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INVALID DEALINGS AND THEIR CONSEQUENCES

Abstract. The article reviews and analyzes the scientific views on the different approaches to the definition of the concepts of «transaction» and «invalid transaction». The grounds for invalidation of a transaction due to its nullity or voidability are also analyzed. The authors have come to the conclusion that scientific developments of lawyers and theorists as well as law enforcement practice are to be taken into account to determine the general approach to the definition of the concept of «invalid transaction».

Keywords: transaction, invalidity of the transaction, nullity, voidability, private law, civil rights and obligations

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Научная статья

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НЕДЕЙСТВИТЕЛЬНЫЕ СДЕЛКИ И ИХ ПОСЛЕДСТВИЯ

Аннотация. В статье рассматриваются и анализируются научные подходы к определению понятий «сделка» и «недействительная сделка», осно-

вания для признания сделки недействительной в силу ее ничтожности или оспоримости. Авторы пришли к выводу, что для выработки общего подхода к определению понятия «недействительная сделка» необходимо учитывать научные разработки практикующих юристов и теоретиков, принимать во внимание правоприменительную практику.

Ключевые слова: сделка, недействительность сделки, ничтожность, оспоримость, частное право, гражданские права и обязанности

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Transactions are an integral part of the life of any person. And within the framework of civil turnover, an important problem at the moment is the protection of the interests and rights of bona fide participants.

In Roman law, the concept of «deal» was originally used in a double sense. In the first case: a transaction is any private law act aimed at establishing, changing or terminating legal relations between subjects of law. In the second, those private-law acts, that met all the requirements of the law were called transactions¹.

In the Civil Code of the Russian Federation (hereinafter – the Civil Code of the Russian Federation)², article 153 provides a legal definition of a transaction. It follows from this article that transactions are actions of citizens and legal entities aimed at establishing, changing or terminating civil rights and obligations. By means of transactions, subjects of civil law establish, change or terminate their civil rights and obligations according to their expressed outside will and in their interest (paragraph 1 of paragraph 2 of article 1 of the Civil Code of the Russian Federation).

For the execution of some transactions, it is necessary and sufficient to express the will of one party (Article 154 of the Civil Code of the Russian Federation). Unilateral transactions include, in particular, the issuance of a power of attorney, will, acceptance of inheritance, rejection of inheritance, issuance of an independent guarantee. As a general rule, a unilateral transaction creates obligations only for the person who made the transaction. Deals, for the conclusion of which it is necessary to express the agreed will of the two parties, are called bila-

¹ Юридические сделки [Электронный ресурс]. URL: https://studme.org/285239/pravo/yuridicheskie_sdelki (дата обращения: 18.04.2023).

² Гражданский кодекс РФ от 30.11.1994 № 51-ФЗ [Электронный ресурс] // Официальный интернет-портал правовой информации. URL: <http://www.pravo.gov.ru/> (дата обращения: 18.04.2023).

teral. Bilateral and multilateral transactions are called contracts, these are agreements between two or more persons on the establishment, change or termination of civil rights and obligations (Article 420 of the Civil Code of the Russian Federation).

In order for the deals to lead to legal consequences, a number of conditions must be met. Firstly, transactions must be made by persons who have transaction capacity, which in turn is an integral part of legal capacity. Secondly, the expression of the will of the person must correspond to his actual will. Thirdly, the will of the person should be formed freely, and also not be under unlawful outside influence. For example, violence, deception or illness, intoxication [1]. And finally, fourthly, the transaction should not contradict any regulatory enactments, i.e. we take into account the legality of its content.

It follows from the above that violation of at least one of the conditions for the validity of transactions may lead to the recognition of the transaction as invalid, unless otherwise provided by law (clause 1 of article 162 of the Civil Code of the Russian Federation).

The very concept of an invalid transaction is not established by law, but developed only in the theory of law. Invalid transactions are considered to be the actions of persons, both individuals and legal entities, although they are aimed at establishing, changing or terminating a civil legal relationship, but do not create these consequences due to the inconsistency of the actions committed with the requirements of the law [2].

The question that might arise is in what cases transactions are invalid. First, if the transaction was made by a minor and without the consent of his legal representatives. The exception is minors who have become fully capable (Article 27 of the Civil Code of the Russian Federation). In this case, the transaction may be declared invalid by the court at the suit of a legal representative. If the transaction was declared invalid, then the rules that are provided for in clause 1 of Article 171 of the Civil Code of the Russian Federation apply, namely, bilateral restitution will be applied, as well as compensation by the capable party to the minor for real damage if the capable party knew or should have known about the fact minority of the other party.

The will of parents, adoptive parents and trustees to make a deal by their wards is expressed in the form of giving consent to the deal. As a general rule, consent can be given by one of the parents, but if there are disagreements on this score, each of them has the right to apply for resolution of these disagreements to the guardianship and guardianship authority or to the court. In order to avoid further complications, it is advisable to obtain the consent of both parents when making any major transactions with a minor [2]. Secondly, if the transac-

tion was made by a citizen, who, in turn, was limited by the court in his legal capacity on the basis of Article 30 of the Civil Code of the Russian Federation.

In this case, the transaction can also be recognized by the court as invalid at the suit of the trustee with the application of the consequences provided for by Article 176 of the Civil Code of the Russian Federation: bilateral restitution, compensation by a capable party for real damage suffered by the other party. Thirdly, a transaction that was made, although by a competent person, but at the time of its execution in a state where he was not able to understand the meaning of his actions or to direct them. Such a transaction will be invalidated in accordance with Article 177 of the Civil Code of the Russian Federation.

Fourthly, the transaction may not be recognized as valid due to the discrepancy between the expression of the will of the actual will of the party, committed under the influence of a delusion of significant importance. At the same time, we note that even a conditional expression of will can never be expressed in the essential parts of a transaction that determine one or another of its legal composition, since they are its fundamental features, the absence of which does not allow us to talk about the completion of this transaction [3]. A delusion can mean a person's misconception about any circumstances. The person entitled to bring a claim is the party that acted under the influence of delusion (Article 178 of the Civil Code of the Russian Federation) [1].

Unfortunately, in most cases, the law does not indicate whether the transaction is void or voidable, but only indicates the fact that the transaction cannot be valid under some specific conditions. The differences between these deals are not quite clear as it would seem at first glance. The differences between void and voidable transactions can be reduced to the following criteria:

- the procedure for declaring a transaction invalid (clause 1 of article 166 of the Civil Code of the Russian Federation)
- the circle of persons who can declare the invalidity of the transaction (clause 2 of article 166 of the Civil Code of the Russian Federation).

For example, based on the circle of persons who can declare the invalidity of the transaction, it is obvious that this feature is just a consequence. At least for the reason that in paragraph 2 of Art. 166 of the Civil Code of the Russian Federation named authorized persons in relation to only two requirements. I.B. Novitsky believes that the very term «nullity» is not entirely successful, since it presupposes legal zero [4]. This point of view is supported by the majority of scientists. For example, F.S. Kheifets also believes that the deal in this case is zero, that is, canceled.

V.A. Belov believes that the contested transactions are a kind of forerunner of the contested transactions [5]. We support this point of view, because if you

think about it, the challenged transactions were originally valid transactions, which only after some time became invalid.

Transactions that do not comply with the requirements of the law entail various consequences, for example, unilateral or bilateral restitution. During unilateral restitution the transaction is executed by only one party, which will have the right to demand the return of the transferred. The situation is different with bilateral restitution, according to paragraph 2 of Art. 167 of the Civil Code of the Russian Federation, each party is obliged to return what was received under the transaction. But if it is impossible to do it we have to reimburse the cost. The consequences will be more serious if the parties deliberately executed an invalid transaction. In such a case, all income is charged to the income of the Russian Federation.

Thus, we came to the conclusion that today transactions play a decisive role in the development of the economic life of society. However, the question of defining the concepts of a transaction and an invalid transaction remains controversial. It is unclear whether an invalid transaction is a legal fact in general and a transaction in particular; is an invalid transaction a lawful action or is it an illegal action? The solution of this problem is facilitated not only by scientific developments of lawyers and theorists, but also by law enforcement practice, which determines the general approach to the definition of the concept of «invalid transaction».

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