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THE LEGAL NATURE OF THE PROCUREMENT AGREEMENT AS THE MOST SIGNIFICANT OBLIGATION AND TRADE AGREEMENT[1]

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Abstract

Sales is a two-pronged deal in which one side appears as a seller, while the other one is a buyer. Because of this, the Agreement for the sales of goods is: two-sided, freight, commutative, informal and causal.

The legal regulation of the sales is carried out using the methods of: coordination and subordination. The main characteristic of the method of coordination is: equality of parties participating in the sale and equity of their expressed will or intent to conclude the contract, free initiative and property sanction arising in circumstances where the agreed upon is not respected.

From a legal point of view, the sale and purchase of goods represents an activity that is guided by regulation and the exchange of goods for money is channeled under the protection of state institutions. Starting from this, the sale and purchase agreements are the result of the expressed will for the agreement of the parties participating in the exchange of goods for money.

Keywords: Agreement, Procurement, Obligation,

[1] professional paper

Introduction

Agreements, ones who are legally formed, take the place of law for those who form them. Although this approximation of the contract and the law is done only through a photo (sustained), it is much more expressive. The obligation or series of obligations arising out of the contract will be a law for a small group of contractors. No doubt this special "law" is conditioned by the general law - lex specialis a pro leg generalis. [2]

The purchase agreement is the most important agreement in the area of goods turnover. The basic principle of the sales is the principle of autonomy of the will of the parties, with certain restrictions imposed by the national law, as an expression of the state's interest in regulating the international trade. According to different interpretations, trade is defined differently, and so it is known as an activity in commodity circulation.[3]

The enormous importance of the sales law comes from the expression of the Civil Code, in that the "individual obligation" regulations begin with the provisions of the Sales Agreement. The right to sell is considered as the "core" of the Civil Law.[4]

The purchase agreement (procurement) is a result of the consent of the parties' will, whereby the seller commits a certain item that is the subject of the agreement itself, to deliver it to the buyer, transferring the right to ownership, while the buyer with this contract obliges to the seller to deliver a certain amount of money, and at the same time must guarantee the right to ownership of those money.

The components of the contract, i.e. its essential elements are the object of sale and the price at which it will be executed. The Roman maxim in one sentence determines the essence of the sale:Res per pecuniam aesti matur et non pecunia per rem.[5]

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[2]Jean Carbonie, Civil Law, Skopje, 2014, .page. 2115

[3]General Usanas for the trade in goods, number1

[4] Mansel, Kaufrectsreform in Europa und die Dogmatik des deutschen Leistungsstorunges – rechts, AcP 204 (2004) 396,399 ; ähnlichStaudinger/Magnus (2005) Ein l zum CISG

[5]Sasha Dukoski, Obligation Law / Contracts, Kichevo 2016, page.165

The legal regulation of the sales is carried out using the methods of coordination and subordination. The main characteristic of the method of coordination is: equality of parties participating in the sale and equity of their expressed will or intent to conclude a particular contract, free initiative and property sanction arising in circumstances where the agreed in not respected.

On the other hand, the basic characteristics of the subordination method are: inequality of the parties, inequality of the will, legal relation after a decision on the side of the contract that is the holder of a public authority, a sanction that affects only one party in the contract (monopolies, privileged positions, state intervention, principle take or leave, etc.).

With the sales agreement, the seller is obliged to hand over the object he sells to the buyer so that the buyer acquires the right of ownership, and the buyer undertakes to pay the seller the price. The seller of a certain right commits the buyer to acquire the sold right, and when the exercise of that right requires the holding of the case and hand over the object.[6]

It is important for each of the parties participating in a purchase agreement to transfer the risk of ruin or damage to the object from the buyer's bargain. The generally accepted rule is that; Until the handing over of the object to the buyer, the risk of accidental rupture or damage to the object is submitted by the seller, and with the handover of the object the risk passes over to the buyer. But in circumstances where the handover of the object is not made due to the delay of the buyer, the risk passes over to the buyer at the moment when it fell into a delay[7].

Certain cases are determined according to gender due to their nature, that is, in case of objects that have only quantitative determination, in such circumstances the risk passes over to the buyer in delay if the seller has allocated the objects obviously intended for the execution of the lecture and for this he sent a notice to the buyer.[8]

This, although it gives certain general indicators, should always aim for a more precise determination of the goods in terms of quality or some other additional features.

Important elements of the Procurement Agreement

[6]Law on Obligation, Art.442

[7]Sasha Dukoski, Obligation Law / Contracts, Kichevo 2016, page.167

[8]Law on Obligation, Art..445

As a legal transaction from the obligation law, the sales contract is a mandatory transaction. The purchase agreement is based on the rights and obligations of the parties; the procurement agreement does not impose a change in the property relations of the real right for the objects of purchase, i.e. the buyer by the conclusion of the purchase contract does not yet own the objects of the purchase and sale. [9]

An important element or constituent of the contract is the subject of sale.

The subject of trade sale in commercial and business law is items (movable and immovable), energy and securities.

The general rule is that the subject matter of the contract must be in circulation, so the contract for the sale of an item that is out of circulation is null and void. For the sale of items whose turnover is limited, special regulations apply. Sales can also apply to a future subject. The legislator has determined that the sale agreement has no legal effect, if at the moment of its conclusion the object for which the contract is lost or has failed. If, at the time of the conclusion of the contract, the case has only partially failed, the buyer may terminate the contract or stay with it with a reasonable reduction in the price. On the other hand, the Agreement will remain in force and the buyer will have only the right to reduce the price if the partial failure does not interfere with the achievement of the purpose of the contract, or if there is such a custom in the legal circulation for the particular case.[10]

In a circumstance when the sale of a foreign transaction held in the ownership of the seller or he did not have the authorization to put it on the market or sell it, the legislator has determined that there is an obligation for the contracting parties, but the buyer who did not know or did not have to know that the object is a foreign person, if, therefore, the purpose of the contract cannot be achieved, terminate the contract and claim compensation forthedamage.

In this context, the quantity of goods (goods), which is the subject of the purchase agreement, is of course if it is an important element determined by the contract's disposition. The quantity is: physical, space and quantitative determination of the item, which is the subject of sale.

The trading price represents the second essential element of the sales agreement.

A price means a financial compensation that the buyer gives to the seller for the purpose of realizing the subject of the contract.

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[9]J. von Staudinger, Civil Code - Fundamentals of Civil Law, Skopje 2014, page565

[10]Law on Obligation, Arts.446-447

Viewed from an economic point of view, the price represents a value consideration for the transferred right of ownership of the goods subject to the trading agreement. From a legal point of view, it is an essential element of the contract and is the cash equivalent of the counterparty of the sale in question and the proprietary rights thereto.

The price of the subject of sale and purchase is determined by: contract, disposable regulation or by an act of the state. In principle, free-trade based on supply and demand, it always seeks to determine prices by way of an agreement between the buyer and the seller, whether it is done directly or by way of electronic purchase and the like.[11]

As a rule, the price in trading should be: serious, fairly defined precisely and fixed.

If the contract of sale does not determine the price, and the contract does not contain enough data for which it could be determined, the contract has no legal effect. When the contract for sale does not specify the price, nor does it have sufficient data in the help of which it could be determined, the buyer is obliged to pay the price that the seller regularly charged at the time of concluding such contracts, and in the absence of this reasonable price.

As a reasonable price, the current price at the time of the conclusion of the contract is considered, and if it cannot be determined then the price determined by the court according to the circumstances of the case.[12]

In certain circumstances, the sales contract states that the so-called current price will be paid for the product. This price is usually used for the sale of goods listed on official stock exchanges or that are bought in well-known markets. In such circumstances, the buyer owes the price determined by the official records on the market at the vendor's place at a time when the fulfillment.[13]

It is common practice for companies or vendors to freely determine the prices by which they will offer their products, in cases where the price is stipulated, which is basically an exception rather than a practice. However, the free market dictates the prices to be common in the ratio of the purchasing power and the payment power of the persons who appear as buyers, otherwise the risk of impossibility of becoming a commodity item becomes a subject of sale.

[11]Sasha Dukoski, Obligation Law / Contracts, Kichevo 2016, page.168

[12]Law on Obligation, Art.450

[13]Sasha Dukoski, Obligation Law / Contracts, Kichevo 2016, page.170

Non-essential elements of the Sales Agreement

Non-essential elements of the purchase agreement are: the quality of goods, packaging and transport clauses.

The quality of the goods that are the subject of trading is a set of: chemical, physical, aesthetic, functional properties, which make it suitable and usable for the purpose for which it is usually or purposely used only for that contract. The quality of the goods is determined according to: contract, disposable regulations (General trade bonds and Law of Obligations) and forced regulations by the state or internationally accepted standards.

The subject must possess the usual properties of objects of the same kind, which can be determined by comparison with objects of the same variety and the same price class, and among other things with the competitive products.[14]

Packaging is an object, more precisely a means in which the goods themselves are packed or protected. From a legal point of view, the packaging is divided into: original and plain, as well as consumable and unfocused. In practice, the packaging may also appear as an essential element of the contract only if it is prescribed or explicitly agreed. The general trading interests specify that the seller should provide the usual packaging. If this is not provided, the seller must ensure that the goods in question are capable of transporting without damage and must be such that the lowest standards for packaging for the chosen mode of transport.[15]

Transport clauses are technical trade terms with which the seller and the buyer in a short and mutually understandable way agree on a number of issues that are of vital importance for the execution of the purchase agreement. [16]

Conclusion

The agreement is the first way to create a legal, special obligatory relationship that creates, changes and ceases all civil legal relations, with the consent of the volunteers of two or more persons who appear as its parties. The Procurement Agreement is the basic legal instrument in the legal trade

[14]J. von Staudinger, Civil Code - Fundamentals of Civil Law, Skopje 2014, page 576

[15]Usanas,no.79

[16]Sasha Dukoski, Obligation Law / Contracts, Kichevo 2016, page.171

of the Republic of North Macedonia, which is regulated and detailed in the second part of the Law on Obligations, as the first of thirty agreements, which emphasizes its importance as the most efficient means of supply of goods, services and rights. It is the oldest contract, which forms the basis of the creation of a contract law not only in the domestic, domestic trade, but also in foreign trade.

As a result of the growing and more frequent trade relations, both on domestic, national and international markets, the procurement agreement is an essential economic and legal institute that directly affects the development of the economy. According to this, the agreement represents the basis and the foundation of the contract law and the creation of all further agreements.

With the purchase agreement, the seller and the buyer acquire certain rights and obligations that are equivalent to each other. The seller submits the goods that are the subject of the contract, and as a result it receives financial compensation from the buyer, which is essentially its essential obligation.

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