond condition is that the third party must be assigned by the debtor to execute the contractual obligation. Third condition the debtor choses his assistants independently and the creditor does not intervene in the selection of third party. Fourth condition is that the third party committed a contractual error and caused harm to the creditor. These are main points which we will separate in the following.

2.1- A valid existence of the contract between the debtor and the creditor.

In order to achieve the contractual liability for the act of the third party there must be a contract between the debtor and the creditor, since the contractual liability is not achieved only if there is a valid contract, the absence of a valid contract leads to a lack of such liability. To have a valid contract and produce its legal effects between the debtor and the creditor that requires a number of conditions, which are required by the general rules of a contract.¹²

Article (87) of the Jordanian Civil Code provides that " the contract is the engagement of the manifestation issued by one of the contractors to acceptance of the other and their concurrence in a manner that proves the impact of the contract

12 Hanaa Khairi Ahmad Khalifeh, Civil responsibilities, Previous reference, P. 63

on it and entails the obligation of each of them to the other." What is understood from the text of the article is that the Jordanian law has defined the terms of a right contract in the presence of consent, subject matter of contract, and cause of contract.

Section 1: Consent

Consent is the expression of the will of the contractor's manifestation and acceptance, and if the lack of consent results the failure of the company, and satisfaction is not available if the contractors did not agree on the assessment of the quota or the subject matter of contract ¹³

This pillar is the main and essential element of the contract. It must be derived from the contract parties and it must be clear and demonstrates the contents of the contract. The person or party of the contract must be fully qualified to express his consent and will freely without symptoms of will, such as competence or symptoms of legal capacity, or insanity, expulsion and failure to reach adulthood.¹⁴

It also requires that this consent must be true and free from defects of will that are objectionable, which are according to the Jordanian civil code (duress, deceit, mistake).

The verification of engaging manifestation and acceptance in two ways

1-Form of engagement, Article (93) of the Jordanian Civil Code provides that " the expression of will shall be written or speaking or in the customary reference which is customary in custom, even without the abrasive, and the actual exchange of consent, where there shall be no sign of doubt in the evidence of consent.¹⁵

Article (95) of the same law refers to the second method of expressing satisfaction by silence, where the article states that." No sayings should be attributed to silence, but silence in the place of need is a statement and is considered acceptable.¹⁶

Section 2: Subject matter of the contract

The contract is the legal process to be achieved in terms of the rights and obligations corresponding to the contractors, where the contract is required to be present or possible or appointed or eligible for appointment and may be dealt with,

13 Younes, Ali Hassan, Commercial Companies, Dar Alfekr Alarabi, Egypt, 1966, P21.

14 Salama, Rola Nael; And Hatab, Rasha, The legal nature of the investment management contract in Amman international market, Journal studies, Sciences of law and Sharia, University of Jordan, Folder43, 2013

15 See the articles 93 and 95 from Jordanian civil code number (43) 1976.

16 Abed, Loay Kareem, The legal basis of the administrative contract and its importance in the performance of the public authority for its duties, Published research in Diali Journal, 2011 , number 53, P 67.

and the appointment of the place of contract by reference to him or to mention his special place or descriptions are distinctive, Which may be dealt with that is to be legitimate, and considers this condition to be one of the most important conditions for the validity of the contract.

The subject matter of the contract is also the activity of the contract, which must be legitimate and possible, otherwise the company would be void.¹⁷

The subject matter of contract is general, and it is the promise and the main reason of the contract, where the contract can be different depending on the type of contract, it may be financial in the form of sale or purchase, or benefits as in the lease of dignitaries or work as in the lease persons.¹⁸

Section 3: Cause of the contract

The existence of consent between the contractors and the existence of the subject matter of the contract are not sufficient to complete the contract, since there is an important pillar, the reason for the completion of the contract and the reason of assigning this contract which is the motive for establishing this contract. If the contract evacuates the cause of the contract, it is considered void.¹⁹

The reason for the contract Is considered to be one of the pillars of establishing the contract. In the contract according to articles (65, 66) of the Jordanian Civil Code, it is necessary to be present and legitimate, where the illegal profits may not be realized, it must be valid and not contrary to public order. It also must legitimate benefit to his predecessors.

If the conditions precedent does not meet the conditions, the contract becomes null or void and no contractor may claim compensation for non-performance of the obligation arising out of an invalid contract²⁰, because the contractual liability for the contract must satisfy all the elements of the contract. The invalid contract has no effect in terms of implementation of the obligation, the contactor may not ask for the execution of this contract. To obtain compensation for harm suffered on the basis of contractual liability; otherwise, the rules tort liability.²¹

The question that arises here is are the contractual officials responsible for the act of the third party before concluding the contract?

The general rule is that the contract is the law of the contract, and therefore the contractual liability does not take place before the conclusion of the contract either during the negotiations or after the implementation of the obligation, and the person wishing to contract may do some work before concluding the contract.²² Sometimes the nature of the contract requires the debtor to conclude other

17 Abed, Loay Kareem, Previous reference, p 67.

18 Shafeeq, Mehse, brief in commercial law, Alnahda alarabya for publication, Egypt, 1967, p 161.

19 Abed, Loay Kareem, Previous reference, p 43.

20 Hussien Ammer and Abdelrahim Ammer, Civil and Secular Liability, Dar elmaaref for publication, Aleskandareyaa, 1978, P 48.

21 Alshami, Mahamad Hassan, Element of fault in civil responsibility, Dar alnahda for publication, Egypt, 1995, P 299

22 Helmi, Wafaa Ahmad, Breach of contractual obligations by third parties or participation, Master thesis unpublished, University of Egypt, 2008, P 46.

contracts for the purpose of executing the contract, although the creditor does not comply with these contracts, because the contract did not fall in the circle of obligation, and the position of jurisprudence on this liability differed whether its contractual or not.²³ The researcher believes here that the responsibility here is tort for lack of the existence of the contract.

Therefore, the contractual liability for the act of third parties is realized only with existence of the contract, and therefore its absence leads to the absence of the contractual liability.²⁴ The contract actual liability could only be claimed by a contract between parties and the contract must be valid.

If the contract is not yet concluded, for example a party would be harmed at the negotiation stage or there was no scope for contractual liability, nor did the contractual liability apply if the contract was not originally between the official and the harmed. For example, one of them provides services for the second from the door of charity or courtesy, such as the matter in the free transportation.²⁵

The asset is that the contractual liability for the act of the third party after the completion of the contract shall not have effect. Once the contract ends the liability ends and the creditor has only one door which is the tort liability of it had a subject of matter. The jurisprudence and law considered that there are certain cases of responsibility after the completion of the contract which can be considered as an extension, to which rules of liability were applicable in place of the rules of tort liability. This extension must be agreed by the parties, and it must be stated in one clause of the contract that the consequences of the contract after its termination is governed by the contract.

2.2. Assigning the third party from the debtor (legal personality) to implement the obligation in whole or part

The debtor is asked for the actions of third parties who are used to execute the obligation, who has been entrusted with the execution of the obligation in whole or part. The third party we are talking about are those who are being used by the debtor to carry out the obligation and have a direct relationship with the debtor based on a previous agreement. If these conditions are not fulfilled, the third parties shall be considered here a foreign to the debtor's liability.²⁶

Third parties under the agreement by the debtor are the following²⁷

1. the lessee's responsibility in the case of the sub-lease, where the original lessee is liable for the negligence of third parties (the sub-tenant) in maintain the sublease according to the Jordanian Civil Code which stated "the lessor shall not be ensuring that the work that is issued by him or his followers, but this guarantee shall extend to any harm incurred based on a

23 Helmi, Wafaa Ahmad, Previous reference, P 48.

24 Hanaa Khairi Ahmad Khalifeh, Previous reference, P 63.

25 Felaly, Ali, Obligations, Actions of compensation, Part 2, Dar Mofem for publication, Algeria, 2002, P 18

26 Aljbouri, Yaseen, previous reference, page 408.

27 Sultan, Bahtour Anwar, The general theory of obligation, Commitment source, Dar Aljamaa for publication, Eskandareya, P. 257.

- legal reason issued by another lessee or by any person entitled to the right from the lessor.
2. The responsibility of the entrepreneur which pledged to implement all or part of its obligations according to article (798) of the Jordanian Civil Code which stipulates that"1. The entrepreneur may assign all or part of the work to another entrepreneur only if there is no contrary in the contract or the nature of the work requires to be done by him.
 3. the liability of the first entrepreneur exists before the employer."

2.3 Non-interference by the creditor in the selection of third parties

In order to realize the contractual liability of the debtor for the act of third parties and the debtor to bear, is the failure of implementing all or part of his obligations that were assigned. The debtor must have chosen his assistants independently, and the creditor did not interfere in the selection of others.

If the creditor intervenes in the selection of the third party, or chooses or approves the third party, the contractual liability does not materialize. If the third party commits a contractual error and the creditor intervenes by choosing a third party that leads to establishing a contractual relationship between the creditor and the third party which creates an independent relationship the creditor and the original debtor.²⁸

Therefore, arising the contractual liability for the act of third party, the debtor is liable for the actions of such assistants for failure of executing the obligation. An independent choice must be taken by the debtor separated from the will of the creditor, and if the creditor interferes, he must share responsibility with the debtor.²⁹

The creditors interference in this choice leads to a direct contractual relationship between the creditor and third party. Although this condition is clarified the proof of the intervention of the will or not in the selection of third parties is difficult in some cases of contractual liability for the actions of others. For example, the case of medical responsibility, the hospital that uses a doctor to perform a procedure for a patient cannot easily determine if he or she will intervene in the choice of an anesthesiologist. The doctor may be appointed by the state and the hospital cannot choose him.³⁰

2.4 Committing the third party a contract fault

The fault the debtor is asked about is not his fault, but rather the fault of the third party who was entrusted with the execution of the obligation in whole or in part if the error relates to the part entrusted to him. If the third party commits a contractual fault during execution or in the performance of the obligation, or the delay of executing the obligation the debtor is responsible to face of the creditor.

28 Aljbouri, Yaseen, previous reference, page 408.

29 Aljbouri, Yaseen, previous reference, page 409

30 Abu Alnaja, Hassan, Contractual responsibility of third party, Dar althakafa, Egypt, 1989, P82.

For example, the entrepreneur's responsibility towards his subcontract, as well as the responsibility of the lessee for the sub-tenant.³¹

Contractual liability for third parties assumes that a contractual obligation has not been implemented, but the non-performance is not due to the act of the debtor itself but is due to the act of another person whom the debtor has been entrusted to carry out its obligation. This assumes three categories the debtor which is responsible for contractual execution, the harmed party which is the creditor in this case, and the third party which was used by the debtor for executing the obligation.

If the debtor assigns a third party to execute the obligation that is contracted with the debtor. If these third parties commit a contractual fault during the execution of the obligation the debtor bears sole responsibility issued by them.³²

Therefore, the third party must have caused harm in the event of execution of the contract or because of its implementation, or not achieving the diligence standards of the obligation, or the commitment to safety by the failure of ensuring safety. If these conditions are met, the third-party liability is realized and the debtor becomes liable for the fault of the third party who was used it in the execution of its obligation. If the liability of the debtor is realized by third parties, the first may be due to the second either by contractual liability if he was entrusted with the implementation of the contract or the delictual responsibility if the second was entrusted with the implementation by law.³³

If the third party fails to fulfill these obligations, the aggrieved party cannot be consulted under the rules of contractual liability since he is not considered a party of the contract and has only recourse to the debtor who is responsible for the acts of his subordinates.³⁴

Conclusion

Through our study of the subject of this research, we find that the contractual responsibility for the actions of others is an exception to the principle of the general rule that a person only asks for his personal actions and does not inquire about acts of others. This responsibility was determined by law for the benefit of the creditor (the victim) In obtaining a right to compensation.

This study has reached several conclusions and proposals

Results

1. The third party: Any person who was not a party to the contract who was assisted by the debtor in the performance of its contractual obligations
2. There is no liability in the case of breach of void contracts, and secondly,

31 Alnajar, Abdallah Mabrouk, Adminstrative obligations and non-administrative, Dar alhnada alarabya, Eygpt,2002, P 157.

32 Aljbouri, Yaseen, previous reference, page 412

33 Belhaj, Alarabi, previous reference, p.278.

34 Hanaa Khairi Ahmad Khalifeh, Previous reference, P 66.

that the debtor has chosen his assistants independent, and the creditor did not intervene in the selection of third parties. If the creditor intervenes in choosing or approves third parties, the contractual liability does not materialize; the third is that the debtor has entrusted the third party to execute the contract under a agreement or the law, and fourthly, Contractual liability does not materialize if there is no fault.

3. The contractual liability for the act of third parties is only during the contract, and then it does not take place before the conclusion of the contract or after the contract termination, where we cannot apply the burden of liability for the actions of third parties in these two stages and that is because there is no contract this period of time.

Proposals

1. The researcher recommends that the Jordanian legislator must add a text that lists all the categories of the third parties which are asked about their mistakes by the debtor as a contract
2. The researcher suggests that the legislator must add a text stating the terms of liability for the actions of third parties

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Dictionary

Dictionary of meanings, section (others)