



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

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On Certain Issues of Application of Chapter 24 of the Civil Code of the Russian Federation regarding Substitution of Persons in an Obligation based on a Transaction

In order to ensure the uniform court application of provisions of the Civil Code of the Russian Federation regarding the substitution of persons in an obligation based on a transaction, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following explanations:

General Provisions on Transfer of Claims by Virtue of Contract (Assignment of Claims)

1. By implication of Item 1 of Article 382, Item 1 of Article 389¹, Article 390 of the Civil Code of the Russian Federation (hereinafter referred to as the CC RF), an assignment of claim is performed by virtue of a contract concluded between the initial creditor (assignor) and the new creditor (assignee) (hereinafter – an assignment contract).

By virtue of Article 421 of the CC RF, such a contract between the assignor and the assignee may be a contract stipulated in law or other legal acts, a mixed type of contract or a contract that is not stipulated in law or other legal acts.

For example, the assignment may be performed by virtue of a contract of sale of a property right (Item 4 of Article 454 of the CC RF) or a donation contract (Item 1 of Article 572 of the CC RF), stipulated in the CC RF. In this case, the rules of civil legislation regarding certain types of contracts should be taken into account. In particular, by implication of Item 1 of Article 460 of the CC RF, if the seller (assignor) fails to perform the duty to transfer the claim unencumbered by rights of third persons, the buyer (assignee) may demand for a price decrease or the termination of the contract, unless it is proved that the seller knew or must have known about those rights (Item 1 of Article 307¹ of the CC RF).

In accordance with Article 421 of the CC RF, the parties also may, among other things, conclude a contract under which the initial creditor (assignor) is obliged to transfer the claim against the debtor to the new creditor (assignee), and the new creditor (assignee) is obliged to transfer a part of what will be performed by the debtor under the transferred claim to the initial creditor (assignor).

2. An assignment contract in regard of a transaction that requires state registration must be registered in the manner stipulated for registration of that transaction, unless otherwise stipulated in law. By general rule, for third persons such a contract is regarded as concluded from the moment of its registration (Item 2 of Article 389, Item 3 of Article 433 of the CC RF). For example, a contract on assignment of a claim regarding rent payments under a registered rent contract is subject to state registration. In the absence of registration that assignment contract does not entail legal consequences for third persons, who did not know and were not supposed to know about it, e.g. for the buyer of rented property.

If the assignor and assignee fail to comply with the aforementioned state registration requirement, as well as to observe the form of assignment, this does not entail negative consequences for a debtor, who performs for the assignee by virtue of a duly drawn written notification about the corresponding assignment, received from the assignor (Article 312 of the CC RF).

3. By virtue of Item 3 of Article 423 of the CC RF, an assignment contract is presumed to be non-gratuitous, unless otherwise follows from law, other legal acts, the contents or nature of the contract. If such a contract does not contain terms

regarding the price of the assigned claim, this does not by itself constitute grounds for recognising it as invalid or non-concluded. In this case, the price of the claim may in particular be determined under the rule of Item 3 of Article 424 of the CC RF. The assignment contract may be qualified as donation, only if the intent of the assignor to make a donation to the assignee is established (Article 572 of the CC RF).

4. By virtue of Item 1 of Article 384 of the CC RF, unless otherwise stipulated in law or contract, the claim of the initial creditor is transferred to the new creditor in the amount and on the terms that existed at the moment of transfer of the claim. In particular, the new creditor receives the rights securing the performance of the obligation, as well as other rights pertaining to the claim, including the right to interest.

The initial creditor may not assign more rights to the new creditor than it has itself. Herewith, by virtue of law the new creditor may have additional rights that the initial creditor lacked, due to the special legal status of the former, e.g. the rights stipulated in Law of the Russian Federation No. 2300-I of 7 February 1992 “On Consumer Rights Protection”.

5. By general rule, the claim is transferred to the assignee at the moment of conclusion of the assignment contract, e.g. of a contract of sale of a property right (Item 2 of Article 389¹ of the CC RF). However, the law or such a contract may stipulate a later moment for the transfer of claim. The parties may stipulate that the transfer of claim will take place after a certain period of time or when a suspensive condition, agreed upon by the parties, is met. For example, the parties to a contract of sale of a property right may stipulate that the right is transferred to the buyer after it is fully paid for, without making any additional agreements in this regard (Item 4 of Article 454, Article 491 of the CC RF).

The assignment contract may also stipulate that the claim will be transferred on the moment when a separate agreement is performed, which directly establishes the assignment (a separate bilateral document regarding the transfer of claim). If the assignor evades the signing of such a document, the assignee that performed its duties may demand the transfer of claim for its benefit (Article 12 of the CC RF).

6. In accordance with the interrelated provisions of Article 388¹, Item 5 of Article 454 and Item 2 of Article 455 of the CC RF, an assignment contract may not only be concluded in regard of a claim that the assignor owns at the moment of

conclusion, but also in regard of a claim that will arise in the future or will be acquired by the assignor from a third party (future claim). Unless otherwise stipulated in law, the future claim is transferred to the assignee, correspondingly after the moment it appears or is acquired by the assignor. The agreement of the parties may stipulate that the future claim is transferred at a later moment (Item 2 of Article 388¹ of the CC RF).

A claim, the time for performance of which has not yet come at the moment of conclusion of the assignment contract, is not a future claim (e.g. a claim of a lender to return the sum of the loan stated before the time for return of the loan). Such a claim is transferred to the assignee under the rule stipulated in Item 2 of Article 389¹ of the CC RF.

7. If one and the same claim was assigned to different persons by one initial creditor (assignor), the due new creditor (assignee) is the person, the moment of transfer of claim in whose regard comes earlier (Item 2 of Article 388¹, Item of Article 389¹, first paragraph of Item 4 of Article 390 of the CC RF).

The other person (the other assignee), in whose regard the moment of transfer of the claim must have come later, may claim for restitution of damages caused by the assignor's failure to perform the assignment contract. If the debtor performs for the benefit of this other person, the risk of consequences of performance is borne by the assignor or the assignee, which knew or must have known about the earlier assignment of claim (second paragraph of Item 4 of Article 390 of the CC RF).

8. By implication of Articles 390, 396 of the CC RF, if it is impossible to transfer the claim (e.g. due to the fact that it belongs to another person or has terminated), this does not by itself result in invalidity of the assignment contract and does not exempt the assignor from liability for failure to fulfil the obligations arising from that contract. For example, if the parties to a contract of sale of a property right were acting on the premise that the aforementioned right belonged to the seller, while it actually belonged to another person, the buyer may claim the restitution of damages caused (Items 2 and 3 of Article 390, Article 393, Item 4 of Article 454, Articles 460 and 461 of the CC RF), as well as application of other civil liability measures, stipulated in law or contract.

Likewise, unless otherwise proceeds from the nature of the agreement between the assignor and assignee, the assignor that undertook an obligation to transfer a future claim is liable to the assignee, if the transfer did not take place due to the fact that

the transferred right did not arise or was not acquired from a third person within the time stipulated in the contract or within a reasonable time.

Permissibility of Transfer of Claim

9. A transfer of claim, performed in violation of a legislative prohibition, is void (Item 2 of Article 168 of the CC RF, Item 1 of Article 388 of the CC RF). For example, if a beneficiary assigns its rights under an independent guarantee without simultaneously assigning its rights under the principal obligation to the same person, such an assignment is void (second paragraph of Item 1 of Article 372 of the CC RF). Article 383 of the CC RF prohibits to assign rights (claims) to another person, if their performance is personally intended for the creditor-citizen or is inextricably linked to her/his person. Herewith, the courts should take into account the nature of the assigned right and the purpose of limiting the substitution of persons in the obligation. For example, based on provisions of Item 7 of Article 448 of the CC RF, the prohibition to assign rights under contracts, which may be concluded only through holding a tender, does not affect the claims regarding monetary obligations.

10. For the purpose of applying Item 2 of Article 388, when assessing whether the creditor's person is significant for the debtor, the court needs to proceed from the nature of the obligation.

If the parties stipulated it in the contract that the person of the creditor is significant for the debtor, but this does not proceed from the nature of the obligation arising from the contract, such terms should be qualified as prohibiting the assignment of rights under the contract without the debtor's consent (Item 2 of Article 382 of the CC RF).

11. The possibility of assignment of claim does not depend on the fact, whether the assignable claim is unobjectionable, whether the possibility of its realisation is conditioned by the consideration of the assignee in the form of performance of its obligations to the debtor (Item 1 of Article 384, Articles 386, 390 of the CC RF).

12. Unless otherwise stipulated in law, the fact that the assignee does not have a license to engage in insurance or banking activities does not constitute grounds for invalidity of assignment of claim received by the insurer through subrogation or invalidity of a credit contract acquired by a bank.

13. In particular, it is allowed to assign claims for restitution of damages caused by violation of obligations (in particular by future violations), claims for return of benefits acquired through an invalid transaction, claims for return of unjustly received or saved property (Items 2 and 3 of Item 307¹, Item 1 of Article 388 of the CC RF).

Herewith, the debtor may raise the same objections that it had against the initial creditor (in particular regarding the amount of damages caused to the creditor), and may present evidence that the creditor could decrease such damages, but did not take reasonable measures for that purpose (Articles 386, 404 of the CC RF).

14. By general rule, the assignment of claims for payment of a forfeit, accrued due to a violation of an obligation (in particular payable in the future), is allowed both simultaneously with assignment of the principal claim and separately from it.

15. When an assignment of claim for non-monetary performance is performed without the consent of the debtor (including a claim for partial performance under a divisible obligation), and this makes the performance of the obligation significantly more encumbering for the debtor, the debtor may perform the obligation for the benefit of the assignor (Item 3 of Article 384, Item 4 of Article 388 of the CC RF).

If the transfer of the aforementioned claim cannot be recognised as significantly more encumbering for the debtor, but requires additional efforts or expenses from the debtor, the assignor and the assignee are obliged to compensate the corresponding expenses of the debtor. By general rule, until the assignor and (or) assignee performs this duty, the debtor is not regarded as defaulting (Articles 405, 406 of the CC RF).

Notifying the Debtor about the Assignment of Claim

19. A debtor is regarded as notified about the transfer of right from the moment, when the corresponding notification is delivered or is regarded as delivered under the rules of Article 165¹ of the CC RF, unless otherwise stipulated in the CC RF, other laws or in the terms of the transaction, or follows from the practice established in the relations of the parties. If such a notification was not delivered to the debtor, and there are no facts indicating that it may be regarded as delivered,

the assignor may not refuse to accept the performance by referring to the transfer of right that took place. If the assignor is evading acceptance of due performance, the debtor is not regarded as defaulting (Item 3 of Article 405 of the CC RF) and may claim restitution of damages caused by the delay (Item 2 of Article 406 of the CC RF).

20. If the notification about the assignment was forwarded to the debtor by the initial creditor, then by implication of the second paragraph of Item 1 of Article 385, Item 1 of Article 312 of the CC RF, the debtor's performance for the benefit of the new creditor, indicated in the notification, is by general rule regarded as provided to the due person, in particular in case of invalidity of the assignment contract.

If the notification about the assignment is forwarded to the debtor by the new creditor, the debtor, in accordance with the second paragraph of Item 1 of Article 385 of the CC RF, has the right not to perform the obligation until it receives a confirmation from the initial creditor. If no such confirmation is provided within a reasonable time, the debtor may perform the obligation for the benefit of the initial creditor. If the debtor receives a notification from the new creditor about one or several further transfers of the claim, it may demand to present evidence of expression of will of each consecutive creditor for the transfer of claim.

21. By implication of Article 385 of the CC RF, the notification about the transfer of claim must contain information sufficient to reliably identify the new creditor, determine the volume of rights transferred to it. If the information indicated in the notification is not sufficient for the debtor to perform for the new creditor, the debtor may, by general rule, perform the obligation for the benefit of the initial creditor or suspend performance and request the initial creditor to provide the corresponding information.

A notification about the conclusion of an assignment contract, stipulating that the assignment will take place after a specified term expires or a certain condition is met, cannot be regarded as due notification for the purposes of Article 386 of the CC RF. Herewith, in the future the debtor may not refer to the absence of notification, if it evidently could determine the moment of transfer of right from the contents of the provided message.

22. In accordance with Item 3 of Article 382 of the CC RF, if a debtor performs for the initial creditor before receiving a notification about the assignment, this is regarded as performance for the due person. In this case the new creditor may request the initial creditor to transfer everything received from the debtor in repayment of the transferred claim and restitution of damages in accordance with the terms of the contract concluded between them (Articles 15, 309, 389¹, 393 of the CC RF).

Debtor's Objections against Claims of the Assignee

23. The debtor may state not only those objections that it had against the initial creditor at the moment when it received the notification about the transfer of rights under the claim to the new creditor, but also objections, grounds for which have appeared up to that moment (Article 386 of the CC RF).

For example, if a claim for payment for performed works is transferred, and the debtor discovers hidden defects of those works after receiving the notification about the transfer, it may state the corresponding objection against the claim of the new creditor, since at the moment when the debtor received the notification, the grounds for the objection, arising from the contract of work and labour, have already appeared. Likewise, if a buyer discovers the defects of goods after receiving notification that the claim for payment was transferred, it may state the corresponding objection against the new creditor (Articles 469–477 of the CC RF).

In case of several consecutive transfers of claim, the debtor may state objections, based on legal relations with each of the preceding creditors, against the claim of the new creditor.

24. By implication of Articles 386, 412 of the CC RF, a debtor may request an offset after receiving the notification about the assignment, if the debtor's claim appeared on grounds existing at that moment, and the time for performance of obligation came before the notification was received, or if that time was not stipulated, or the creditor was obliged to perform upon request. If the debtor's claim against the initial creditor appeared on grounds that existed at the moment when the debtor received the notification about the assignment, but the time for its performance has not yet come, the debtor may request the offset of this claim against the claim of the new creditor only after that time comes (Article 386 of the CC RF).

The debtor's claim against the initial creditor, arising on grounds that did not exist at the moment when the debtor received the notification about the assignment of claim, cannot be offset against the claim of the new creditor.

25. By implication of Article 386 of the CC RF, when a creditor receives a notification about the conclusion of an assignment contract, stipulating that the assignment will take place after a specified term expires or a certain condition is met, it may state those objections against the assignee's claim, the grounds for which appeared prior to due notification about the assignment or prior to the moment when the debtor learned or must have learned that such a transfer of rights took place (e.g. if the date of transfer of rights was indicated in the notification message).

Transfer of Debt

26. By implication of Article 421 and Item 3 of Article 391 of the CC RF, when debt is transferred under an obligation pertaining to engagement in entrepreneurial activities by all its parties, either the initial debtor is discharged from the obligation (hereinafter – perfect delegation), or both the initial and the new debtors are liable before the creditor in a joint and several manner (hereinafter – imperfect delegation). The agreement of the parties may also stipulate subsidiary liability.

If a creditor is entitled to claim performance in kind from the initial debtor (Article 308³ of the CC RF), in case of perfect delegation the creditor is also entitled to claim performance in kind from the new debtor.

27. If it is not clear from the agreement of the creditor, the initial and the new debtors regarding an obligation pertaining to entrepreneurial activities, whether they agreed upon perfect or imperfect delegation, the court should proceed from the premise that the initial debtor is discharged from the obligation (Item 1 of Article 322, Article 391 of the CC RF).

If it is unclear whether the creditor and the new debtor, engaged in entrepreneurial activities, agreed upon imperfect delegation or suretyship, the court should proceed from the premise that their agreement is a suretyship contract (Article 361 of the CC RF).

28. In case of perfect delegation, the new debtor may state objections against the creditor's claim, based on relations between the creditor and the initial debtor, but may not realise the right to offset of counterclaims belonging to the initial debtor against the creditor (Article 392 of the CC RF).

In case of imperfect delegation under an obligation pertaining to entrepreneurial activities, the new debtor may state such objections against the creditor's claim, which the initial debtor would have. Provisions of Article 324 of the CC RF are applied to the objections of the initial and new debtors, arising after the imperfect delegation is complete, against the creditor's claim.

By implication of Item 5 of Article 166 of the CC RF, the new debtor may not counter the creditor's claim for performance of the obligation with objections that the new debtor did not receive consideration from the initial debtor for the transfer of debt, and also with the objections regarding the invalidity of the transfer of debt by virtue of Sub-item 4 of Item 1 of Article 575 of the CC RF.

Assignment of Contract

29. By implication of Article 392³ of the CC RF, the parties to the contract and a third person may agree upon the transfer of all rights and duties of one of the parties to the third person. In this case, the complex of rights and duties under the contract is transferred to the third person as a whole, including the rights and duties, in regard of which a separate assignment or transfer of debt is not possible. In particular, the creditor retains the right to direct debit of monetary funds in regard of the third person entering the contract, if it had such a right in regard of the initial debtor.

For example, by implication of Articles 392³ and 391 of the CC RF, if the tenant and a third person conclude a lease transfer contract with consent of the landlord, the third person completely substitutes the initial debtor in relations with the creditor and is obliged to pay rent for all periods of usage of property, including those that occurred before it entered the contract, unless otherwise stipulated in the agreement regarding the assignment of contract. Herewith, if such a lease transfer lawfully takes place without the consent of the landlord, e.g. where Item 5 of Article 22 of the Land Code of the Russian Federation applies, the initial and the new tenants are, by general rule, liable before the landlord (in a joint and several manner) for consideration in return for the landlord's performance that took place

before the agreement regarding the assignment of contract was concluded (Article 323 of the CC RF).

30. By general rule, the invalidity of a term of an agreement regarding the assignment of contract, pertaining to one of the rights (claims) or the transfer of one of the duties arising from the contract which the third person is entering, results in invalidity of the whole agreement, unless it may be supposed that the transaction would be concluded without the invalid part (Article 180 of the CC RF).

Procedural Issues

31. An arbitration agreement (arbitration clause), included into the contract between the initial creditor and the debtor, remains effective for the new creditor and debtor, unless otherwise stipulated in the aforementioned contract or in a contract between the debtor and the new creditor (Part 10 of Article 7 of Federal Law No. 382 of 29 December 2015 “On Arbitration (Arbitral Proceedings) in the Russian Federation”, Item 11 of Article 7 of the Law of the Russian Federation No. 5338-I of 7 July 1993 “On International Commercial Arbitration”).

32. Unless otherwise stipulated in law or contract, if the law or the contract stipulates obligatory pre-trial dispute resolution, this requirement is regarded as met, even if the letter before action was forwarded to the debtor by the initial creditor before the debtor was notified about the transfer of right that took place, and the statement of claim is filed by the assignee.

33. If during the consideration of the dispute in court rights were transferred from the creditor (plaintiff) to a third party, the court, upon application of an interested person and with consent of the assignor and assignee, replaces the plaintiff in the manner stipulated in Article 44 of the Civil Procedure Code of the Russian Federation (hereinafter – the CPC RF), Article 48 of the Commercial Procedure Code of the Russian Federation (hereinafter – the ComPC RF).

If the assignor does not consent to its replacement by its legal successor, the assignee may enter the case as a third person with independent claims in regard of the subject matter of the dispute (Part 1 of Article 40 of the CPC RF, Part 1 of Article 50 of the ComPC RF).

The aforementioned rules also apply if the creditor assigns a part of the claims after applying to court for the protection of the whole volume of claims, and where there is a motion for partial replacement on the side of the plaintiff.

If the assignor is replaced by the assignee in a part of the stated claims, both persons, being plaintiffs, act in the proceedings on their own and independently from each other (Part 3 of Article 40, Part 1 of Article 429 of the CPC RF, Part 4 of Article 46, Part 5 of Article 319 of the ComPC RF).

34. If during consideration of issues of procedural legal succession it is established that several consecutive assignments took place, the court replaces the plaintiff (the initial assignor) with the end assignee. Other assignees may be drawn to participation in the case as third persons without independent claims (Part 1 of Article 43 of the CPC RF, Part 1 of Article 51 of the ComPC RF).

If in case of invalidity of assignment of claim the assignee already filed a claim against the debtor under such assigned claims, the assignor may also file a claim against the debtor or may enter the initiated case (Part 4 of Article 1, Part 1 of Article 44 of the CPC RF, Part 5 of Article 3, Part 1 of Article 48 of the ComPC RF).

35. When effecting procedural legal succession on the stage of execution of a judicial act, the court replaces the assignor with the assignee upon application or with consent of the former in the part, in which the judicial act is not yet executed. If the term for presentation of the writ of execution for enforcement has expired, the court performs the replacement, only if that term is restored (Articles 23, 52 of Federal Law No. 229 of 2 October 2007 “On Enforcement Procedure”).

By implication of Item 3 of Article 382, Article 385 of the CC RF in their interrelation with Part 1 of Article 428 of the CPC RF, Parts 2, 3 of Article 318, Article 320 of the ComPC RF and Article 52 of Federal Law No. 229 of 2 October 2007 “On Enforcement Procedure”, a debtor that received the notification about the assignment has the right not to perform for the assignee until the recoveror is replaced.

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