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F A C U L T A T E A D E D R E P T

Ș C O A L A D O C T O R A L Ă

TEZĂ DE DOCTORAT

CONTRACTUL DE LEASING

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JUSTIFICATION OF THE PROPOSAL OF THE DOCTORATE THEME

The doctoral thesis entitled "Leasing contract" includes in the approximately 310 pages, the results of an in-depth analysis of the theoretical considerations, as well as of some practical aspects, which were aimed at consolidating the leasing concept and developing a theoretical-methodological knowledge framework. and its understanding, which was based both on interdisciplinary research, but also on the experiences gained at European or international level.

By elaborating this paper I proposed to make first of all new theoretical contributions, but also to enter into an area, which although we can no longer say that it is at the beginning of the road in the Romanian society, in view of the complexity of the approached topic, it will always be a perpetual challenge.

Objectively, we intended that through the research done to consolidate the "status" of the legal relationships specific to the leasing operations at national level, relationships that are still in search of their own identity.

Being structured on 11 chapters, which in turn comprise several sections and subsections, the paper tends to cover essential aspects of these operations. Much of the paper concerns the theoretical aspects of leasing operations, so that by systematizing a complex bibliographic research (documents, studies, reports, strategies, existing research in the field, case law) we wanted to provide a clearer presentation and interpretation framework, but also as far as possible of the concept of leasing.

As the deepening of such aspects becomes much easier when the theory is supplemented by practical examples or interpretations, the opinions offered by the doctrine have been carefully analyzed, so that they can then be supplemented in practical terms by the solutions offered by the case law in this matter.

Thus, summarizing the main issues regarding the importance of leasing operations in general and the leasing contract in particular, we will proceed to a brief analysis of the structure of the doctoral thesis.

STRUCTURE OF THE DOCTORAL THESIS

The thesis is structured in eleven chapters, divided in turn into a random number of sections, and subsections and points, respectively, depending on the complexity of the topic addressed.

The final part of the paper includes the conclusions reached, following the scientific approach taken and capitalized by the present study, being presented in this regard and some proposals of law ferenda, as well as certain aspects that underline the contribution made by the realized study.

Also, at the end of the paper is presented in a systematic way the bibliography on which the scientific research was based and capitalized by the writing of the present thesis, being consulted for this purpose the information contained in courses, treaties and monographs both from the Romanian doctrine related to the subject and from the foreign doctrine. , relevant to the study of the proposed theme.

Chapter I - "Introductory notions", is divided into three sections and begins with a section that follows the history of leasing operations, chronologically dealing with aspects that led to their emergence and evolution, followed by a section affected by the terminological and etymological analysis of the term. leasing. In the following sections we presented the specific legislation for leasing operations, from several European countries, from the USA, Japan, as well as the entities in the field, which operate internationally, but also in the territory of our country, highlighting the main sources of law in this matter.

Chapter II, called "Leasing Operations", comprises four sections. In Section 2.1 "The concept of leasing operations", general concepts regarding the conduct of leasing operations are presented as well as the main participants in the running of these (the user / tenant, the lender / lessor and the supplier).

Section 2.2 begins by presenting the advantages offered by the leasing operation to the participants in this operation.

Obviously, by participating in the conduct of leasing operations, depending on the position they occupy in the context of the developed legal relationships, the parties will also assume a series of risks. Thus, we considered it appropriate to analyze the risks, limits and disadvantages of the leasing operations for the three main pawns of the leasing operations, in a separate section.

In section 2.3 we summarized the relationship between the leasing operations and the leasing contract, because all the legal operations generated by the leasing will not be reduced or assimilated only with the conclusion of the leasing contract. From this perspective, we have highlighted, through a detailed analysis, the legal relationships that are established between the parties involved in a leasing operation, presenting separately the contracts within this overall operation.

The role of the leasing contract itself, which essentially represents the materialization of the leasing operation, was the transfer of the right of use for a certain period.

From the enumeration mentioned in this section, the insurance contract could not be omitted, focusing our attention on it from the perspectives imposed by the legal regulations or offered by the jurisprudence.

The third section of chapter two refers to the mechanism of forming the leasing operations, the opening being made with a subsection dedicated to the preliminary details needed to clarify this concept. The following subsections detail the essential stages of leasing operations.

It was analyzed, first of all, the preliminary stage, in which the future user / tenant behaving like a real buyer, will undertake a market exploration, to choose the product that will correspond best in terms of quality / quality ratio. price for its needs. The identification of the good will have as a consequence the choice of the supplier who is able to make available the selected good.

As a result of the steps taken, the future user will make a request for an offer (and not an offer as specified in the initial version of the order), to a leasing company, which will request the financing of the chosen good and the conclusion of the lease, which will transfer the right of use. Along with its application, the potential user / landlord will attach the documents necessary to support its solvency. Depending on the results of the analysis undertaken, the lender / lessor will be able to accept or refuse the user / tenant's request.

When the request is accepted the parties will proceed to the actual conclusion of the lease, with all the consequences (conclusion of the sale-purchase contract, conclusion of an insurance contract, etc.). When the leasing contract expires, the user / tenant benefits, by virtue of the legal provisions, of an option right regarding the completion of the leasing operations, this opportunity being the final stage.

Chapter III, entitled "The concept and forms of the lease", is divided into three sections and several subsections. In the first section, it was sought, as through the analysis, to distinguish

the differences between the whole of the leasing operations and the leasing contract, as they are indicated in the regulations of the ordinance.
In a first subsection of this section I have detailed the legal character and legal nature of the lease. As a novelty, considering the importance of the enforceable title with which this contract was invested, I insisted on this subject and especially on the conditions of its practical application.

It was pointed out that, unlike the other contracts to which this power was assigned, as it results from the text of the ordinance (art.8 of OG 51/1997), the leasing contract will be an enforceable title in the creditor's hand of the remaining obligation to be executed, regardless whether it is the lender / lessor or the user / lessee.

I also insisted on the consequences that the termination of the lease will have on a subsequent investment application with executory formula, demonstrating that after the termination of the lease it loses its executive power, equivalent to a cancellation of the court decision, which remains. final and irrevocable. The termination, according to the common law, will be able to intervene only under the imperative condition established by art.1549 Civil Code, respectively that of not requiring subsequent termination, forced execution.

To specifically identify the specific characteristics of the lease, the second section includes a comparative analysis between it and other contracts with which it was similar, respectively by delimiting the lease from the lease, the sale-purchase contract with the installment payment or the one with the installment payment, as well as the credit agreement.

It was insisted on the fact that we cannot ignore the reality, as by their nature, the leasing operations will give rise to two distinct legal relationships, in the first phase being a lending operation, followed by a location, their interference being a condition existential for leasing operations.

The complexity of the lease resides not only as a consequence of the whole of the legal operations that it inserts in its whole, but also as a result of the wide scope of applicability that it develops. Thus, in the third section of chapter three, we presented a detailed classification of leasing contracts according to several criteria, structured according to: the nature of the transaction, the position of the supplier, in the contract, the content of the rates, the duration, the source of financing or the specific realization technique.

Without exception to the rule, in order to be considered validly concluded, the lease will be subject to the essential substantive and form conditions necessary for the validity of any

legal act (art.1179 C.Civ.). Chapter four of the thesis is dedicated to their details, being analyzed in the subsections of this chapter, in turn, the conditions of validity of the lease, such as:

1. the ability to contract;

2. the parties' consent;

3. a determined and lawful object;

4. a legal and moral cause.

Under these considerations, the conditions that must be met by the participating parties at the conclusion of the lease, both from the point of view of the specific regulations contained in ordinance 51/1997, as well as under the imperative aspects of the current Civil Code, were highlighted separately.

Their study required that, within this chapter, a careful analysis be made of the parties' ability to contract, respectively the civil capacity of the natural person in his capacity as user / tenant, but also of the legal person, both as user / tenant, but especially as a lender / lessor.
One aspect that we focused in particular on, was the ability to contract the lender / lessor and the special rules that are required when setting up leasing companies in general and financial leasing companies in particular.

The National Bank of Romania is the only authority able to decide if the activity carried out by an entity is of the nature of the lending activity with professional title or not, and according to this criterion the companies established according to L31 / 1990 will be required additional rules for functioning. On these considerations, we analyzed separately the situation of companies that provide operational leasing, because on these the NBR did not fit them in the field of professional lending activities. Thus, any company established according to law 31/1990 and which meets the requirements regarding the constitution of the share capital provided by OG 51/1997, regardless of the legal form of registration, will be able to carry out operational leasing operations.

On the other hand, in the case of the financial leasing operations, which by the nature of the way of conducting, are generally directed to the acquisition by the user / tenant of the financed good, the transfer of the ownership right being assumed from the moment of the conclusion of the contract, the competent authorities have determined in classifying the financing activity of the financial leasing companies as a professional lending activity.

Under the legal provisions, when the lending activity is carried out as a self-employed economic activity, with the purpose of obtaining regular income, and for the achievement of

the proposed objectives, the existence of specialized internal structures in the field of lending is required, which manages and analyzes. these activities distinctly, on the basis of predetermined rules and taking into account the lending activities when designing the company's budget or making forecasts regarding the overall activity of the company, then the National Bank of Romania considering these aspects established the classification them in the category of professional lending activities.

The lending activity is carried out for professional purposes only through the entities listed exhaustively by the legal norm, respectively by credit institutions and financial institutions, as well as by non-banking financial institutions (art.2, pt.1, of Law no. 93/2009; art. 3, point 1 of the Ordinance no. 28/2006), under the conditions established by the special laws regulating their activity and by the norms issued by the National Bank of Romania, being expressly forbidden to carry out professional activity of lending by other persons than those provided in the text of the law.

In the second section of chapter four, we detailed the considerations under which consent is considered valid, but also the vices of consent. According to art. 1206 Civil Code, we consider the consent vitiated when given by error, surprised by mourning or torn by violence or in case of injury, in which case the lease is cancelable (art.1251 Civil Code) due to relative invalidity, which may but be covered later under the conditions of the law.

As a novelty in the third section, I insisted on the concept of object of the contract, which, as it is revealed in the current recoding, refers to the legal operation agreed by the parties, as it appears from the set of contractual rights and obligations (art.1225 Civil Code) and not for good, which rightfully represents the object of the benefit. Until the appearance of the current Civil Code, as is commonly found in the doctrine, when the debates concerned the object of the contract, reference was made to its material object, which, however, no longer corresponds to the regulations brought by the current recoding, which establishes in a manner clearly legal object of the contract.

Through these actions they sought to highlight and justify why erroneously in the doctrine, when referring to the object of the contract, it is specified or debated on a good, as a material object, present or future, determined or determinable, the one that does not correspond to the current regulation of common law, in which it is extremely clear that the object of the contract is the legal operation and not the good as a material object, this being only an object of the benefit.

Within this subsection, a detailed comparative analysis was performed, under the imperative perspective of art.1225 C.Civ., Of the object of the lease and the object of the lease, with the intention of highlighting once again the major difference between the two.

As the current Civil Code regulates distinctly, the object of the obligation, as the benefit to which the debtor commits, has been treated separately, and the good as object of the benefit has also benefited from a whole sub-chapter.

The following section analyzes how to calculate the price of the lease, the lease rate and the residual value and how to pay them.

The case, as a substantive condition, essential for the validity of the lease, was dealt with in section four, from the perspective of art. 1235, which with the title of novelty states the definition of the concept of cause of the contract, clearly and explicitly, as: "the reason that determines each party to conclude the contract".

We conclude chapter 4 of the thesis with a subsection in which aspects regarding the form of the lease agreement, which is a consensual contract par excellence, were analyzed, the imperative condition of the written form, being required only ad probationem is considered to be sufficient. The will agreement of the parties will not have to wear a special form in the case of the lease, the written form, mentioned by art. 7 of OG 51/1997, being sufficient for its valid formation, obviously in the case of movable property.

Chapter V of the thesis "Contents of the lease" represents a collage of three sections, in which, after some preliminary details have been made, we have analyzed separately and in detail the mandatory clauses that the ordinance mentions imperatively to be inserted in the lease agreement, but also the clauses specific to the financial leasing contract, this section being divided into several subsections.

Section II a is therefore dedicated to the mandatory clauses to be inserted in the contents of any lease, irrespective of its legal classification, respectively clauses which include:

a) defining the lease as financial or operational leasing;

b) the name of the good that is the object of the lease and the characteristics of its identification;

c) the exact amount of the monthly leasing rates and their exact payment date;

d) the period of use in the leasing system of the asset;

e) the clause regarding the obligation to insure the good;

f) the total value of the lease.

The third section "Compulsory clauses specific to the financial leasing contract" analyzes the clauses that the legislator considered to be the minimum necessary to be part of

the contract of a financial leasing contract, next to those of the previous section, respectively:
a) the entry value of the good;
b) the residual value of the good agreed by the parties, when appropriate;
c) the amount of the advance;
d) leasing rate.

Of the specific causes listed and analyzed, we paid close attention to notions of residual value and the practical implications that this imposes.

As the residual value by the meaning conferred by the legal norm, represents the value at which the transfer of the property right is made, under the terms of the ordinance, I considered that it is required to be paid in full at the end of the lease period, when the tenant / user can express his option certain to buy the good. If at the end of the lease period the lessee / user will choose to terminate the lease and return the property to the rightful owner, the residual value will no longer incubate.

As a natural consequence of the careful study of the jurisprudence in this matter, I considered it appropriate to insist also on the practical implications of having the advance received when signing the lease,

As it appears the text of the normative act, by the mention made by the legislator regarding the mandatory insertion in the clauses of the financial leasing contract, of the amount that the tenant / user will pay to the financier / lessor, in advance, next to the value residual and the leasing rate, we can deduce that this represents not only a pecuniary obligation of the tenant / user towards the lender, but also an essential element of the financial leasing contract. The amount to be paid in advance is not financed by the lessor / financier, but represents the tenant / user's own contribution to the purchase of the asset, which will be part of the financier / lessor's patrimony. The advance paid by the tenant / user will serve the purchase of the good, which legally belongs to the lender / lessor as owner, thus subsidizing the acquisition of the good that can remain permanently in the property of the lender / lessor, the law making no reference to a possible refund of the advance in in case the user / tenant chooses to return the good at the end of the lease period. However, I consider that by imposing by the lender the payment of an advance - the leasing contract will not only lose its essence, but will also generate a series of practical problems when the user / tenant does not express the intention to buy the good or he will have to return it to the rightful owner as a result of the early termination of the contract.

In the established practice of leasing operations at international level, in the case of leasing contracts, the investment is wholly owned by the lender, who has the financial funds

necessary to purchase certain movable or immovable property, which he then offers for use, for a sum payable in consecutive installments as a leasing rate for a predetermined period.

The last section of this chapter refers to the importance that the legislator attaches to the freedom of will, materialized by the conclusion of the contract, clearly specifying that the parties cannot be required to limit the contractual clauses. The parties will have the freedom to insert in the contract any conditions they deem fit, as long as they do not contravene the law and good morals.

The "conclusion of the lease" is the subject of the sixth chapter of the work, which starts with dealing with aspects that start from the pre-contractual stage of bidding and acceptance of the offer and ends with the section "The moment and place of the conclusion of the contract".

The details specific to the bidding operation were analyzed which will have to preconfigure as accurately the conditions under which the lease will be concluded. The offer and the acceptance of the offer will therefore represent the two fundamental elements of the will to contract, through their meeting and mutual acceptance, in fact the will agreement being achieved, subsequently materialized by the actual conclusion of the lease.
Therefore, the leasing company, at the express request of the future potential user / tenant, will submit to it an offer that will make concrete reference on the conditions under which the financing will be accepted and implicitly the location related to the lease.

The place of conclusion of the lease will be where the parties are, when the acceptance of the offer is made, the moment of the conclusion of the contract being the one in which the tenderer receives the acceptance (similar to the principles of the reception system, generally applicable in the case of contracts concluded in electronic form).

Chapter VII concentrates in its contents, theoretical considerations and practical aspects of the effects that the conclusion of the lease will have. This chapter begins with a section of introductory considerations regarding the obligations that the parties assume and through the valid conclusion of the contract, following a section devoted to the details of the obligations assumed by the contracting parties.

The first subsection of this section includes the legal obligations of the lender / lessor, as they are listed in the regulation governing the leasing operations (OG 51/1997) respectively:

a) to respect the right of the tenant / user to choose the supplier of goods. The lender / lessor will assume this obligation from the pre-contractual phase of the offer, because these obligations are imposed by the legislator as a rule of conducting leasing operations and not only as an effect of the pact principle are the seventeen, as an effect of the conclusion of the lease.

b) to contract the good with the provider designated by the tenant / user, under the conditions expressly formulated by him or, as the case may be, to acquire the definitive right of use on the computer program;

c) to conclude the lease agreement with the lessee / user and to transfer to him, under the lease agreement, the rights deriving from the contract, except for the right of disposition, and in the case of computer programs, to transmit the right of use over the computer programs to the tenant / user, without being able to exercise this right during the period of the lease agreement. By concluding the lease, the lender / lessor undertakes to convey to the user / tenant all rights deriving from the contract, mainly the right of use (jus utendi and jus fruendi), but less the right of disposition (jus abutendi).

d) to respect the option right of the tenant / user to buy the good, to extend the lease, without changing the nature of the lease, or to terminate the contractual relations. The non-observance by the lender / lessor of this right of the tenant / user, is sanctioned by law according to art.16 of the OG51 / 1997 with the obligation to damages interest in an amount equal to the total of the damage produced by violating this obligation, moreover, the court will be able to make a decision to take the place of a sale-purchase act (forcing the transfer of the property right, when appropriate).

From this point of view, I consider that the possibility conferred by the legislator of the justice, with the utmost interest, to intervene on this exclusive and absolute right, which is the property right, must be regarded with maximum interest. Thus, when the court issues a court order that will take the place of a deed of purchase, the lender / lessor will be practically obliged to give up and at the same time to transfer his property right to the tenant / user.
Thus, I conclude that by this extremely drastic regulation, the legislator has unequivocally stated the importance of respecting the right of the tenant / user to get in full possession of the property right (jus abutendi), when he expresses the option of buying the good at the end of the contract. leasing.

e) to guarantee the tenant / user the peaceful use of the good, provided that it has complied with all the contractual clauses. Under this obligation the financier / lessor will be liable for the disturbances of law, that is, for the disturbances based on the existence of a right, which excludes the right of use available to the tenant / user. We considered it appropriate in this subsection to pay greater attention to the legal means by which the user will undoubtedly protect his right of use, respectively his right to resort to the possessory act.

Therefore, in case of disturbance or dispossession, peaceful or violent, the user / tenant has the possibility to bring possession action, within the limitation period of one year from the date of the disorder or dispossession. According to the regulations brought by para. 1, art.951 Civil Code, the introduction of the possessive action after the expiration of the term of 1 year, will lead to its rejection as prescribed.

Possession actions can also be brought against the owner, respectively against the lender / lessor, but will not have the benefit of introducing a counterclaim for the proof of the right. The restriction is imperative provided in paragraph 2, of art.1004, C.Proc.Civ. which proclaims the rule that the counterclaim is inadmissible, as will any other claim for the protection of property rights over the disputed property.

f) to insure, through an insurance company, the goods offered in leasing, if the parties have not agreed otherwise by the leasing contract. The burden of concluding the insurance contract rests with the lender / lessor, and the insurance costs are the responsibility of the user / lessee, in case the parties have not agreed to derogate from this rule (art.5, OG 51/1997).

Thus exhausting the obligations of the lender / lessor, the next subsection is devoted to an in-depth analysis of the legal obligations incumbent on the user / lessee. Through the effect of the imperative provisions of the law of the user / lessor it incubates the following obligations:

a) to carry out the receipt and receive the goods at the time and in the conditions of delivery agreed with the supplier, regardless of whether the good, object of the leasing operations, is received with or without reservations by the user / tenant, he is obliged to receive it at the term and under the conditions pre-determined with the supplier, under the sanction of the termination of the lease. Thus, in order to avoid termination of the contract and any damages that would be liable, the user / tenant will be practically forced to receive a non-compliant good, and will subsequently turn to the supplier to remedy the deficiencies found, and at the same time he will be obliged to the payment of the leasing rates to the lender / lessor, who is exempted from any liability regarding the delivery of the good, through the effect of the provisions of the ordinance.
b) to exploit the good according to the instructions elaborated by the supplier and to ensure the training of the personnel designated to exploit it; by this provision, the legislator has tried to avoid a possible situation whereby the tenant / user invokes, after the signing of the minutes of reception, the technical non-conformities (other than the hidden defects) that lead to an inadequate yield, but which in fact are due to an exploitation. faulty.

c) not to strike charges the object that is the object of the lease except with the agreement of the lender. Because by the nature of the lease, the tenant / user only enjoys a right of use over the property, being excluded the right of disposition, the latter not having practically the possibility to pledge or to institute on it any other real guarantee, of his own will, the legislator offers the opportunity that when however the rightful owner, respectively the lender / lessor agrees, this becomes possible.

d) to pay all the amounts due according to the lease agreement - leasing rates, insurance, taxes, taxes, in the amount and at the terms mentioned in the contract. When the user / lessee will not meet the payment terms assumed or will not fully pay the amounts due under the contract, the lender / lessor based on the enforceable title, which is the lease, will be able to start the forced execution procedure of the debtor. If the debt right concerns the leasing rate, the lender / lessor will be able to pass the forced execution of the user / lessee, as soon as the term at which the debt became payable has been exceeded or alternatively will be able to declare the termination of the contract, which will imposes as a consequence the provisions of art. 1549 C.Civ., Respectively not to request the forced execution of the contractual obligations, the recovery of the amounts due following the common law procedure. The foreign legal literature retains the same solution, considering that in case of non-payment, clear, liquid and demandable, by the user / tenant, the lender can opt for one of the following possibilities:
    - to request the execution of the contract, requesting the payment of the unpaid leasing rates;
    - to keep the contract in force, renouncing subsequent claims and demanding damages, in this situation he resumes the good and puts it up for sale, asking from the user the value of the unpaid rates, with penalties plus the non-due rates, of which the value is deducted net obtained as a result of the sale of the good;
    - termination of the contract with damages

e) to bear the expenses of maintenance, as well as any other expenses related to the good or from the lease agreement. The obligation to maintain the property rests entirely with the user / tenant, who under the benefit of the right of use, will behave as a real owner throughout the course of the lease.

f) to assume for the entire period of the contract, in the absence of a stipulation to the contrary, the totality of the obligations arising from the use of the direct good or by his foreskin, including the risk of loss, destruction or damage of the used good, for unforeseen causes, and the continuity of payments as leasing rate until full payment of the value of

the lease. Therefore, the user / tenant will assume, in the absence of a stipulation to the contrary, both the risk of the work, the risk of the obligation, as well as the risk of the correlative obligation.

g) to allow the lessor / lender to periodically check the status and mode of exploitation of the good that is the object of the lease;

h) to inform the lessor / financer, in good time, of any disturbance of the property right coming from a third party. As the asset will be for the entire duration of the lease agreement in the user / tenant's detention, the legislator has set, in its task, the obligation to inform the right owner, respectively the lender / lessor, about any legal disturbances coming from a third party. The defense of the property right will be realized through a petition, which the lender / lessor having active procedural quality will have to file separately in court.

i) not to make changes to the good and not to change the place declared in the contract without the consent of the lessor / financier.

j) o return the good in accordance with the provisions of the lease. This provision of the ordinance will certainly only take effect if at the end of the lease period the lessee / user chooses to return the good. The good will be returned not in the state in which it was initially received, but in the conditions in which it is presented after the expiry of the lease period. Therefore, the risk of wear and tear by the use of the good is borne by the lender / lessor.

The last section of Chapter VII refers to the "Advertising of the lease", which concerns the whole of the means or means by which the real estate leases are brought to the public's notice.

We concluded that by imperative regulation of the advertising of the leasing contract, the legislator also considered the protection of the tenant / user, because in his capacity as owner of the property right over the object that is the object of the lease, the lessor / financier can strike the good with tasks, by establishing mortgages or even selling the good, thus fraudulently the tenant / user who in good faith executes his contractual obligations with a view to purchasing it.

In Chapter VIII we analyzed the ways under which "Termination of the lease" takes place. The chapter is divided into three sections and several subsections, in which we have subjected to an in-depth study of situations that have been identified as causes of termination of the lease.

The first section contains general considerations regarding "Termination of the lease at the expiration of the contract term". The expiration of the "determined period" for which the lender / lessor has transmitted the right of use will lead to termination of the lease, but the leasing operation will continue to exist. , by continuing the relations that intervene between the parties as a consequence of expressing the right of option that the user / tenant has regarding their completion.

Thus, by the expiration of the contractual theme, we are witnessing only the extinction of the legal relationships between the parts of the lease that have as object the legal operation such as the location.

The following section refers to "Termination of the lease agreement before the expiration of the contract term", which begins with a subsection in which we have analyzed "Termination of the contract law". Of special importance in this situation being the special rule in the matter of leasing, by which the legislator considered it appropriate, as an exception from the rule of common law that specifies in art.16 that “the debtor is released when his obligation can no longer be fulfilled due to a force majeure, a fortuitous case or other events assimilated to them, produced before the debtor is delayed "to impose the legal obligation of the user / tenant to assume" for the entire period of the contract, in the absence unless otherwise stipulated, all the obligations arising from the use of the direct good or through its foreclosures, including the risk of loss, destruction or damage to the used good, due to unforeseen causes, and the continuity of payments by way of leasing rate until full payment of the value of the lease ” (art.10, lit.f). Therefore, even if the good loses as a result of a fortuitous case, and the use of the good can no longer be ensured by the lender / lessor, the contract remains without an object of the benefit, the user / tenant under the legal provisions, if there is no stipulation on the contrary, it will assume the obligation to continue to pay the leasing rates as if it would benefit from a useful use on the property, until the full payment of the lease agreement.

The next subsection refers to "Termination of the title of the lender", which refers in fact to the cancellation of the sale-purchase contract, between the supplier chosen by the user / tenant and the lessor / lender, and which will have, in the first place, the violation of a legal obligation (art.9) to respect the right of the tenant / user regarding the choice of the supplier of goods and not lastly, we note that by abolishing the basis on which the lender / lessor could ensure the use of the given good in the lease, the lease will in turn be terminated. , because it thus remains without the object of the benefit.

The third section "Termination of the lease" addresses aspects of the termination of the lease as a result of the application of the termination sanction. Applying this sanction is perhaps the most important way to terminate the lease, not only due to the unfortunate consequences that such a finality imposes on the parties, but also due to the complexity of the repercussions that follow, a fact proven by the non-unitary practice of the courts. a judgment that not infrequently has been faced with extremely difficult situations.

The study on the effects of the termination of the lease agreement when the user does not fulfill the obligation to pay the lease rate for two consecutive months calculated from the maturity stipulated in the contract, is subject to the following subsection. Pursuant to the provisions of Article 15 of the ordinance, the lender / lessor may invoke the unilateral termination of the lease, and the lessee / user will be obliged accordingly to return the good and to pay all the amounts due, up to the date of the refund, under the lease. Because the judicial practice offers numerous examples of cases in which the courts have formally executed termination leases (most often under a fourth degree commission), the one that I personally think is legally impossible, I developed this aspect in particular.

In the chapter IX chapter were analyzed aspect related to "Implications of the opening of the insolvency procedure on the leasing contract".

The insolvency procedure is based on social and economic justifications proven by its function of rehabilitation and recovery of trade and economy, by recovering the activity of insolvent debtors that can be saved and by eliminating those whose salvation is no longer possible. The chapter is opened by a section dedicated to the Insolvency Procedure in the regulation of law 85/2014 and of the Concept of insolvency procedure in the legal regulation in force.

Representing a complex legal institution of commercial law, the insolvency procedure interferes, on the one hand with the status and capacity of the people, and on the other hand, it makes direct reference to the goods of these persons, on whom a regime of unavailability is established and which affects them. the purpose of the procedure, namely to recover or liquidate the asset in order to cover the liability.

The purpose of the insolvency procedure in the current regulation, as opposed to the purpose of the previous regulation, the law no.85 / 2006, which mainly sought to cover the liabilities of the insolvent debtor, remains the priority of the debtor's recovery, with the purpose of saving it and maintaining it on the market. Essential aspects regarding the

legal definition, conceptual clarifications, insolvency procedure characters were analyzed in the subsequent sections.

The fourth section deals strictly with the consequences of opening the insolvency procedure on the lease. From the current regulation, we note that in accordance with the provisions of par. 12 of art.123, the lease may be terminated in the following situations:

• by law, following the request of the financer before the expiration of the 3-month term - the financier sends the judicial administrator a notification requesting him to terminate the contract, he is considered to have expired within a period of 30 days from the date of receipt of the notification;

• by law, at the expiration of a period of 3 months from the date of opening the procedure - if no express agreement was obtained from the financier;

• by the judicial administrator / liquidator of the contract, on the basis of the prerogative to denounce any ongoing contract.

However, according to the doctrine, I considered that the difference between the situation of termination of the lease and the situation of termination of the lease must be emphasized. Or, when the termination of the leasing contract occurs, according to the provisions of L85 / 2014, from the legal regulations we note that the lender / lessor is offered the option to choose between:

• transfer of ownership of the property that is the object of the lease. In this case the lender / lessor will acquire a legal mortgage on that good, having rank equal to that of the leasing operation, being registered at the credit table according to the order established by art.159, paragraph 1 point 3 of the law. The amount of the debt that will be included in the table of claims consists of the value of the outstanding rates and accessories invoiced and unpaid on the date of the opening of the procedure, to which is added the rest of the amounts due by the insolvent debtor under the lease, but without exceeding the value of market of the good, which will be established by an independent appraiser. In this situation, the debtor will continue to make periodic payments until the full payment of the value of the lease.

• the recovery of the goods that are the object of the lease contract, in this situation the creditor being offered the possibility to register at the credit table according to art.161, point 8 of the insolvency code, with the value of the rates and accessories invoiced and unpaid at the date of opening the procedure , to which will be added the rest of the amounts

owed by the debtor according to the leasing contract, their accumulation diminishing with market value of the recovered asset, established by an independent appraiser.

The international leasing contract is the subject of study addressed in the chapter X of the thesis. The first section of this chapter analyzes aspects that characterize the international leasing contract in national law. We have analyzed in detail the conditions required for a contract to be of international character, as well as the consequences of this classification. The presence in the leasing contract of an element of foreignness that makes it liable to come in contact with several legal systems, will determine its international character.

When in the leasing contract one of the parties is a foreign natural or legal person, it is considered to have an element of foreignness, which will turn it into a legal report of international law.

The second section, chapter X, is dedicated to a very important document in the context of international financial leasing operations, namely the UNIDROIT Convention, which sets the rules of the game on these and was designed with the aim of unifying the rules governing the operations. of international financial leasing. The purpose of the convention, as it follows from its preamble, is to remove certain legal obstacles to leasing operations and to balance the interests of different parties in such transactions, adapting the rules of the traditional lease agreement to the triangular relationships created by the leasing financial transactions and establishing certain uniform rules of civil and commercial law for this purpose. The scope of the convention is restricted to the financial leasing operation, considering that this type of leasing is most often found in international commercial contracts.

The third section inserts a presentation of the international accounting standard, International accounting standard - IAS17 Leasing, which refers to the aspects of the lease, from the definition of certain notions or characteristic terms - such as the definition of the lease, classification; notions and characteristics of classification and until the material reflection of this in the financial statements of the companies party to the contract. The contents of this norm define the definitions of the specific terms of the leasing operations, a classification of these operations, obligations of the parties of the leasing contract along with the way of recording and charging the leasing operations, the one that may serve as an inspiration to the Romanian legislator, but will be able to bring conceptual clarifications in the practical application of the lease.

The last chapter of the thesis, Chapter XI, is devoted to the highlighted conclusions reached after the scientific endeavor undertaken and capitalized through the in-depth study of the content of the thesis, being presented in this regard some proposals of law that would be required in my opinion, for the optimal interpretation and application of the provisions of the leasing regulations at national level. The creation of a legislative and institutional framework, clear and predictable, easy for the development and application of the leasing in Romania, is required as a necessity of the modern economy, this being possible only through the deepening of the specific features of these operations.

Conclusions

Although, between theory and practice, there are inevitably major, discouraging discrepancies, which still remain the view that the leasing, financing or operational variant may implicitly hold in operations, or be of undeniable advantage, compared to other financing, purchasing methods. or rental.

The lease operations, but especially the lease, therefore deserve more attention for a more accurate replacement of a sale of specific legal characters, then the complexity is so that it can be implemented correctly, but the parties involved will being able to reap the benefits for care is a creative stimulation.

We consider, therefore, that they can have aspects that extend in terms of the work, and can provide efficient results in the systematization and final substantiation, which can provide information on information, regarding the specific instruments for the rental operations, but can offer other solutions to control the problems that can be analyzed the judicial practice analyzed, the proposal of the subject being an important tool that can be used for civil societies.

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