

Powers Of Subjects Property Trust

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Abstract: *In this article the author highlights the powers of the subjects of the contract of trust management of property, in the conclusion, suggestions and recommendations on improvement of this sector.*

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Subjects of the contract of trust management of property have specific pravai and obligations under this contract. First of all, we should consider the rights and responsibilities of the trustee - hand, "performing" the main task of the legal relationship from which the action depends on the continuation of the contractual relationship. Since, in many cases, the content of the contract amount to the trustee powers under the contract.

After the transfer of the property to the trust property, the trustee manages the property, he is entitled to make in respect of the property in accordance with the contract of trust management any legal and actual actions in the interests of the beneficiary. A statute or contract may provide for limitations on certain actions by trustee.

According E.A.Suhanova, although the trustee exercises all the authority of the owner, he does not acquire these rights from the owner based on the rejection of the claim. The owner of the parent transfers the control is not right, but only the possibility to use them. In managing the property rights as there is such a situation. In this case, the manager also receives the possibility of implementing powers rightholder themselves rights reserved by copyright. In these cases, the manager, not being the owner, in fact, acts as an owner. Since, it administers the assets on its own behalf, but not in its own interests but in the interests of the owner or the person they said¹.

V.A.Doziertsev, in turn, proposes to distinguish the rights and duties of the trustee of his rights and obligations to third parties².

M.I.Braginsky and V.V.Vitryansky, provided that the rights and duties of managing the contract property trust are the essence of management activities, offering to divide them in the following areas:

- Firstly, the trustee must take measures to protect the property entrusted to him;

- Secondly, the main purpose of the transferred to the trust management of the property may be to ensure that the obligations sobstvnika parent to third parties. In this case, the trustee is obliged to fulfill its obligations due to the property;

- Thirdly, in some cases, the purpose of the trust property management is the implementation of the individual rights of property owners. In such situations, the trustee is directed to exercise ownership rights on the basis of the property transferred to it;

- Fourth, unlike the above three cases, we can speak about the rights and responsibilities associated with the implementation of the trustee in the framework of the activities to obtain benefits as a professional property manager³.

By agreeing with these views, it should be emphasized that the terms of office of trustee

² Doziertsev VA Discretionary asset management (Chapter 53). . - In the book: the Civil Code of the Russian Federation. Part two. Text, comments, alphabetically-index. / Psychology. O.M.Kozyr, A.L.Makovskogo, S.A.Hohlova. M.:, 1996. 546 p.

³ Braginsky M.I., Vitryansky V.V. Contract law. Book Three: Contracts for execution of works and rendering uslug. M.:, 2002.-900-902 p.

¹ Civil law. In 2 v. T.II. Semivolume 2: Uchebnik. M. : Wolters-Kluwer, 2002. - 128 p.

property management along with the implementation of the founder of the rights and the protection of his interests also include the implementation of actions aimed at profiting from the property.

As a general rule, the main duty of a trustee is in the proper management of trusted assets⁴.

Under the management of the property meant the development of useful features of the property, the successful and reliable action in the course of business activities, maximizing the benefits of the property, it requires that the interests of the founder and the beneficiary, the purpose of the property and to ensure the safety of the property under the law of the fast destruction. However, when asset management is required to obtain benefits, the size of which is at least not less than obtained previously or specified as agreed in the contract. For example, if the annual income of the company before the transfer to the trust management of 25 million soums, according to the results of trust management he also must not be lower than 25 million soums, however, if agreed by the parties contains the ability to generate income in a smaller size, it is also the basis for the recognition of good implementation of asset management.

In managing the property trustee must demonstrate professionalism, fully demonstrate their knowledge, skills and skills in a particular field, take care of the property entrusted to him as their own, and most importantly - do not forget about the interests of the founder and the beneficiary.

At the same time, he is obliged to take all measures to prevent the reduction in the price of the property entrusted to him. For example, with a decrease in stock prices for the shares, the trustee must take all possible measures to improve the stock price data.

Taking a commitment to property management, trustee, in the first place, must take measures to preserve the property. Also important is the practical provision of such measures. But it is worth noting that in the civil

legislation of our country these provisions have not found their expression. First of all, with regard to the safety of the trusted manager of the property, as well as the most important action against the loss of property in the future, in the article 857 of the Civil Code as part of the fifth expedient introduction of provisions concerning the insurance of the property transferred in trust. In our view, the rule should be stated as follows:

- the trustee shall fully insure transferred to it in trust property by the property. If the property is transferred to the trustee to carry out business activity, in this case, the trustee must insure by trusted property and business risk.

If insurance costs have been carried out at the expense of the trustee, these costs can be recovered in the future due to the trusted assets.

The introduction of the Civil Code of such a rule, while protecting the interests of the owner and his property rights regarding the property transferred in trust, to prevent possible future cases of property losses. At the same time, risk insurance associated with the need to satisfy the claims of creditors with respect to property as a result of doing business, based on risk, ie the so-called business risk, the risk of shortfall in the entrepreneur expected revenues caused by violation of counterparties entrepreneur of their duties, or changes in the conditions of doing business for reasons beyond the entrepreneur's circumstances and the risk of civil liability, ie liability associated with causing harm to life, health or property of other persons, and in the cases stipulated by law, the risk of contractual liability⁵ It should always be considered as a duty trustee aimed at preserving held in trust property.

In a relationship of trust property management is also important in determining the question of liability which is assigned the risk of accidental destruction of property. Since the trustee must perform in relation to the property of any legal and actual actions in the interests of the beneficiary, it must also exercise

⁴ Civil law: Textbook. Part.2 /A.P.Sergeeva, Yu.K.Tolstogo. M.:. 1997.- 659 p.

⁵ Egamberdieva N.H. Reflected in the contract of insurance and insurance of the Civil Code of the Republic of Uzbekistan./ The collection of materials of scientific-practical conference on the theme "Problems of improvement of the Civil Code" .- Tashkent TSIL, 2007.- P.157-160.

due diligence in relation to property. For this reason, in the Civil Code is necessary to fix the position of on whom shall be the risk of accidental destruction of property held in trust. For this reason, as part of the sixth article 857 of the Civil Code is expedient implementation of the provisions of the following:

- Figure accidental destruction or damage of property transferred in trust, if the law or the contract provides for another procedure, is assigned to the trustee.

It is known that the trustee acts in the interests of the founder and the beneficiary. In this connection, the founder of management and the beneficiary has the right to be informed about the actions committed by the trustee in the framework of governance. This, in turn, imposes on the trustee the duty to provide management and the founder of the beneficiary in the manner and terms established by the contract of trust management of property, reports on its activities.

Article 857 of the Civil Code defines the rights and duties of the trustee with respect to ishonchli trusted his property. According to this article, the trustee shall, within the limits prescribed by the law and the contract of trust management of property, proprietary rights in respect of the property transferred in trust.

Rights acquired by the trustee as a result of actions of property management are included in this property. Obligations arising from the commission of such acts trustee, executed by this property. Alienation and collateral transferred in real estate management trust manager shall have the right to perform only in cases when it is stipulated by the contract of trust management of property.

To protect the rights of the property held in trust, the trustee has the right to demand any elimination of violations of his rights. In this case the trustee as the title of property owner⁶ It

⁶ Ergashev V.Yo. Some issues related to the nature of the legal claims Vindikatsion./ Collection of scientific-practical conference materials on the topic "Problems of improvement of the Civil Code." -Tashkent: TSIL 2007.- P.157-160.; Ergashev V. Citizens the right to private property, and that the scientific and theoretical aspects. Avtoref. diss ... sugar. walk. nauk.- Tashkent: 2005. P. 16,-.; Aripdjanov UA Of mistakes sobstvennosti c system

has all the rights of the owner and can use any civil legal ways to protect the property transferred in trust.

According to article 228 of the Civil Code, the trustee has the right to claim transferred to him in trust property from unlawful possession (vindication).

The claim for recovery of property from unlawful possession (vindication, taken from the Latin expression "vim/ dicere", meaning "to declare the use of force") is considered non-contractual requirements of the law of the owner of the property on his return in kind. The legislation for initiating a claim vindication requires a number of conditions. These are the following:

Firstly, the owner must be prevented actual ownership withdrawn from his disposal of the property. Otherwise, apply other methods of protection of property rights.

Second, the owner of the lost property should be kept in kind in actual possession of another person. Otherwise, other methods are also used to protect property rights. For example, a claim for damages.

Thirdly, vindication applies only to certain things individually. It is necessary to distinguish between certain individual (edininchnye) things and homogeneous things. If it is possible to identify the true owner of similar things to them also applies vindication. If you can not isolate them prestavlyayuschie possible, it applies not replevin, and a claim for unjust enrichment.

Fourth, replevin has a non-contractual in nature and protects the right of property as an absolute subjective right⁷.

If the property for value acquired from a person who had no right to alienate it, of which the acquirer did not know and should not know (bona fide purchaser), the owner has the right to reclaim the property by the purchaser when the property was lost by the owner or the person to whom the property was It passed into the possession of the

veshchnyx Pravda .: Avtoref. diss ... sugar. walk. Nauka. Tashkent: 2000. P. 15.

⁷ Imomov N. Business entities and protection of property rights qilinishi. Tashkent: TGYuI, 2006.- S.14-15.

owner or stolen from one or the other, or left their possession in some other way against their will.

Recovery of property on the grounds specified in the first part of this article, shall not be allowed if the property were sold in the manner prescribed for the execution of judgments.

If property was acquired without compensation from a person who had no right to alienate it, the owner has the right to reclaim property in all cases.

Money and securities may not be recovered from a bona fide purchaser.

In accordance with Article 230 of the Civil Code, the owner at the recovery of property in accordance with the procedure provided for in Article 228 of the Civil Code, shall also be entitled to demand:

from a person who knew or should have known that his possession is illegal (defaulting owner), refund or reimbursement of all income that the person has learned, or should be removed for the time of possession;

from a bona fide owner - all the revenue that he learned or should have been extracted from the time when he knew or should have known about the illegality of possession or receipt of the request on the claim for the recovery of the property owner.

The owner, as a bona fide and mala fide, in turn, has the right to demand from the owner reimbursement of their necessary expenses of the property from the time from which the owner liable to income property.

The conscientious holder shall be entitled to retain improvements made to them, if they can be separated without damage to things. If such a separation is impossible, conscientious owner is entitled to demand reimbursement of the cost of the improvement, but not more than the size increase the value of things (articles 229-230 of the Civil Code).

As a general rule, property nahodyaschesesya in trust may be demanded from both fair and unfair by the owner. Since, as a bona fide and mala fide owner recognized the illegal owners. Thus, pursuant to paragraph 8 of Article 34 of the Law "On Mortgage" dated October 4, 2006⁸, the owner of the mortgage is not considered its rightful owner, if it is proved that the mortgage dropped out of the possession of any of the persons who have made a special

pledge transmission line, as a result of theft or otherwise against the will of that person, which is the owner of the mortgage, purchasing, knew or should I have known.

The founder of management and the beneficiary also have special rights and obligations under the contract. First of all, the founder of management on the basis of the conditions stipulated by law have the right to control committed in accordance with the contract of trust management of the legal and factual actions, not interfering with the operational business activities. To do this, he is entitled to receive from the trustee to the original terms of relevant information and reports. If the Trustor detect violations of the conditions of the contract, he is entitled to require the trustee to eliminate irregularities in an optimal time frame.

In legal literature, the question of whether the actions of the founder on the transfer of property to the trust management of its rights or obligations causing a fierce debate. Some authors (L.G.Efimova, V.V.Chubarov) consider the transfer of assets in trust responsibility of the trustee⁹, other (L.Yu.Miheeva, E.A.Suhanov) note that due to the fact that the property trust management agreement is included in the category of real contracts, transfer of assets in trust are not included in the responsibilities of the founder¹⁰.

In our opinion, in this sense, the scientific opinion of the second group is more reasonable. For the contract of trust management of property rights and obligations of the parties does not appear on the conclusion of the contract, but only after the transfer of the property to the trustee, and therefore, the transfer of property to the trustee is not considered the responsibility of the founder of management.

Unless otherwise provided by the contract, Trustor is entitled to demand the

⁸ National word. October 5, 2006.

⁹ Efimova L.G. Banking transactions: Law and praktika.- M.: 2001.-637 p .; Civil law of Russia. Part two. Liability law. / Ed. Ed. O.N.Sadikov.- M.: 1997.P.578

¹⁰ L.Y. Mikheeva Trust management of property. / Psychology. V.M.Chernova. M.:, 1999. 141 p .; Civil law: In 2 t. Volume II. Semivolume 2: Textbook / Otv.red.E.A.Suhanov. M.: BEK, 2002.P. 128.

provision of benefits and income from the use of the property transferred in trust.

If the contract of trust management of property predusmotrea payment of remuneration to the trustee, founder of management to pay the trustee the amount of remuneration provided in the contract. Usually, this duty is performed by the trustee of the right of retention of earnings, benefits and other material assets resulting from asset management, provided for the payment to him, as well as property management expenses.

Management founder has no right of alienation, pledging or concluding other transactions related to the property transferred to the trust property. This position stems from the requirements of Article 857 of the Civil Code. Because, during the term of the contract of trust management of property, proprietary rights in respect of the property transferred to the trust management implements the trustee.

As a creditor under a contract of trust management of property, Trustor shall perform the duties of the creditor. That is, for the efficient operation of the trustee, he is obliged to give him all information and documents concerning the property transferred to the management of information on the most reliable business partner. In addition, the founder of management can not interfere in the operational and economic activity trustee.

If the property trust management contract is made in favor of a third person (the beneficiary), the above-mentioned rights of the founder will be owned by the beneficiary. At the same time, the beneficiary at any time without any reason shall be entitled to waive its rights under the trust management of property. In this case, the beneficiary rights are transferred to the management of the founder or to the newly appointed beneficiary.