

Issues on Civil and Legal Responsibility for the Obligations Undertaken By Third Parties in the Republic Of Uzbekistan

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Annotation: *The article analyzes scientifically - practical aspects of the civil law responsibility of third parties in the legislation of the Republic of Uzbekistan. It also describes the legal consequences of third party legal relations with third parties.*

Key words: The third party liability, double subsidiary liability, trust management founder, customer, contractor, auxiliary contractor, contract of extradition, guaranteed obligation, liability of the surety, deputy agent, mediation agreement, component.

Participation of third parties in an commitment relationships are active (inactive) and inactive (passive). An active participant can be entrusted with a third party not only as an assistant member of the obligation but also as a direct undertaking of the obligation. The basis of this situation is that Article 241 of the Civil Code of the Republic of Uzbekistan (hereinafter CC) is understood. In addition, the existing law defines a contradictory provision for the performance of a third party's obligation and, as a basic criterion, refers to "the third party is bound by an agreement with one of the parties". For example, in the second part of Article 390 of the CC,

when the seller does not have the obligation to deliver the goods to the buyer or transfer the goods to the buyer at the place of purchase, unless otherwise provided by the contract, to the buyer or to the communication organization the obligation of the seller to deliver the goods to the buyer at the time of delivery is considered to have been fulfilled. In this case, the obligation to transfer the goods to the buyer is transferred to a third party carrier or communication organization and the consequences of the default of this obligation will result in civil and legal liability against these.

As a rule, all claims of the creditor must be directed to the debtor as a party to the contract and obligation until the performance of the obligation by a third party¹. However, Article 241 of the CC does not exclude liability for the third party. In the third part of this article, the

¹ Churilov A.Yu. Legal problems of the performance of an obligation by a third party when assigning execution // Legal Studies. - 2016. - № 6. - P.12-22.

contracting party will be held liable for non-performance of the obligation, unless the law or contract provides for the third party's liability.

For example, pursuant to Part IV, Article 859 of the CC, debt on obligations arising from the trust management of property is paid out of this property. If this property is insufficient, the compensation may be directed to the property of the trustee, and if his property is insufficient - the property of the management founder not transferred to the trust management.

In this case simultaneously the property of a trustee, as well as the management founder and the property of the beneficiary, which has not been transferred to trust management, become subject of compensation, this scheme can be considered as "double-subordinated subsidiary responsibility"². In this case, a third party can be a trusted founder. Because the trust manager is directly responsible for the transaction, and the

responsibility for it must also be borne by him. However, if his property is insufficient to cover the liability, the founder's property shall be the basis for reimbursement and shall be considered as the third party's liability.

According to the first part of Article 324 of the Criminal Code, the debtor is liable for damages to the creditor due to non-performance or improper fulfillment of the obligation. In turn, only the debtor is liable to the creditor for the improper performance of the obligation as a result of a third party's obligation to perform the obligation. A third party, who has failed to fulfill its obligations due to the obligation, shall be liable for the loss of the creditor or its property if the action was taken, except for the contract for compensation. However, due to the fact that a third party is not a party to the contract between the debtor and the creditor, the third party's liability is related to the fact that the creditor has been indemnified as a result of improper performance of the obligation. The debtor may demand from a third party, after

² Topildiev B.R. Citizenship and legal regulation of trustworthy property: abstract on diss. law sciences. - T.: 2008. - 135 p.

reimbursement of the expenses incurred by the third party in the event of improper performance of the obligation by the debtor. For example, in accordance with Part 2 of Article 634 of the Civil Code, according to the second and third parts of Article 241 of the Criminal Code and Article 334, the general contractor shall be responsible to the assistant contractor for the failure or improper performance of the contract by the contractor, bear responsibility for the consequences of failure or improper fulfillment of their obligations.

It should be noted that the contractual arrangement of the parties' relationships is based on the contractor and the general contractor's subcontractor-level contractor. In accordance with Part 4 of this Article, with the consent of the general contractor, the customer has the right to conclude a contract with other persons for performance of certain works. In this case, these persons are directly responsible to the customer for failure to perform or improper performance of the

work. As a general rule, the customer does not have auxiliary contractors contractual relationships. Here's how the contractor is responsible for the customer's actions in front of the auxiliary contractor for the auxiliary contractor's actions before the customer. It should be noted that, in relation to these relations, Articles 241 and 334 of the Criminal Code apply to the third party and the norms of the debtor's liability for their actions³.

Similarly, a travel expedition agreement is defined. In particular, according to Article 730 of the Civil Code, the forwarder has the right to involve other persons in the performance of his obligations unless the forwarding contract requires the forwarder to fulfill his obligations personally.

Uploading an obligation to a third party does not release the forwarder from liability for the fulfillment of the contract of carriage expedition.

It should be noted that similar rules are also found in the English law, which

³ Commentary on the Civil Code of the Republic of Uzbekistan. 2 T. - Tashkent, 2013. – P. 482

states that the debtor is liable to the creditor for the damage caused to the third party as a result of the improper performance of the obligation by a third party. Specifically, responsible on the work *Stewart v. Reavell's Garage* dealer handed over a third party car for repair. The third party did not perform the repair properly and the debtor is liable to the creditor⁴.

The issue of the third party's liability for the fulfillment and non-fulfillment of the obligation of the debtor, which is the principal subject of the obligation, is evident in the surety relations. For example, in the first part of article 293 of the CC, if the debtor fails to perform or improperly performs a warranty, the surety and the debtor shall be liable to the creditor if the guarantor is not a subsidiary liability in the law or guarantee agreement. The liability of the surety shall arise in cases when the debtor fails to perform or improperly performs the obligations. In this case, the failure or

improper performance should only relate to the obligation⁵.

Subsidiary liability is the additional liability of the third party to the unpaid portion of the debt outstanding by the debtor. In other words, the subsidiary is liable to the creditor in addition to the liability of the principal debtor. The creditor initially entrusts the liability to the principal debtor, if it fails, attracted to a subsidiary debtor relationship⁶.

Of course, subjects of civil rights have to answer for their responsibilities. However, the parties to the obligation at all times are not only two persons, and the offense is not always committed by one person. In addition, civil-legal relations include the participation of individuals in the name of a person, his or her subsidiary's participation in a legal entity, or the existence of a relationship between a legal entity and its establishments and the non-performance of legal obligations by the government

⁴ Emily M. Weitzenboeck, English law of contract: Discharge. Norwegian Research Center for Computers & Law 2012. P. 30

⁵ Commentary on the Civil Code of the Republic of Uzbekistan. Volume 1 (first part) Ministry of Justice-Tashkent: "Vektor-Press", 2010.-P. 595

⁶ Zokirov I.B. Civil Law. Section I. -Tashkent: TSUL, 2009. – P.460

and its legal entities in which case civil litigation is normally accompanied by an obligation undertaken by a person do not tire. In this case, there are two specific types of civil-law enforcement: one of the principles of solidarity or subsidiary responsibility. It should be noted that the terms "solidarity" and "subsidiary" are derived from the Latin alphabet and refer to their common and additional meanings. Subsidiary accountant will always be liable for additional liability, and only if the debtor has insufficient funds to meet its obligations. Subordinated liability does not arise if the debtor has sufficient funds to cover its liabilities. Therefore, it is necessary to determine that the debtor's funds are insufficient to determine the subsidiary liability of the person who is to be held liable for the debtor.

Before filing claims to a person who is liable in addition to the responsibility of the other person who is indebted to the debtor in accordance with the provisions of the law or the obligation (subsidiary liability), the creditor shall demand the

principal debtor (Part 1 of Article 329 of the CC).

If this policy is to be binding on a third party, in any case, the creditor may initially place his / her claims against the obligor and then file a claim against a third party. According to experts, if a subsidiary liability of a third party is entered into between the creditor and the principal debtor, the third party's consent is required for such liability.

An important prerequisite for claiming a subordinated person is to put the claim back to the primary debtor. Thus, availability of subsidiary responsibility is confirmed by the responsibility of the principal debtor. Only the principal debtor may be liable to the creditor's request without the creditor's request or the creditor's demand be disclosed to the person responsible for the subsidiary. In this case, regardless of the circumstances, the principal debtor's denial must be illegal, otherwise the creditor can not claim a subsidiary⁷.

⁷ Commentary on the Civil Code of the Republic of Uzbekistan. Volume 1 (first part) Ministry of Justice-Tashkent: "Vektor-Press", 2010.-P. 595

In our opinion, the fact that a creditor can not directly comply with a third party is derived from the status of a third party in the obligation relationship because in such a case the third party owes the debtor the obligation to perform the obligation and the contracting party is not a third party. Therefore, the third person is not the sole subject of civil law liability arising from this situation, even if the obligation is imposed upon him. But this is not the case. Indeed, the parties may specify that the third party's involvement in the agreement is independent of his or her personal responsibility, by enforcing the terms of his or her identity and actions. For example, the second part of Article 634 of the FCC states that the auxiliary contractor is directly responsible to the customer for the consequences of failure or improper fulfillment of his obligations.

Article 822 of the Civil Code stipulates the rules for the deputy's deputy's responsibility to the assignee. According to the fourth part of this Article, if the name of the Deputy

Attorney is specified in the contract, the representative shall not be liable for the conduct of the case⁸.

The deputy who handed over the task to the substitute in accordance with all the requirements of the law shall be responsible only to the assignee for the assignment, not for the deputy's actions. For example, the representative submits a letter of acceptance of a certificate of acceptance of sophisticated equipment to the unsatisfactory person who entrusts him to the unsatisfactory person, if he entrusts the person who has no idea about the characteristics, features and other circumstances of this equipment. However, the assistant who may be involved in the engagement contract can be indicated. In such cases, the delegate is not required to nominate himself / herself for the position of the assistant or his / her actions.

The deputy is not liable for the defendant's guilty actions (Article 522, Article 822), if the execution of the case by the substitute is envisaged in the

⁸ Commentary on the Civil Code of the Republic of Uzbekistan. 2 T. - Tashkent, 2013. – P.482

assignment contract, but the name of the deputy is not mentioned therein. In this case, the assistant shall pay the damage to the assignee as a result of his guilty action.

Taking responsibility for the obligations undertaken by third parties derives from the peculiarity of the particular type of legal relationship. For example, in the mediation agreement, the mediator can be liable to the commission agent for the actions of the additional intermediary (Article 835 of the Code of Civil Procedure), where the mediator has the right to conclude additional mediation agreement with another party in order to fulfill the mediation agreement the first part). This impresses the fact that it is possible to introduce a general rule that establishes the responsibility of third parties in commitment and legal relationships in the law. However, based on the nature of the obligations, it is desirable to state the provision of the third party liability as part of the Article 241 of the CC and to define this provision in the following wording:

If a debtor fulfills a non-monetary obligation, he will be liable to the creditor in lieu of the debtor in the manner prescribed for this obligation because it is not necessary to do so.

It should be noted that this addendum to article 241 of the Civil Code increases the liability of the debtor to fulfill his / her commitment to the full and complete fulfillment of his / her obligations and helps to clarify his actions as a third person.