

Bail as a Strengthening Tool for Contracts

M. Sc. SEVDAL MORINA, PhD(c)

Lecturer of Civil Procedure

College "GJILANI", Gjilan

Dr. Sc. SKENDER GOJANI

Lecturer of Civil Right

"Ukshin Hoti" University, Prizren

Lecturer for Obligatory Right

Univeristy College "BIZNESI"

Abstract:

Contractors, as they may be the seller and buyer at the start they harmonize mutual goals and interests and as such define those in the contract, in order to implement it in practice. This is the normal course of contracting and contractual implementation. However, in practice, it often happens that at least one contractor to disobey them adequately its obligation and contractors as and in that form would damage the relative contractor.

After that, the judicial proceedings for fulfilment of the contractual inquiry of damaged contractor, in a considerable way, is complex and lengthy, in that proceeding, the damaged contractor is disfavoured again. Consequently, in practice, the respective forms of insurance applicable to contractual creditor demand contraction.

Such insurance in practice is called "remedies for strengthening the contract". Means of reinforcing the contract is stipulated with clauses of contract and presents its accessory element. When the contract is perfected in accordance with contractual terms, the means of strengthening contractor is not activated and vice versa. In theory and in practice, the recognized and applied tools and different categories for enforcing contracts, among which it is worth to be, mentioned the bail.

Key words: *Bail*, creditor, contractor, interest, responsibility, insurance

ENTRY

Bail is a transaction by which a person, the creditor must provide the bailey execution of the obligation of a third person, the principal debtor.

Bail is available even when the debtor is unaware of. Bail is only an effective obligation. Bail can be granted for a future obligation as well as a liability. Bail is not valid if it is valid primary obligation.

Bailiff answers for the amount owed by the principal debtor including payment of interest, compensation for damage caused by delayed performance and other expenditures made by the contractor to recover his credit unless an agreement is accepted that bail be granted even in parts of the obligation or easement of conditions or less than the main obligation. The bail passing obligation or given the severe conditions that the primary obligation is valid only until the latter's borders.

The bail as an instrument for strengthening the contract, known from ancient times. In Albanian customary law, bail has been one of the most recognizable instruments and applied for reinforcements of contracts.

Bail, due to the recognition of moral qualities, character, honour and properties of noble, to settle the debtor to have guaranteed that if he did not perform contractual obligations to the best of his creditor, that obligation without hesitation would make the guarantor-bail. Bail was recognized and applied in the rights of ancient civilizations such as the Sumerians, arcades, Babylonians etc. Bail, among other things, it should be well known as person as well as to have guarantee opportunities. Bail except assurances moral and material is usually required to swear to gods (polytheism) in God (monotheism) and manifest oath so solemn ritual and (Form Ad

Solemnities). Even in contemporary law, bail is recognized and applied.

BAIL AS A CONTRACT

Bail is bilateral contract, consensual, commutative, secondary, oral or written with which the bail is liable to the creditor to the debtor, for which, this guarantees that will perfect the contractor obligation, valid and reached to the debtor, if he does not fulfill that obligation.

When primary is a creditor and the secondary is a debtor, the creditor may require the debtor itself as to ensure a bail-surety for him; if primary accepts it, it is self-understood that it is required the consent of bail, the bail of the debtor, the debtor becomes secondary, latent, eventual with the same obligations of the debtor if he fails to fulfill his assurances and meet the contractual obligations.

"In the practice of the Albanian customary law, inter alia, with respect to bail, is recognized and quoted conclusion verified in practice: "If you are not a debtor, mortgagor, be a bail!"

The person who takes over the function of guarantee, it becomes possible debtor, secondary liability, but when the debtor for which it provides, fails, the debtor, bail immediately is transformed into the current active debtor.

THE BAIL IS:

- An accessory that can only be given for valid contractual obligation, regardless of the content; if the debtor's obligation is not accessible, such liability cannot be strengthened on bail, also prescribing the obligation of the principal debtor, the obligation of bail is prescribed; the bale with the contract of the bail, can be liable only for the principal debtor contractual obligations, less the whole of his duty but no more obligation to bail for him.

- It is a subsidiary character, because of bail may be required to fulfill the liability, since he, after the has failed towards the creditor;
- It is a solidarity character, so that, when it is contracted that bail guarantees as bail payer, his contractual requirement creditor can realize from debtor, the bail or both;
- It is characterized by subrogation so that the bail which perfects obligation of the debtor, the creditor powers to pass first to the debtor insolvent or irresponsible and bail has the right to request his regressed from the debtor failed to fulfill the contract.
- According to legal obligatory philosophy , it appears that bail which meets owing the contractual obligation of the debtor if he has had some surety may require repay the debtor from any bail or all, from the debtor and other of his guarantors.

THE BAIL IS:

- personal guarantee,
- accessory insurance,
- subsidiary insurance (see art. 998 of the civil code of Croatia and is similar to the German, Austrian and Swiss civil codes).

Bail is out with the extinction of the principal obligation. Bail (bailiff) is discharged from its obligation if the creditor waives any privileges, mortgages, and mortgage loan to secure bail and therefore cannot take his place on the right.

When the creditor voluntarily accepts a fortune or anything else for payment of principal obligation, bail is released from his obligation to the creditor even if there was a result of eviction.

Bail is out of question if the creditor has not filed a lawsuit against bail within six months from the date of expiry of the obligation. When the term of performance of the

obligation is not specified in the contract or warranty as to an alternative arrangement, the bail shall expire one year from the day the contract of surety ship.

For nonperformance or adequately obligations, the parties to the contract may provide for the payment of a sum of money or other performance of an obligation to repair the damage or to promote the execution of duty. The creditor cannot demand at the same time paying the penalty clause and execution of the obligation.

CONCLUSION

On the basis of what was stated in the paper work, we have understood that the contract is a very important means of contributing to the obligations under the right binding and also represents the central institution within the legal communication between the contracting parties. While the bail as an instrument for strengthening the contract, known from ancient times. We saw that in the Albanian customary law, bail, has been one of the most popular instruments and applied for reinforcements of contracts. Also as a conclusion, it is worth noting that bail is personal tool for the execution of the contract and that it is established by agreement of the creditor and bail, which bail assumes an obligation to pay the debt if the debtor will not pay. So, accessory contract for bail is connected with the main contract clause in a contract or as a separate contract. At the same time the validity of bail depends on the validity of the principal obligation and if the main task is not established the bail is not valid either.

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