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Legal Analysis of Use of Other's Property in Business Transactions

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ABSTRACT

The use of other people's property in business transactions is one of the important mechanisms from the socio-economic point of view. Because a business entity may attract property belonging to other persons on the basis of risk if it does not have the appropriate property or sufficient funds to start its activity. Based on this, in this article, the use of other people's property in business transactions is thoroughly analyzed.

KEYWORDS: *entrepreneurship, property, law, property, farm, machinery.*

The involvement of other people's property in business activities is carried out through any legal mechanisms allowed by the current legislation. In this case, the attraction of property between legally connected subjects (material-law, for example, superficies, emphyteuzis, operational management, management), contracts between different legal subjects (legal obligation, lease, free use, trust management, There are methods and mechanisms for attracting property and using exclusive rights to intellectual property objects (exclusive rights license, complex business license (franchising), etc.)

While researching material legal methods of using other people's property in business activities, V.V.Galov[1] expresses the following points: material-legal regime is a legal description of objective reality (relations of subjects on objects) representing the sum of positive-legal rules of all imperative and dispositive norms and mechanisms of their implementation. The type of material-legal regime is derived from the socio-economic and political construction of society, the subject of law, the object of property rights, the functions and social assignment of objects. The material-legal regime of entrepreneurship is a set of norms that regulate the order of formation and the mechanisms of implementation of the object of property rights and other material rights, in which the entrepreneur's property freedom is combined with the economic and social interests of society.

Yu.P. Kashirina [2] the property of an individual entrepreneur belongs to him along with private property on the basis of other material titles provided by law, and his activities are carried out on this basis.

In our opinion, it is appropriate to introduce new methods of using other people's property in business activities and to establish an effective legal procedure for their use. Because the use of other people's property in business activities has a number of positive aspects from a socio-economic and legal point of view. In this way, vacant properties are brought into economic circulation and thereby receive economic benefits (both the owner of the property and the business entity), the business activity acquires an economic basis, means of production and equipment, the introduction of a contractual and legal construction between the parties and relations are regulated on the basis of legal and customary norms rather than formalities. In addition, by involving the property of others in the business activity in physical and legal methods, there is no mutual distribution and alienation of rights to property, and the summation and integrity of these rights is preserved.

A traditional and classic way of using other people's property in business activities is leasing. Lease relations involve the use of property owned by another person.

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Lease relationships have always been distinguished from other types of contracts by the fact that property is transferred from one person to another person for a certain period of time and returned to the owner. In the classification of civil-legal contracts, it is placed next to the lease-purchase agreement and is included in the series of transactions related to property. Therefore, the role and importance of rent in stable economic relations is incomparable. This situation appears regardless of the goals and objectives of the lease. From this point of view, the literature divides social and commercial rent according to the purpose of the rent structure [3] Regardless, its main purpose is the transfer of property from one person to another for temporary ownership and use, and almost all cases are characterized by the return of property to the owner.

The use of other people's property in business activities is widely used in the conditions of developed market relations. In this case, property belonging to third parties is involved in business activities by using various constructions formed in jurisprudence. For example, by applying legal constructions such as rent, rent, free use, debt, credit, an entrepreneur will have the necessary property and funds to carry out his activities. It is possible to include the property trust management agreement specified in Chapter 49 of the FC to the forms of conducting business activities through the use of other people's property.

is essentially the transfer of property (*trust res*) to another person (*trustee), in which his (trustee*) actions in relation to property are limited by the rights of third parties (beneficiaries) and trust the manager undertakes the obligation to use the property for the benefit of these persons. As a result, the ownership rights of the original owner are void. The trustee (trustee) is obliged to exercise the rights of the owner in relation to the property entrusted to him or is limited to the transfer of property upon the occurrence of a certain event (for example, the beneficiary reaches a certain age). In turn, if one of the subjects of the trust (trustee, beneficiary or founder) or property is located abroad, it is considered a cross-border (international) trust.

The basis of the trust is the relationship between the trustee (trustee) and the property entrusted to him by the founder (in other words, physical and legal relations). It is in this respect that the continental legal system, in particular, the reliable management of property expressed in the legislation of Uzbekistan, and the traditional trust differ. In connection with this situation, I.B.Zokirov states the following: in later times, the constructions originating from completely opposite principles of Anglo-American law (for example, trust or entrusted property) are being adopted by continental law, but they are being adapted without violating established traditions. (for example, trust management of someone else's property is established instead of entrusted property) [4] .

According to B.R. Topildiev, in most situations, in the Anglo-American legal system, the institution of trust management of property is recognized as a separate form of property, and in most situations, the participants in this relationship are considered as full owners [5].

In agreement with these opinions, it should be mentioned that in contrast to the trust management of property, which is valid in the continental legal system, in a traditional trust, the trustee (trustee) participates in relations with third parties as the owner of the property. A trust differs from a full, unrestricted estate only in that it is limited to the interests of the beneficiaries. Therefore, in the Anglo-American legal system, the trust belongs to the field of material law [6] . This means that the trust is recognized as the owner and ensures that the trust has the right to own, use and dispose of the property. In addition, this contract creates the right for a third party - the beneficiary of the trust. It should be noted that a number of traditional precedents [7] not only shows the material-legal nature of these rights, but also establishes that the interests of the beneficiary take precedence over the interests of the trust founder and shows that the rights of the founder have an obligation-legal nature.

In conclusion, the widespread use of the institution of trust management of property as a form of

implementation of entrepreneurial activity by attracting other people's property serves to increase the effectiveness of the implementation of the legal mechanisms of economic reforms implemented in our country, the introduction of idle property into economic circulation. .

Another way to use other people's property in business activities is a loan agreement. Credit is the backbone of the modern economy, an integral part of economic development. It is used by large enterprises and organizations, as well as small production , agriculture, trade structures, as well as the state, government and individual citizens. In particular, credit is the most important and decisive tool in the implementation of business activities. After all, entrepreneurs use financial resources in the form of loans to form and develop their businesses. For this reason, special attention is paid to attracting investments in the form of loans, ensuring consistency and stability of credit relations between banks and business structures in each country.

Creditors will have the opportunity to earn additional funds in return for transferring idle resources to borrowers. Credit appears as a new payment system in the form of money. With the help of credit, material assets are acquired, goods are purchased by the population on the condition of payment in installments. Various valuables (things, goods) can be seen as objects to be taken into credit account. However, the "material" interpretation of credit comes from the framework of political-economic analysis. The economic science of money and credit studies not the things themselves, but the relations that arise between subjects because of things. Based on this, it is worth saying that as an economic category, we should understand credit as a form of social relations.

Through credit, the following positive results can be achieved in our society:

1. In the process of circulation of funds, it is prevented that funds that are left aside and remain inactive.
2. It will be possible to continuously continue reproduction in a wide range [7] .

The usual loan agreement is no longer able to regulate various and complex credit relations in the conditions of market relations. This situation required introducing the concept of credit agreement as an independent type of debt agreement to FC [8] .

civil law , which is regulated by relevant legal norms and provides for the uniqueness of certain types of economic relations. Agreements in the field of bank-credit relations are among them [9] .

The category "credit" in economics is a generalized concept that means all types of bank, product and commercial credit, and it is impossible to legalize it without determining the economic nature of the credit. When it comes to the category of "credit" in the legal sense, it is not so global, despite its multifaceted nature [10] .

It should be noted that today there are specific legal problems related to the legal norms related to the loan agreement and the practical application of the loan agreement. First of all, this is explained by the many administrative barriers to concluding a loan agreement and the majority of bank administration documents, as well as by the bank's absolute authority to issue loans. Although banks publish proposals for granting loans, in many places the practice of granting loans is decided mainly based on the powers of bank employees. Of course, when loans are allocated to one or another organization based on the decision of credit commissions under banks, it cannot be said that the bank's credit policy is always based on systematicity, rationality and honesty.

In addition, there are currently many problems related to the provision of loans, lending to production activities of farms that are agricultural producers, which are currently awaiting their solution from the point of view of legislation [11] . Especially in relation to the bank loans received by the farms, the participation of the preparation organizations as representatives and as a result, there are cases of violation of the circulation of funds paid for the delivered crop.

In order to eliminate these problems and improve the legal regulation of credit relations, the following comments can be made:

1. FC norms aimed at regulating legal relations related to the credit agreement are very deficient (only 5 articles). This, in turn, shows that the legal foundations of credit relations have not yet been fully formed. For this reason, it is necessary to enter into FC the main provisions regarding the conclusion of a credit agreement, requirements for its subjects, credit objects and the rights and obligations of the parties to the credit agreement.

2. Many legal documents regulating credit relations are in force today. In many places, these by-laws contain conflicting provisions, along with internal contradictions. Therefore, it is necessary to unify and systematize them, and in this regard, it will be necessary to adopt the single Law of the Republic of Uzbekistan "On Credit".

3. The credit policy of each bank is determined based on its internal capabilities and approved by the Central Bank. However, the credit policy can lead to abuses in many places. For this reason, it is necessary to develop relevant legal norms on the bank's credit policy and clearly define the mechanisms of its operation in legal documents.

4. One of the methods aimed at ensuring the performance of obligations in the loan agreement, many problematic situations arise in practice regarding the use of surety. In some places, there are cases where the guarantor is directly responsible. In our opinion, it would be appropriate to include a rule limiting the guarantor's liability when concluding a guaranty contract. In this case, the guarantor should be given the authority to control the actions of the debtor and apply appropriate sanctions against him.

Forms of using exclusive rights to intellectual property objects in the use of other people's property in business activities have their own characteristics. Usually, the use of exclusive rights is carried out through a number of civil-legal contracts, and these include license agreements, exclusive rights use agreement, franchise agreement, collective management agreement , trust management agreement [12] and other such agreements.

Exercising exclusive rights to intellectual property objects can be done in different ways. According to Z. Babakulov [13] , there are active and passive ways of using exclusive rights to trademarks. Active use is carried out directly by the owner of the exclusive right, while passive use is the granting of exclusive rights to third parties for use.

In agreement with this opinion, the use of exclusive rights in relation to objects of intellectual property belonging to others is an active use for the person who performs it on the basis of a contract, when it is passive in relation to the owner of the right. Despite the fact that there are many types of civil-legal contracts used to transfer the use of exclusive rights to another person, it is necessary to pay special attention to the fact that the main place is occupied by license contracts. There are simple non-exclusive, absolute (Article 1036 of the FC), mandatory types of license agreements as an agreement on the use of exclusive rights in business activity (Article 40 of the Law of the Republic of Uzbekistan No. 395-II of August 29, 2002 "On Selection Achievements" [14]) .

In our opinion, it is necessary to expand the use of license agreements, simplify the formalization and registration procedure, and introduce clear mechanisms for the protection of exclusive rights in the implementation of these agreements as the basis for the use of intellectual property objects belonging to others in business activities.

References:

1. Galov V.V. Universal legal regimes and business systems: autoref. dis. ... candy. walk science – Rostov-on-Don: 2000. – 9 p.

2. Kashirina Yu.P. Civil and legal status of individual entrepreneurs in the Russian Federation: autoref. dis. ... candy. walk science – Krasnodar: 2015. – 16 p.
3. Ruziev R.D. Contractual and legal problems of imushchestvennogo nayma and usloviyakh rynochnoy ekonomiki. Avtref.diss...d.yu.n.-Tashkent, 2002.-30 p.; Bobokulov S.B. Stages of historical development of rental relations and classification of rental contract constructions in market economy conditions.-Tashkent: Ilm-Ziya, 2008.-82 p.
4. Zakirov I.B. Civil rights. Part I. - Tashkent: TDYuI, 2009. - 69 p.
5. Topildiev B.R. Civil-legal regulation of trust management of property. - Tashkent: Philosophy and Law Publishing House, 2009. - 12 p.
6. It should be noted that this provision is partially contrary to the general maxim of the "right to justice", because according to this maxim, the personam , i.e. directly affects the person and not the material right.
7. A classic precedent in this regard is Saunders c . It is the work of Vautier (1841).
8. Civil law (part 2) textbook, author team, TDYuI, T.-2009, p. 340.
9. Rossiyskoe grajdanskoe pravo. Textbook. Pod ed. Z.G. Krylovoi and E.P. Gavrilova. M., "Yur.InfoR" 1999.
10. Temirova N.S. Fundamental accounting and clearing operations in the Republic of Uzbekistan: Autoref. dis... cand. walk science - Tashkent: 2011. -26 p.
11. Suyunova D.J. Pravovoe regulirovanie kreditnykh otnosheniy v Respubliki Uzbekistan i problemy ego sovershenstvovaniya: Autoref. dis... doc. walk science - Tashkent: 2011. - 14 p.
12. Dostov U.N. Theoretical and legal problems of liberalizing the provision of loans to entrepreneurs in market relations // Legal problems of liberalizing entrepreneurial activity. - Tashkent: TDYuI, 2008. -B. 117-140.
13. Safoeva S.M. Some legal problems in the commercial handling of intellectual property objects: jurisprudence. science. name dis. ... - Tashkent: 2008. - p. 81-82.
14. Babakulov Z.Q. Civil-legal regulation of the use and protection of trademarks: jurisprudence. science. fake Doctor (PhD). dis. ... - Tashkent: 2008. - p. 66-67.