LEASING AS A TYPICAL FORM OF CREDIT FINANCING

B.B. Ibragimov
International school of finance technology and science, DSc

Abstract: *In modern conditions, leasing activity has become one of the most complex types of activity, including leasing, collateral financing, settlements (payments) on debts (liabilities), and other financing mechanisms. Today leasing companies (lessors - lessors) face several new challenges, such as a sharp increase in overdue accounts receivable and the need for mass return of leased items. However, the current legislation of the Russian Federation and the Republic of Uzbekistan does not facilitate the collection of lease receivables, and compensation of losses by lessors for return of leased property. In particular, the legislation provides for the right of the lessor to return the property to the lessee only in cases stipulated by law and the lease agreement.*

Key words: *leasing, civil law, relationships, finance*

The structural complexity of lease contracts complicates the issue of applying a particular contract template, since the lessor (lessor) and lessee (lessee), as well as the supplier of the leased property, are involved, and supply and lease contracts are interrelated. The purpose of the study is to analyze the legal regulation of leasing legal relations to identify practical problems of using the contractual design of leasing and to improve the application of different legal designs of leasing. Confusion between the concepts of leasing (financial lease) and traditional property lease (rental) and, consequently, difficulties in their differentiation are caused by the external similarity of leasing operations with rent.

At the same time, in many countries that have adopted leasing laws, leasing includes contracts that combine both of these features. Such countries, in particular, include Spain, Belgium, Portugal and France. Russian regulation in this matter follows the world experience, singling out leasing as a type of lease.

At the same time, judicial practice and doctrine are trying to find criteria for singling out leasing as a type of lease in the sphere of interpretation of legislative norms.

Therefore, the coverage of this topic requires a presentation of the development of approaches to the differentiation of such operations in foreign and international law. It seems more correct to consider leasing as an independent special phenomenon - sui generis. It is logical to use the terminology of "lessor" and "lessee", thus emphasizing the special role of this contractual structure, different from the usual lease contract.

If a person decides to engage in a business in which he will invest, for example, cars, and then rent them out, he will seek to recover his costs and earn more than that. However, this is his motive if you look at the situation from the rental contract side.

The tenant is not at all interested in whether the landlord covers the costs of the property. The tenant pays, as part of the agreement. The agreement is formed in the negotiation process with an eye on what it costs on the market to use the same similar rental property. In leasing agreements, on the contrary, the will of each party is directed precisely at recouping the lessor's costs of acquiring the leased object. Thus, the payback is transformed from an ordinary factor into the content of the contract.

Ф. Plate, a German scientist created the theory of the so-called "purchase of right" (Rechtskauf). He argues that the user buys from the lessor the right to use the equipment, limited in time[36].

Back in the XIX century in several states of the USA (in particular, in Illinois and Pennsylvania) the courts were ambiguous about the type of transactions of the "conditional sale" type (or sale with the seller retaining ownership of the sold goods). buyer on credit). buyer on credit).

The courts have assumed that such transactions are essentially designed to create a security interest in favor of the seller to secure the price of the goods. However, such transactions were not subject to the book-entry rules required by the statutory law of those States for securities transactions.

Ignoring such rules by the parties created a risk of misleading the buyer's creditors, who, based on the buyer's possession of the goods (which in the case of movable property was the most convincing evidence of ownership), risked drawing erroneous conclusions about the buyer's ownership. creditworthiness.

The courts, in turn, evaluated such transactions differently: in some cases, they found arguments in favor of qualifying the contract according to the terminology used by the parties, in other cases, they identified characteristic features of conditional sale and resolved the conflicts. based on the secured content of the transaction established in contradiction with the name given by the parties.

An example of resolving a dispute based on a consideration of the purpose of a contract in conflict with its title is the U.S. Supreme Court's decision in Hervey v. Rhode Island Locomotive Works. Locomotive Works of Rhode Island, 93 U.S. 664 (1876).

Leasing can be described as a typical credit transaction in which the lessee receives a loan and guarantees its repayment by the leased object.

The difference from the classical credit is that the lessee does not receive "live" money from the creditor (bank) and does not independently invest it in the goods he needs, pledging then this good in favor of the creditor.

However, from the point of view of the final result, everything turns out the same as in the case of classical credit:

the object for the sake of which the debtor (lessee) needed the credit (money) is purchased with credit funds, comes into his use and after repayment of the credit becomes free from any encumbrances.

[36] Plathe F. Die Rechtliche Beurteilung des Leasing-Geschafts. 1969

But there is one imperative norm of the legislation of the Russian Federation and Uzbekistan, as a rule, establishing obtaining a license for banking activities (issuing loans).

Unlike banking activity, leasing activity is not licensed at least only in the RF and Uzbekistan, this type of activity is licensed in Germany. Intellectual property, software, technology licenses, etc. do not fit into the narrow definition of property used in entrepreneurial activities, but may be significant leasing objects for many companies. Therefore, to further stimulate the development of leasing in Uzbekistan, it may be worth considering amending the legislation to expand the range of objects subject to leasing.

This would increase flexibility and opportunities for businesses to use leasing as a tool to finance and develop their operations. In addition, attention should also be paid to simplifying procedures and improving the legal protection of participants in leasing relations to create a more favorable environment for the development of the leasing market.

An essential condition of a leasing agreement is the condition of its subject matter. The subject of leasing is non-consumable things. Land plots and other natural objects cannot be the subject of leasing.

In judicial practice, the question whether property rights can be the subject of leasing has arisen more than once, and this question has been resolved ambiguously by the courts. Nevertheless, Article 3 of the Federal Law "On Financial Lease" explicitly names things, but not property rights, as the subject of leasing. As is known, civil legislation distinguishes these concepts (for example, in Article 128 of the Civil Code). The schedule of leasing payments is not an essential condition, as well as the condition of the Seller of the property, which can be defined in the letter of the Lessee sent by it to the Lessor.

The German Civil Code (GGC), like the German Commercial Code (GTU), is a fundamental legal system characterized by its abstract structure and breadth of regulation. Unlike situation-oriented codifications, the GGU and GTU offer a set of general principles and concepts that allow the law to be adapted to ever-changing realities. This approach, known as "abstract lawmaking," allows for effective regulation of legal relations in dynamic economic sectors such as leasing.

Leasing, as a form of hire-purchase, is regulated in Germany by both civil and commercial law. The GGU establishes the general principles of contractual relations, including leasing, which is reflected in §§ 535-580 of the GGU governing lease obligations. The GTU, in turn, proposes specialized rules for leasing contracts, taking into account the specifics of commercial activities. §§ 535-580 of the GGU set forth key aspects of the lease legal relationship, including:

- Tenant's obligations: timely payment of rent, proper use of the property, compensation for damage to the property.

- Landlord's obligations: provision of the property in proper condition, guarantees for unhindered use of the property.

- Termination of the contract: the possibility of termination of the contract on certain grounds (e.g., in case one of the parties fails to fulfill its obligations).

The GTU, in turn, introduces additional rules specific to financial leasing, which involves the transfer of the property to the lessee after the end of the lease term.

Important provisions of the GTU for leasing are:

- § 580 GTU, which establishes the principle of transfer of ownership of the leased object after the end of the leasing period.

- §§ 357-374 of the GTU, regulating the rights and obligations of the parties in leasing contracts.

Effect of the GGU and GTU on leasing legal relations:

- Legal certainty: clear regulation of leasing relations provides legal certainty and predictability for all participants in the process.

- Flexibility: the abstract structure of the LGU and GTU allows to adapt of legal norms to specific leasing agreements, satisfying different needs of lessors and lessees.

- Effective dispute resolution: in case of disputes, the parties have the opportunity to appeal to the court, relying on clear and reasonable legal norms.

Thus, the GGU and GTU provide a sound legal basis for leasing relationships in Germany, ensuring that they are transparent, flexible, and fair.

Conclusion. In judicial practice, there are cases in which courts qualify the leasing agreement as a sham transaction. Since such a conclusion is based on the actual non-fulfillment (or improper fulfillment) of obligations by the seller to transfer the leasing object, it is appropriate to devote some attention to this problem immediately after determining the aspects of the interaction between the parties to the leasing agreement and the seller. The existence of such disputes gives rise to the need to analyze under what conditions a repurchase lease agreement may be recognized as a sham transaction.

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