

TRANSPORT CONTRACT - EXCEPTION TO THE RELATIVITY EFFECTS OF LEGAL DOCUMENT

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Abstract

The parts to the contract are the shipper freight and the carrier. But the beneficiary of the contract is the consignee, although he doesn't take part to the signing of the contract, he is (if he is adhering to the contract) acquirer of rights and obligations which result from the contract of carriage. The contract of carriage is considered an exception to the principle of relativity effects of the legal act and it is considered by some authors in the literature as a stipulation for another with certain features. Stipulation for another is the contract whereby one part (stipulate) provide that the other side (promisor) to give, to do or not to do something for the benefit of a third person (beneficiary) who do not participate, and he doesn't take part to the conclusion of the contract. It is considered the only real exception of the principle of relativity. Called contract for another's benefit, stipulation for another creates for the beneficiary third-part right, directly and immediately created in his benefit since the conclusion of the contract between the promisor and the stipulate. The right is created from the time of signing the contract, in the patrimony of beneficiary, regardless of beneficiary's accepting or waivering this right.

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1. Introduction

The regulation of the "contract" notion is found in the New Civil Code, in the contents of article 1166: A contract is an agreement of will between two or several persons with the intention of setting up, amending or extinguishing a legal relation. A contract is a convention, an understanding between two or several persons who agree to do something, it is an agreement resulting in rights and obligations for the parties².

2. Exception to the relativity effects of legal document

A contract is a tool playing an essential role in the current reconciliation of public law and private law, recreating law unity³. A contract is the most prominent way of acquiring property, a variety of legal document, a bilateral legal document. A contract is an agreement of will between two or several persons that leads to setting up, amending or extinguishing a legal obligation. The freedom to establish any kind of convention, to establish the content of a contract may be limited through imperative rules on the scope of the contract (the price of products subject to state control) or the form of a contract (written form - consignment agreement, legal form, purchase and sale contracts for lands, conventional mortgage).

Thus, entering a contract as the result of an agreement of will (*mutuus consensus*) and dissolving it should be the outcome of the same agreement (*mutuus disensus*). The rule of law according to which a contract only generates rights and obligations for the parties, i.e. it cannot benefit or affect third parties, is the content of the principle of relative effects of a contract. In our law, there is only one exception from this principle: a contract in favour of a third party (stipulation for another).

The stipulation for another (also called a contract to the benefit of a third party), i.e. the contract whereby a party (the promising party) obliges against the other party (the stipulating party) to perform a delivery in favour of a third party (the beneficiary third party), but the latter shall take

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² The New Civil Code, art. 1166.

³ Cătălin-Silviu Săraru, *Contracte administrative*, C.H.Beck, Bucharest, 2009, p.11.

part in entering such convention neither directly nor through the stipulating party's representation, was unanimously deemed, as long as it was not explicitly regulated by law, as a genuine (actual) exception from the principle of relative effects of a civil legal document, as it was admitted that the third party's subjective civil right was born directly and as a consequence of the convention between the stipulating party and the promising party and only the exercise of this right depended on the will of the beneficiary third party.

The New Civil Code generally regulates stipulation for another and, after providing that "*by effect of stipulation, the beneficiary acquires the right to directly ask the promising party to perform the delivery*"⁴, it mentions that "*if the beneficiary third party does not accept the stipulation, its right is deemed to never have existed*"⁵, which means that the birth of the direct and final subjective civil right in the assets of the beneficiary third party is conditioned by his/her acceptance of this right. In this case, the failure to accept the stipulation acts as a resolutive condition⁶.

The resolutive condition is a future and uncertain event whose production results in the dissolution of an obligation and is presumed to be a resolutive condition whenever the due date of the main obligations precedes the moment when the condition might be fulfilled. "A resolutive condition differs from a resolutive clause, that sanctions the failure to perform a definitive contract. Contrarily to the resolutive clause, that does not forbid the forced execution of a contract, a resolutive condition does not allow for forced execution or equivalent execution. There is an obvious incompatibility between the existence of a resolutive clause or a resolutive condition on the one hand and the legal judgment of resolution, since the fulfilment of a resolutive condition results in the automated resolution of a contract, while the compulsory force of a resolutive clause imposes that the judge should declare resolution"⁷

In how it is formed and seen in the complexity of its elements and goals, a transport contract has its own legal structure and appearance, being independent from any other civil or commercial contract⁸.

The persons directly and necessarily involved in entering a transport contract are the sender and the carrier. The former agrees to deliver the item to be transported; the latter agrees to properly deliver the item to its destination in exchange for a sum of money.

Besides these persons, the contracting parties, a third person, the recipient, is involved in the performance of the contract; even though external to the contract, the recipient is the exclusive beneficiary of the contract's useful outcome. For this reason, given the recipient's role in solving a transport contract, the sender should indicate the recipient's name and address to the carrier as the contract is made, so that the latter may know where to direct the concerned item⁹.

A transport contract is entered by the transport undertaking and the sender, who usually appear as subjects of the contract.

In case the transportation of goods is to the benefit of other person than the sender, the recipient, though not part of the contract, acquires certain rights out of the concerned contract, which is why the legal clarification of the recipient's rights has given birth to many discussions in scientific literature.

Thus, in Roman law, a carrier was classified as the *negutiorum gestor* of the recipient, which contradicts the actual situation, as the performance of a transport is the outcome of the sender's, not the carrier's initiative and as the goods to be carried belong to the sender, not to the recipient.

According to a different opinion, rights resulting from a transport contract are transferred from the sender to the recipient through an assignment, based on an offer provided by the sender to the recipient as the goods arrive, by means of the carrier. Thus, the recipient's position derives from the

⁴ Art. 1284(2) New Civil Code.

⁵ Art. 1286(1) New Civil Code.

⁶ Art. 1401 New Civil Code.

⁷ I. Turcu, The New Republished Civil Code, Book V. Despre obligații art. 1164 – 1649, 2nd ed., C. H. Beck, p. 532.

⁸ Gheorghe Filip, Cristina Badea, Mihai Manoliu, Gavril Paramon, *Dreptul transporturilor*, Junimea, Iași, 2002, p. 31.

⁹ E. Cristoforeanu, *Despre contractul de transport. Cartea I. Transportul terestru de lucruri. Analiza lui în cadrul dispozițiilor din codul de comerț*, Tipografia „Curierul Judiciar” S.A., Bucharest, 1925, p. 81.

sender's position, and the carrier may enforce all his personal exceptions, even those that are external to the contract, thus depriving the sender from the independent position they actually have, that is needed for the fruitful exercise of their own rights¹⁰.

According to another disputable opinion, since the recipient acquires his/her own right against the carrier, as resulting from the carrier's contract with the sender, the recipient's rights are considered to be identical to the rights of the beneficiary third party in stipulation for another, with certain distinctions. In the case of stipulation for another, the beneficiary third party acquires his/her rights as the contract is entered between the stipulating party and the promising party, while, for transport contracts, the recipient is only entitled to be handed the items when they have reached the destination and are made available to him/her; up to that time, the sender is entitled to dispose of the items and change their destinations.

A beneficiary third party in stipulation for another can only become a holder of rights, as they cannot be bound by an act of will belonging to someone else, while the recipient in a transport contract may also have rights and obligations.

Sometimes, in practice, based on the same transport contract a carrier is simultaneously bound by the sender and the recipient, which goes against stipulation for another; according to the latter, as the recipient adheres to the transport contract, the sender would no longer be entitled to bind the carrier, since the recipient's acceptance of the bill of lading and the items would result in him/her substituting the sender as for the use of any right resulting from the transport contract¹¹.

Pursuant to these distinctions, a conclusion has been reached that the idea of stipulation for other cannot fully explain the recipient's position in the transportation contract, which cannot fall within the principles applicable to stipulation, though it resembles the latter from many points of view; thus, a transport contract is a stipulation for other with certain particularities.

The recipient's position in the transport contract may be fully explained through the institution of stipulation for other, as a specific application of this legal institution; the recipient's rights are born as the contract is made between the stipulating sender, irrespective of whether the beneficiary third party, the recipient, has or has not accepted the right stipulated to his/her benefit. The exercise of such rights is suspended by law until the goods reach their destination, when the recipient becomes aware that there is a stipulation to his/her benefit that they may accept and, thus, they adhere to the contract, or they may reject it.

The recipient's acceptance of or adhesion to the contract does not result in rights, since they are born on the very moment when the transport contract is made by the sender, and the recipient only reinforces the rights stipulated to his/her benefit¹².

One of the original traits of a transport contract results from the effects caused to the recipient, if the latter is a third party in relation to the contract between the carrier and the sender. Provided that the recipient adheres to the convention, s/he becomes the holder of certain rights and obligations against the carriers, even though s/he has not contracted them personally or through an intermediary.

3. Conclusions

The legal basis for the position held by the recipient within the transport contract has generated various discussions and explanations; thus, according to business management principles, the carrier is deemed to be acting to the recipient's interest, as a *negotiorum gestor* thereof. This viewpoint has resulted in reserves, since the initiative of business management to the benefit of a third party lies with the manager, while the initiative of entering a contract in transport of goods lies with the sender, not the carrier. The rights of third parties exist as such in business management, arising from the date when the manager defends them. In terms of transport, the recipient's rights against the carrier are conditioned by the goods arriving on time¹³.

¹⁰ Gheorghe Filip, *Dreptul transporturilor, ediție revăzută și adăugită*, Casa de editură și presă „Șansa” SRL, Bucharest, 1996, p. 52.

¹¹ Gheorghe Filip, *Dreptul transporturilor, ediție revăzută și adăugită*, Casa de editură și presă „Șansa” SRL, Bucharest, 1996, p. 53.

¹² Gheorghe Filip, *Dreptul transporturilor, ediție revăzută și adăugită*, Casa de editură și presă „Șansa” SRL, Bucharest, 1996, p. 55.

¹³ Gheorghe Stancu, *Dreptul transporturilor. Curs universitar*, Lumina Lex, Bucharest, 2005, p. 52.

Based on the assignment of rights, the sender, as the assignor, assigns the rights resulting from the transport contract to the recipient, who becomes the assignee. This shows a flaw in classifying the recipient as a particular successor of the sender. The solution is detrimental for the recipient, since it involves the outcome that any exceptions that the carrier may invoke against the sender are also used against the recipient, and his/her rights become vulnerable.

The difficulties seen in these assumptions show that the recipient's legal position presents a certain originality, as it cannot be reduced to formulae such as business management, assignment of rights or stipulation for other. This particularity is seen in the theory that a recipient may be the holder of autonomous rights resulting from a transport contract, and the recipient acquires such rights against the carrier as of the date when the transport contract is made, subordinated to a suspensive term and a resolutive condition.

The recipient's rights cannot be exercised against the carrier from the date when the transport contract is entered; they are suspended until the goods arrive at the destination. The sender may revoke the recipient's rights by replacing him/her with another recipient, along the route travelled by the load¹⁴.

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¹⁴ Gheorghe Stancu, *Dreptul transporturilor. Curs universitar*, Lumina Lex, Bucharest, 2005, p. 53.