

THE CASE OF NON-ENFORCEABILITY OF THE DEBTOR'S DISPOSITION AGAINST THE CREDITOR (POLICY CASE) IN JORDANIAN CIVIL LAW

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Abstract

The study of this research dealt with the analysis of the case of non-enforceability of the debtor's disposal against the creditor (policy case) in the Jordanian civil law. As this lawsuit is a legal means approved by the Jordanian legislator for the creditor to challenge the harmful behaviors against him.

Accordingly, it follows from this that the creditor remains threatened with the danger of losing his debtor's money, because the means of general guarantee established by the Jordanian legislator, including this lawsuit, do not prevent the disposer from exercising all his rights on his money, but rather it aims to preserve the general guarantee established for creditors in a manner that helps in fulfilling his right. Through a legal system, it decides that the debtor's actions are not enforceable against third parties unless this third party permits it.

Keywords: creditor, debtor, general guarantee, disposition, fraud.

THE INTRODUCTION

The aim of the lawsuit for the non-enforceability of the debtor's actions against the creditors is to preserve the general guarantee of the creditors, when the debtor takes a positive stance and hastens to dispose of his money, and the intention behind this action is to remove his money from the scope of the general guarantee of his creditors, as if he sells some of his money at a low price Or to give to others money from his money. In this case, we are facing a bad faith debtor who intended behind his actions only to miss the opportunity for his creditors to fulfill their rights, by weakening their general guarantee. Therefore, the Jordanian legislator, like the rest of the legal legislation in various countries of the world, initiated lawsuits to preserve the general guarantee, including the lawsuit of non-enforceability of the debtor's behavior against the creditor, and its purpose is to protect these creditors from the danger of harmful behavior of their money with the debtor.

RESEARCH IMPORTANCE

Undoubtedly, the subject matter of the lawsuit for non-enforcement of the debtor's actions against the creditor (the police suit) in the Jordanian civil law represents a civilized and legal apostasy by all standards, due to what is enjoyed by the preservation of the general guarantee, and the aim of this lawsuit is to appeal after the debtor's legal actions become enforceable. , which he has undertaken to prejudice the rights of creditors, and to prevent the harmful effects of these actions. Hence, preserving the debtor's money, strengthening the general guarantee and not diminishing it. It also affects the interest of the disposed to, as here the interest of the creditors appears to be in objecting to the debtor's actions that are harmful to them, as compensation or as a donation, to prevent its smuggling from his general guarantee.

RESEARCH PROBLEM

The principle is that a person is free to dispose of his money in all kinds of legal dispositions, and that these dispositions are valid in his right and in the right of his successors from among the heirs (the general successor) and in the right of the private successor (such as the buyer and the legatee).



And since the debtor's financial liability is the general guarantee for the creditors, it is natural that his actions with his money affect this guarantee. Thus, his behavior has no legal effect for them. Based on the foregoing, several questions arise, namely: What is the nature of the claim of non-execution of the debtor's disposal (the policy suit)? What is the nature of this lawsuit? Is it a case of non-enforceability of the contested disposal against the creditor? Or is it a personal or in-kind suit? What are the conditions and effects of a claim not to enforce the debtor's disposal against the creditor?

RESEARCH METHODOLOGY

The study of this research is based on the analytical descriptive approach, so the researcher focused on studying and analyzing the legal texts in the Jordanian civil law, citing some judicial rulings issued by the Jordanian Court of Cassation, and as we are in the process of studying a subject that mainly needs extrapolation of the legal texts that govern it, Analyzing them, presenting and discussing jurisprudential opinions, reviewing the case of non-enforcement of the debtor's disposal against the creditor (policy case) in the Jordanian civil law, and drawing conclusions and recommendations.

Search Plan:

In studying the case of non-enforceability of the debtor's disposition against the creditor (policy case) in the Jordanian civil law, the researcher relied on the following plan:

The first topic: what is the claim of non-enforceability of the debtor's disposal (the policy suit) and its nature.

The first requirement: the definition of a claim for non-execution of the debtor's disposal.

The second requirement: the nature of the lawsuit for non-execution of the debtor's disposal.

The second topic: the general provisions of the case of non-enforceability of the debtor's actions against the creditor.

The first requirement: the conditions of the suit for non-execution of the debtor's disposal.

The second requirement: the effects of the non-enforceability of the debtor's disposal and its expiry.

The first topic

What is the nature and nature of the claim for non-execution of the debtor's disposition (the policy suit).

The study of the case of non-enforcement of the debtor's disposition against the creditor retains its importance in several respects, as this case constitutes one of the means of preserving the general guarantee, this guarantee, which constitutes a fundamental pillar in the relationship of the creditor with the debtor, as the creditor is authorized to execute on the debtor's money if he does not understand With the derogation or absence of this guarantee, the creditor's right to execution and collection of his debt shall be diminished. To clarify what is the claim of non-enforceability of the debtor's disposal and the nature of this claim, we will divide this topic into two requirements as follows:

The first requirement: the definition of a claim for non-execution of the debtor's disposal.

The second requirement: the nature of the lawsuit for non-execution of the debtor's disposal.

The first requirement

Definition of a suit for non-enforcement of the debtor's disposal

It has already been mentioned that the debtor's actions exceed their impact on his creditors indirectly, because what decreases his rights or increases his obligations affects the decrease in the value of his creditors' general guarantee. However, this indirect effect of the debtor's actions depends on the fact that these actions are real and not fictitious, and that they are issued by him in good faith. As for the debtor acting in bad faith, that is, with the intention of harming his creditors, then they have the right to request consideration from others in relation to the effect of these actions so that they do not harm them. This is done by filing a lawsuit for the non-enforceability of the debtor's actions, requesting that the debtor's actions be deemed ineffective against them, and therefore the



correct expression of this lawsuit is that it is a lawsuit for the non-enforceability of the insolvent debtor's disposal against his creditors, and not a lawsuit for invalidating the disposal.

The creditor may resort to a claim that the debtor's actions are not enforceable against him. This is called the case (policy case). Which we can know: It is a lawsuit filed by the creditor to challenge the actions of the insolvent debtor that are harmful to him (the creditor) with the intent of protecting him from the harmful actions of the debtor and to preserve the guarantee of his rights and the rights of the rest of the creditors. Considering that these dispositions are not enforceable against him, we will divide this demand into two branches as follows: The first branch: (the importance of the claim not to enforce the disposition) and the second branch: (the nature of the claim not to enforce the debtor's disposition).

First branch

The importance of the non-execution lawsuit

The importance of the suit for non-execution of the debtor's disposal stems from several aspects, which we mention as follows:

First: The claim that the debtor's disposition is not enforceable against the creditor is linked to the idea of the general guarantee.

Second: The non-enforceability of the debtor's disposal against the creditor is considered as a penalty that the law imposes on the debtor's fraud and perhaps his collusion with the recipient, which is a dangerous behavior that causes harm to the creditors. Therefore, the presence of the two elements of fraud and harm in any disposal is considered very important and requires the intervention of the legislator. It should be noted that These two elements are essential in the case of non-enforceability of the debtor's disposal against the creditor.

Third: The mechanism of using this lawsuit indicates its importance and seriousness, as the creditor files it in his name, not in the name of the debtor, and he files it against the person with whom his debtor contracted. The first is the debtor's relationship with the creditor who is harmed by the debtor's disposal, although the creditor is not a party to the legal relationship that brings the debtor together with the disposer of it, not against his debtor, although there is no slightest relationship between the creditor and the disposer of it.

Fourth: The study of the non-enforceability of the disposition claim indicates that the creditor, in one way or another, limits the debtor's desire to act and intervenes to direct this desire to the interface that achieves his interest, as this lawsuit is a fairly strong and effective means if its conditions are met and its goal is achieved, as it gives wide powers The creditors have the right to respond to some legal situations that are inconsistent with his interests, and the importance of this case is increased by the fact that its effects extend to include all creditors. This effect was expressed by Article (373) of the Jordanian Civil Code as follows: harm him).

Section two

The basis on which the claim is based on the non-enforceability of the debtor's disposal

The basis on which the claim is based on the non-enforceability of the debtor's disposal means the essential idea on which this lawsuit is based and the goal that was found to achieve it, and it can be said after that the foundations on which the claim was based on the non-enforceability of the debtor's disposal, the first of which is the idea of general guarantee and its preservation in the interest of creditors, but despite the importance of this idea, it constitutes A goal for all means of preserving the general guarantee.

And that the first basis for the claim that the debtor's disposal is not enforceable is to protect the creditor from cheating his insolvent debtor. As long as the creditor did not obtain a special guarantee for his right, he is left to the general guarantee, but if the debtor was not of good faith and the intent of his action was to harm the creditor by diminishing the general guarantee, the creditor may challenge this action so that its effect does not go to him, and he challenges this action so that he does not Its effect is directed to him and he is challenging it on the grounds that the debtor does not enforce this on the one hand. And the second basis: It includes a kind of legislative protection for the aggrieved creditor, and therefore the basis for this lawsuit is the protection of the legislator to the



creditor from deceiving his debtor, so the debtor when he intends to smuggle his money from the hands of his creditors and hide it from them with the intention of harming them or dissipating any money that he may obtain, as well as preferring one creditor over another in order to avoid him dividing the creditors. With the rest of the creditors and other actions involving fraud, this deserves and rightly the intervention of the Jordanian legislator to approve a certain legal protection for the creditor, so the legislator tested the claim of non-enforceability of the debtor's disposal to be a means to protect his opportunity to obtain his rights, so he is not satisfied with a negative position on that.

The second requirement

The nature of the suit for non-execution of the debtor's disposal

The claim of non-enforceability of the debtor's disposition against the creditor (the policy suit) is nothing but a way that the creditor takes to obtain from the court a ruling that he is from a third party in a disposition issued by his insolvent debtor prejudicial to his rights, and all that the creditor asks of the court in this case is the non-enforceability of the debtor's disposition against him. In order to clarify the nature of the lawsuit for non-execution of the debtor's disposal, we will divide this demand into two branches as follows: The first branch: (a claim for invalidity or a claim for compensation) and the second branch: (a personal claim or a real claim).

First branch

An annulment claim or a compensation claim

A jurisprudential dispute arose over the qualification of this lawsuit, whether it is a lawsuit for invalidity or a lawsuit for compensation, and the opinion that it is not a lawsuit for invalidity is preferred because it leaves the contested disposal existing between the two parties. And that it is not a claim for compensation because in the case that affects the disposition of the one who received the money from the debtor as a donation and in good faith, there is no mistake committed by the latter so that the case against him can be described as a claim for compensation, and therefore the majority went to adapt this claim as a claim of non-enforceability of the contested disposition. In it against the creditor Rafiha.

However, modern jurisprudence did not abide by the provisions of liability regarding this case, because there is no benefit in recourse for compensation to the debtor because the assumption is that he is insolvent, and therefore it is permissible for the creditor to implement on the money that the debtor disposed of by fraud, on the grounds that such disposal is void with regard to creditors. That is, the lawsuit for non-execution of the debtor's disposition is a liability case in which the penalty takes the form of invalidating the disposition, noting that the invalidity here is not complete, but rather limited to the effect of the disposition in relation to the creditor, as for the contracting parties, the disposition remains existing and arranged for all its effects.

Section two

A personal suit or a real suit

As long as we have concluded in the previous section that the claim is not a claim of invalidity, this necessarily means that it is not a claim in kind, since the basis for considering the claim in kind stems from the fact that the creditor is only contending with the disposal of his debtor, by virtue of which he extracted an eye from his money, and it aims to return this eye to the guarantee general. As for saying that the lawsuit is mixed, its basis is that the creditor focuses in his lawsuit on a personal right (the debt) and demands at the same time the return of the property that has been removed from the guarantee. This perception is not accurate, as the creditor does not do so in his capacity as the owner of this property or the holder of a right over it, but rather he does so based on his right to the general guarantee on the debtor's money, and there is no doubt that this right is a personal right.

A part of the legal jurisprudence believes that when the creditor requests that the debtor's disposition not be enforceable against him, this request is based on the debtor's obligation not to dispose of his money to the detriment of his creditors, and this is a personal commitment that comes from the law.



The second topic

General provisions for the case of non-enforceability of the debtor's actions against the creditor Article (370) of the Jordanian Civil Code stipulates that: (If the debt, immediately or deferred, surrounds the debtor's money, whether it increases it or equals it, then he is prevented from donating a donation that he is not obligated to and that is not customary.

It is clear from the text of the above article that the debtor who surrounds the debt with his money increased it or equaled it while he was aware of that, he is prevented from acting in a way that is detrimental to the interest of his creditors. Harmful disposition is disposition without compensation in a manner that does not bind the debtor and is not customary, such as if the debtor gave money from his money to someone to the detriment of his creditors. The gift is not implemented against them (against the creditors). We will divide this research into the following demands:

The first requirement: the conditions of the suit for non-execution of the debtor's disposal.

The second requirement: the effects of the claim that the debtor's disposition is not enforceable.

The first requirement

Conditions for the non-enforceability of the debtor's disposal

The principle is that the claim of non-enforcement of the debtor's harmful actions against his creditors (the policy suit) in Latin laws and jurisprudence is based on two basic fundamental ideas: the idea of fraud emanating from the debtor, and the idea of damage to the creditor. The conditions for the suit revolve around the non-enforceability of the debtor's actions, that is, the conditions for the creditor's right to challenge the actions of his debtor. Therefore, considering it ineffective against him, regarding the circumstances of the debtor who concludes from the actions that are harmful to his creditors. We will divide this demand into three branches as follows: The first branch: (the conditions related to the creditor) and the second branch: (the conditions related to the contested disposal). Section Three: (Conditions related to the debtor).

First branch

Creditor conditions

Two conditions are required for the creditor's right to be able to use this suit: that he is due for payment on the one hand and prior to the disposition of the contested party on the other hand. After that, it is of no importance to the source of the creditor's right, its location, or whether or not he has an executive document. The conditions relating to the creditor are as follows:

First: Debt Maturity:

The Jordanian legislator differentiated between settlements and donations. In the case of settlements, the requirement that the debt of the creditor become due is explicitly required by the text of Article (371) of the Civil Code, where it says: (If the creditors demand their debts from the debtor whose money surrounds the debt, he is not permitted to donate his money or dispose of it as compensation...). It is clear from this text that the creditor has no right to demand from the debtor except for a debt that is due for payment, and this implicitly requires that their right be free from conflict.

In the case of donations that are not obligatory and not customary, the Jordanian Civil Law did not restrict preventing the debtor from donating his money to the limitation of maturity, as Article (370) of the Jordanian Civil Code stipulates that: If it exceeds it or equals it, then he is prevented from making a donation that he is not obligated to and that is not customary, and the creditor has the right to request it...). It is clear from this text that the Jordanian Civil Code has equated the existence of the debtor's abstention from the harmful donation between the maturity date and its non-completion, while stipulating that the debt is due for payment so that the creditor can appeal this lawsuit in the case of settlements, and a fortiori the creditor who has The right of the payee to challenge the harmful donations made by the debtor and to request that they not be implemented against him.

Second: The precedence of the creditor's right in its origin over the contested disposition:

On the other hand, the creditor's right must exist prior to the disposition of the contested party, because in this situation it is correct to imagine that damage to the creditor's nest is caused by the



debtor. Also attached to this is the case if the debtor, at the time of conducting the disposal, intends to harm the future creditor, such as if the debtor sells some of his money at a time when he is seeking to borrow.

The lesson is in the precedence of disposition on the date of the existence of the creditor's right, not on the date of its entitlement, (for example): If the creditor's right arose on 1/1/2022, but it was associated with a standing term that does not become permissible until 1/6/2022, and the debtor disposed on 4/1/ 2022 is a harmful and impoverished disposition, so the creditor may appeal against this disposition and file a lawsuit for the non-execution of the disposition (after the expiration date of his debt) because the date on which his right arose was prior to the date of the contested disposition, and the creditor must establish evidence that his right preceded its existence on the contested disposition, and the date The disposition, even if it is not established, is an argument against the creditor until the opposite is proven, because it is not from a third party before it is proven that the policy suit is available.

If the debtor claims that the date of the disposal was prior to the date of the existence of the right of the creditor's right, then this creditor may prove by all means that the date of the disposal was deliberately presented with the intention of depriving him of this lawsuit. Methods of proving that the date of the creditor's right has been changed (intentionally presented) so that the creditor can challenge the enforceability of the disposition of this case.

Section two

Conditions relating to the contested conduct

Since the claim of non-enforceability of the debtor's behavior (the policy suit) is based on the idea of fraud on the part of the debtor to harm his creditor, its scope must therefore be limited to the actions of the debtor that can include this meaning, which is only true of impoverished legal behavior. The conditions that must be met in the disposal of the debtor in order for the creditor to resort to appealing against it are as follows:

First: That the disposal is harmful to the creditor:

Article (370) of the Jordanian Civil Code stipulates that: (If the debt ... surrounds the debtor's money ... then he is prevented from making a donation that he does not owe ...). Article (371) of the Jordanian Civil Code stipulates that: (If the creditors claim the debtor... he may not donate his money nor dispose of it in compensation, even without favoritism...).

It is clear from the provisions of the above two articles that the work issued by the debtor must be a legal act, not a material act. If the debtor negligently or intentionally caused harm to others, then he committed himself to compensation, and this obligation made him insolvent, then there is no way for the creditor to challenge the unlawful act on the grounds that the debtor's disposal is not enforceable, because this act is by virtue of its fact that it is a material act that is necessary against the creditor. It should be noted that any legal action is subject to appeal on the grounds that the debtor's action is not enforceable, whether the action was unilateral or from both sides, and whether it was a donation or compensation. Relinquishment of an in-kind right, acquittal, waqf, and approval of a voidable contract are all actions issued by one side that may be challenged. A gift, sale, partnership, and conciliation are actions issued by both sides, as a donation or compensation.

Second: That the disposal impoverishes the debtor:

It should be noted that the challenged behavior of the debtor leads to a decrease in the elements that necessitate his liability, which leads to his insolvency or an increase in his existing state of insolvency. It is harmful to the creditor unless it impoverishes the debtor.

But if the debtor's disposal impoverishes him but does not cause his insolvency, that is, does not affect his ability to pay the rest of his debts, then the creditor does not have the right to appeal against that disposal. For example, if he commits himself to new debts, and when the disposal is in this way, the creditor may appeal against it. (20)

Section III

Conditions related to the debtor



By extrapolating the Jordanian legislature's regulation of the claim that the debtor's behavior is not enforceable, we find that he did not show interest in the debtor's motives and his psychological state when he acted. According to this law, the debtor is considered when conducting the disposal, and the type of his disposal, is it a compensation or a donation?

To answer this, we find the explanatory memorandum of the Jordanian Civil Law linking the condition that the debt surrounds the debtor's money with the fact that this debtor is aware of this situation, as the debtor must be aware at the time of disposal that the debt surrounds his money. The debt encompasses his money, and the required knowledge is for the debtor to know that his debt has exceeded his money, or that these debts have become equal to them. (21)

It should be noted that the Jordanian legislator ruled the actions of the person disposed to negate the money disposed of, and the position of the legislator differs from the position of the Jordanian judiciary, where the Jordanian Court of Cassation ruled in a decision stating: "... that the claim of non-enforceability of the disposals, and in the light of the provisions of the civil law, is what It is only a legitimate means that the creditor resorts to to protect his right to execute his debt against the debtor and his successor, and the effect of this method does not extend to a special successor. (22)

The second requirement

Effects of non-enforceability of the debtor's disposal and its expiry

The suit for non-enforceability of the debtor's actions (the policy suit), as previously mentioned, is a suit that the creditor resorts to to challenge the actions of his debtor that are harmful to him. The creditor's intent in that lawsuit is not to enforce that disposal and to remove its harmful effects. In addition, the suit for non-enforceability of dispositions (the policy suit) entails certain effects for the creditor, as well as effects for the contracting parties. To clarify this, we will divide this requirement into two branches as follows: (Part One): Effects of the suit for non-enforceability of the debtor's disposal. And (Second Branch): The expiration of the lawsuit for the non-enforceability of the debtor's disposal.

First branch

Effects of a claim not to enforce the debtor's disposal

The claim of non-enforceability of the debtor's disposition has many effects related to the creditor who insists on the same case and other creditors, as well as its effects with regard to the contracting parties (the debtor and the person to whom the disposition was issued). We will talk about these effects in a separate paragraph as follows:

The first paragraph: the effects of the non-enforcement lawsuit with regard to the creditor challenging the disposal, and with regard to other creditors who did not challenge the debtor's disposal of the lawsuit:

Many effects follow from the non-enforcement suit (policy case), and these effects either relate to the appellant creditor, or relate to the rest of the creditors. We will show that as follows:

First: Its effects for the creditor contesting the disposal:

The filing of a lawsuit for non-enforceability of the dispositions (policy lawsuit), as well as the continuation of its procedures, and then the implementation of the judgment issued in it, all of this requires the availability of the capacity of the creditor, otherwise there is no interest in adhering to the lawsuit for the absence of harm. If the appellant creditor lost his capacity as a creditor after he filed a lawsuit for non-execution, and before the issuance of a judgment in that lawsuit, it would be impossible for him, in this case, to continue with it, on the one hand. On the other hand, if he lost his capacity after the verdict was issued in the case but before it was executed, he would not be able to implement it. As if he had collected his right from the debtor, before the execution of the issued judgment. And the creditor, when he fulfills his right from the debtor, loses his capacity as a creditor, and therefore it is impossible, and even impossible for him, to resort to a non-enforcement suit (the policy suit). However, it may become impossible for the creditor to continue the lawsuit or initiate the execution of the judgment issued therein, even if he remains a creditor to the debtor, in the following cases(23)



- If the condition of the debtor's insolvency is absent, as if he has enough money to fulfill what he owes.

2- If the person to whom the disposition was issued proves that the debtor possesses sufficient funds to fulfill the creditor's right.

3- If the one who received the right from the debtor (to whom it was disposed) deposited the price in the court's fund, and he still had not paid its price yet, and the price was close to the price of the same. The creditor's continued availability of capacity as an appellant against the disposition, and the availability of other conditions of the policy suit leads to the judge ruling that the debtor's disposition is not enforceable against him (the right of the creditor). All that is required of the creditor is to enforce the money that he challenged to dispose of it, if he wants to pay off his debt, by taking executive measures.(24)

As for the dispositions based on that money (the money whose disposition is challenged) such as the disposition of the successor in it, it does not follow from the non-enforceability of the disposition of the money, the non-enforceability of those other dispositions (the successor's dispositions), on the pretext that that successor does not have more rights than The predecessor owns, and the predecessor cannot transfer rights to his successor more than he owns. It follows from the ruling on the claim that the dispositions are not enforceable, that if the disposition diminishes the debtor's funds, then the money on which the debtor's disposition was focused is considered as if it did not come out of the general guarantee, and the creditor can enforce it.(25)

Second: Its effects in relation to other creditors (the rest of the creditors):

Article (373) of the Jordanian Civil Code stipulates that: (When it is decided that the disposition is not enforceable, all creditors who are harmed by it benefit from it).

It is clear from the text of the aforementioned article that when the disposition is decided to take effect, all creditors against whom this disposition was issued benefited. This means that if one of the creditors files a lawsuit claiming that the debtor's disposition is not enforceable (the policy suit), then every other creditor who meets the conditions of this lawsuit may intervene in it, and naturally benefit from the judgment. And if the appellant creditor succeeds in his lawsuit, without the intervention of any of the other creditors, this does not preclude their participation in the implementation of the right that the debtor disposed of, and he returned to the general guarantee according to the ruling that the disposal is not enforceable, and it follows from that that these creditors participate with the creditor who filed the lawsuit. The participation of the creditors in the outcome of the execution, but this participation is limited to the creditors who have fulfilled the conditions of the lawsuit for non-enforceability of the debtor's actions, and in particular, their rights were prior to the contested disposal, because these creditors are the only ones to whom this disposal was inflicted to the detriment.(26)

It should be noted that this ruling is based on an essential consideration, which is that the idea of equality between creditors in their position on the general guarantee for their debts, which is the debtor's funds as a whole, is not achieved if the precedence in taking the procedure is made a basis for preference and exclusivity. The lawsuit, but it is based on the need to achieve equal benefit from the general guarantee.(27)

The second paragraph: Effects of non-enforceability of dispositions (policy suit) with regard to the contracting parties:

Undoubtedly, if the claim would not enforce the debtor's disposition (the policy suit) against the appellant creditor (and other creditors against whom this disposition was issued to the detriment of the Jordanian civil law), this does not mean that the disposition is invalidated, rather this disposition remains valid. And arranged for all its effects on the relationship between the contracting parties. Accordingly, if the disposal is a sale, then it binds the debtor with all the obligations of the seller, just as the person to whom it is disposed of is bound by all the obligations of the purchaser.(28)

1- The disposal concluded between the contracting parties remains valid, and all its effects follow, except for what is inconsistent with its non-enforceability against the creditors. The seller is



obligated to transfer the ownership (ownership of the sold item) and to hand it over to the buyer and guarantee it, and he is also obligated to pay the price.(29)

- 2- - The thing sold is considered to be in the possession of the purchaser, and accordingly, if something remains of its price after execution, this remainder is considered the right of the purchaser or his heirs, not the right of the seller or his heirs. In return, the buyer or his heirs are obligated to pay the price.
- 3- - The purchaser may, after the creditor of the disposer has collected his right from his money, revert to the debtor of the disposer on the claim of enrichment without reason.(31)

Section two

The expiration of the lawsuit for non-enforceability of the debtor's disposal

Article (374) of the Jordanian Civil Code stipulates that: (A claim for non-enforceability of the disposition shall not be heard after the lapse of three years from the day on which the creditor became aware of the reason for the non-enforceability of the disposition, and in all cases it shall not be heard after the lapse of fifteen years from the time of the issuance of the disposition).

It is clear from the text of the aforementioned article that the Jordanian civil law was established to achieve the stability of transactions for a certain period, after which the claim of non-enforceability of the debtor's actions will not be heard after three years, starting from the date of the creditor's knowledge of the non-enforceability of the debtor's disposal against him. Such as the insolvency of the debtor, i.e. the debt's immediate or deferred possession of the debtor's funds with an increase or a decrease, in the Jordanian civil law, and his fraud and collusion with the disposer of it (the successor) if that disposal is a net offset in other civil laws.(32)

Article (374) of the Jordanian Civil Code stipulates that with the lapse of fifteen years from the date of the issuance of the disposition, the lawsuit will not be heard with the lapse of that period with regard to all creditors, even if they are ignorant of the reason for the non-execution of the disposition within the shorter of the two periods. For example, if the disposition was issued and the creditor was ignorant of the reason for its non-enforcement against him, but he learned of that after the lapse of fourteen years from the date of the issuance of the disposition by the debtor, then it is not possible for the creditor to challenge that disposition on the grounds of non-enforcement after the lapse of two years from the date of his knowledge of the reason for the non-execution of that disposition. . If he becomes aware of the reason for the non-execution of the disposition after the lapse of eight years from the date of the issuance of the disposition by the debtor, the creditor has the right to contest that disposition on the grounds that it is not enforceable within the three years following his knowledge of the issuance of the disposition, provided that fifteen years have not elapsed since the issuance of the disposition. Anyway.(33)

It is worth noting that the claim of non-execution of the debtor's disposal is not from the public order, so it is permissible to agree to waive it, and the creditor acknowledges in this agreement the behavior of his debtor. In addition, the creditor's right - if he adheres to the claim that the debtor's disposal is not enforceable - does not prevent him from claiming compensation for the damage he suffered as a result of his debtor's disposal, in accordance with the general rules.(34)

CONCLUSION

Praise and thanks be to God Almighty, and after completing the writing of the research, and its title is the case of non-enforcement of the debtor's actions (policy case) in the Jordanian civil law, and I have come to a set of results and recommendations, we list them as follows:

- 1- The suit for the non-enforceability of the debtor's actions (the policy suit) is a means to combat the debtor's fraud, as it preserves the general guarantee of the creditors and its aim is to non-enforce the actions of the insolvent debtor against the creditors.
- 2- The Jordanian legislator expanded the scope of the lawsuit for non-enforceability of the debtor's actions (the policy suit), as the impoverished actions became not limited to actions that detract from the debtor's rights, but rather included actions that exceeded his obligations.
- 3- The Jordanian legislator omitted explicitly the text of the fraud incident, but only stated the fact that the debtor became aware of the creditor's claim. However, the Jordanian legislator stipulated



the condition of fraud in the event of objection to the division of common money according to the text of Article (1045/3) of the Jordanian Civil Code and as a special application of the case of non-enforceability of the debtor's disposal against the creditor (the policy suit).

4- The Jordanian legislator took the effect of the interest ruling that the debtor's disposition does not apply to all creditors in order to achieve the principle of equality between creditors.

5-The Jordanian Civil Code did not stipulate any provisions related to the transfer of the right to the successor. It would have been more appropriate to have texts related to this issue, similar to other civil laws, in order for the legislator to organize the case of non-enforcement of disposal in an integrated manner.

RECOMMENDATION

1- I recommend the Jordanian legislator to stipulate the condition of fraud issued by the debtor, because the debtor's intention to leave is to harm his creditors, and it is considered one of the most important conditions for the lawsuit not to enforce the debtor's disposition against this creditor's right on the one hand. On the other hand, the condition of fraud is necessitated in the contested disposition, whether it is compensation such as a sale or a donation such as a gift.

2- I recommend the Jordanian legislator to amend the text of Article (370) of the Jordanian Civil Code with the right to the phrase "deferred with the debtor's money" and the article becomes as follows (if the debt immediately encompasses or exceeds it...).

3- The Jordanian legislator recommended amending the text of Article (373) of the Jordanian Civil Code to read: "Whenever it is decided that the disposition is not enforceable, the creditor who filed the lawsuit benefited from it by having the right of precedence over all creditors." Instead of the original text, which is (when it is decided that the disposition is not enforceable, all creditors who are harmed by it benefited from it). That is, the expansion is not to include all, but rather the right is limited to the creditor who filed the lawsuit only and not to anyone else.

4- The Jordanian legislator recommended the text in the event that the creditor is often surprised by the harmful disposition that he is dragging his debtor without having taken the necessary precautions before to prove the date of the debt document so that the creditor can prove his right to the origin of the debt and the date of the contested disposition so that it can be said of precedence. The creditor's right to the contested disposition of its non-priority.

I recommend the Jordanian legislator to stipulate the addition of the term "collusion" to the text of Article (371) of the Jordanian Civil Code issued by the debtor so that the creditor can file a lawsuit not to enforce the debtor's disposal against the debtor, as some other civil laws did.

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