

THE EFFECT OF THE SIMULATED CONTRACT CASE ON OTHERS IN THE JORDANIAN CIVIL LAW

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Abstract

This research aims to study a topic: The effect of the simulated contract case on others in the Jordanian civil law. It is one of the important topics worthy of research, which did not receive sufficient due care in the books of civil law (commitment provisions), Also, the literature that appeared to treat him did not give him the right to a careful and in-depth study in a comprehensive and comprehensive manner. The Jordanian legislator has adopted the principle of stability of the apparent situation when dealing with the fictitious effects in relation to third parties, such as the creditor, the private successor, and the beneficiary in stipulating in favor of the third party who adheres to his rights derived under the provisions of the Jordanian Civil Law according to the text of Articles (368 and 369), where the fictitious gave the option to others when it was in good faith, Adherence to the apparent and simulated contract if it achieves its interest, provided that the contracting parties have not implemented the hidden contract. That is, the third party is not aware of the existence of the fictitious, whether actual or judgmental, at the time of its dealings with the fictitious parties. The Jordanian legislator also granted third parties the right to adhere to the covert contract in application of the general rules, provided that the contestation of the formality is clear and explicit from those who have an interest in that. In the event of a conflict with the interests of third parties who cling to the covert contract and others who cling to the fictitious contract, the third party who clings to the fictitious contract shall advance if it is of good faith. I have discussed this topic in great detail. This study included a set of results and recommendations.

Keywords: simulated, third party, good faith, apparent contract, hidden contract, private successor.

Introduction

The concept of the term “others” is one of the most widely circulated concepts in legal relations, including private legal relations, but it is ambiguous, and its failure to define it with a clear and precise application left its exposure to interpretation in the legal fields. With regard to the contract, the third party is considered foreign to it, because it is not one of the parties to the contract, and therefore the effect of the contract does not apply to it. However, the Jordanian and Kuwaiti legislators have dealt with the effect of the fictitious disposal on third parties according to the text of Articles (368) of the Jordanian Civil Code, which included that the creditors of the contracting parties and the private successor, if they are in good faith, are different from the fictitious disposal because they are not a party to the contract. A third party in good faith may adhere to the apparent contract if he has an interest in that. The basis of this

rule is that the apparent contract has created an appearance that has been deceived and reassured by it, and this is required by the principle of stable dealing. That is why it is necessary that this third party be in good faith at the time of dealing, and the principle of good faith is imposed and whoever claims the opposite must prove his claim. The interest of others in adhering to the apparent contract is also manifested in various forms, including the interest of the creditor of the fictitious buyer in adhering to the apparent contract until the sold item is included in its general guarantee. If the creditor adheres to the fictitious contract, the Jordanian legislator has stipulated that the creditor must be in good faith and not be aware of the fictitiousness of the contract that he is adhering to. The lesson in determining the time of proving good faith is the moment when the obligation arises, as it is the time when the contracting party was deceived by the apparent contract of the contracting party with him and based his dealings on it. Accordingly, it is not permissible for the creditor of the contracting party to adhere to the apparent contract if it is proven that he was working with the existence of the real contract, and his supposed knowledge of the real contract is sufficient for him to be prohibited from adhering to the apparent contract.

Hence the search title: (The effect of the simulated contract case on others in the Jordanian civil law) Within the framework of this topic, we will distribute this research into two sections: In the first section, we deal with the legal concept of a bona fide third party in a sham. We devote the first requirement: the categories who are considered a third party with regard to the effect of a sham, and the second requirement: the conditions necessary to benefit from the legal protection of others. As for the second topic, we will distribute it into two requirements, by addressing in the first requirement the exceptional protection conditions for others, and in the second requirement the content of its protection against the effects of imaginary.

Research importance:

As for the effect of the moot on others, it is disputed by the principle of the authority of the will, according to which people have the right to abide by their will however they wish and for the time they want in order to achieve stability in transactions and respect for apparent situations. The Jordanian legislator adopted the principle of the authority of the will when dealing with the effect of the fictitious disposition with regard to its parties and their likes, as it stipulated that the real, disguised agreement should be relied upon, and that the fictitious effect should not be considered a reason for invalidity, provided that the apparent and hidden contracts fulfill all their pillars, conditions for their concluding, and their formal and substantive validity. The Jordanian legislator also adopted the principle of stability of transactions and respect for the apparent situation when dealing with the effect of fictitious disposal in relation to others, such as creditors, the private successor, the beneficiary in stipulating in the interest of others, the intercessor, and the general successor who clings to his rights derived from the law directly, as he gave the option to the third party who does not know about the existence of the fictitious, whether actual or judgmental at the moment His dealings with fictitious parties have the right to adhere to the apparent fictitious contract if it achieves an interest, provided that the two contracting parties have not executed the concealed contract. And in application of the general

rules, third parties have the right to adhere to the covert contract, provided that the challenge to the formality is made explicitly and clearly by those who have an interest in that. The Jordanian legislator also stipulated the conflict of interest of the concerned parties, that is, the Gentiles who cling to the covert contract and those who cling to the fictitious contract.

Research problem:

The problem raised by this research is that raised by formalism in the areas of authority of the will and the stability of transactions as a result of the conflict that occurs between the interests of the parties to the formality and the interests of others, whether it is good faith or not, which depends on the physical appearance of the commitment, and raises several questions, including what is the impact of the formality In the event of a conflict of interest between third parties and contractors? And who has the right to adhere to the hidden contract or the mock contract? What is the adequacy of the legal rules for not exploiting the fictitious by the contracting parties to harm others in good faith through deception and fraud and protecting this third party from the effect of the fictitious in contracting? How does the moot affect the contractors and the general successor? And why does the moot affect others and the private successor? Does a third party have the right to adhere to the real or apparent (fictitious) contract, as required by the fictitious rules of the Jordanian Civil Law? Does the search in the concept of others with regard to the effect of fictitious require a statement whether the concept of others in relation to the effect of fictitious is limited to the categories defined by civil laws represented by creditors and private successors? Or does it extend to persons who are not creditors or special successors? Are creditors considered third parties within the scope of the fictitious action, whether their right arose before or after the fictitious disposal? Is the definition of what is meant by a third party in relation to a third party in relation to a fictitious one limited to the personal creditor and the private successor of each of the contracting parties, or does the meaning of the third party denote anyone who was not a party to the contract or a general successor to one of its parties? Is the right to contest a fictitious objection or adhere to it limited to the creditor and the private successor, or are there other persons entitled to do so?

Research Methodology:

The study of this research is based on the analytical descriptive approach, so the researcher focused on studying and analyzing the legal texts in the Jordanian Civil Law, citing some judicial rulings issued by the Jordanian Court of Cassation, and as we are in the process of studying a subject that mainly needs extrapolation of the legal texts that govern it, analysis, presentation and discussion of jurisprudential opinions.

Search Plan:

In studying **The effect of the simulated contract case on others in the Jordanian civil law**, the researcher relied on the following plan:

The first topic: the legal concept of non-good faith in the simulated.

The first requirement: the categories who are considered to be others with regard to the effect

of sham.

The second requirement: the conditions necessary to benefit from the legal protection of others.

The second topic: the conditions for the exceptional protection of others and the content of his protection for the effects of imaginary.

The first requirement: the conditions for exceptional protection for others.

The second requirement: the content of the protection of others for the effects of imaginary.

The first topic

The legal concept of non-good faith in the simulated.

The concept of third party differs in one subject from it in another subject, so what is meant by third party in fictitious is not what is meant by third party in the effects of the contract. However, the common idea in all these situations is that a certain legal effect may extend to a person whose general principles of law require protection from being extended to him, so he is considered a third party in relation to this effect.(1)

We will divide this research into two independent requirements. (First requirement): the categories who are considered to be others with regard to the effect of sham. (Second requirement): Categories that are not certain that they are considered other than with regard to the effect of the simulated.

The first requirement

The categories who are considered to be other than the sham effect

It is natural that outside this framework there are persons or groups that cannot be considered other than the effect of formalism. We will discuss the concept of the third party in the form of two branches as follows: (Part One): Creditors. And (the second branch): the special caliphs.

First branch

Creditors

As long as considering the creditors of the contracting parties in fictitious third parties is a departure from the general rules in the effects of contracts, which require the applicability of the contract to the creditors, because they must bear the actions of their debtor, except in the case of fraud from them, who are affected by changes in the financial liability of their debtor because it is a guarantor for the fulfillment of their debts in accordance with Article (365) of the law The Jordanian Civil Court said: “With observance of the provisions of the law, all the debtor’s funds are a guarantee for the fulfillment of his debts, and all creditors are equal in this guarantee.”

Thus, the creditors become in a position similar to the position of the general successor who is affected by the changes in the financial estate of his successor, and the general successor is considered one of the persons to whom the contract applies according to Article (206) of the Jordanian Civil Code, which stipulates that: (The effect of the contract goes to the contracting parties and the general successor without prejudice to the rules related to inheritance, unless it appears from the contract, the nature of the transaction, or the text of the law that this effect

does not extend to the common successor).

The question that arises here is, are creditors considered to be third parties within the scope of the sham suit, whether their right arose before or after the sham disposal?

In order to answer this question, jurisprudence differed regarding the description of this third party in terms of the date of his acquisition of the right. The non-applicability of the fictitious to protect the general guarantee, regardless of his acquisition of the right.(2)

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- (1) See Al-Sanhouri, Al-Wajeez in the General Theory of Commitment, Rulings of Commitment, Manshaat Al-Maarif, Alexandria, 2004, item 890, p. 978.
 - (2) See Abdul-Razzaq Al-Sanhouri, Al-Wajeez in the General Theory of Obligation, Rulings of Obligation, Manshaat Al-Ma'arif, Alexandria, 2004, Paragraph 890, p. 981. See Abdul-Baqi Al-Bakri, Explanation of the Iraqi Civil Law, Part 3, Implementation of Obligation, Al-Zahra Press, Baghdad, 1971, p. 343. Refer to Jamil Al-Sharqawi, The General Theory of Commitment, Book Two, Rulings of Commitment, Dar Al-Nahda Al-Arabiya, Cairo, 1992, p. 103.

The second aspect of jurisprudence goes to the opposite of the previous opinion, and limits the ordinary creditor in the fictitious to those who acquired a right or received it from the fictitious disposer at a later date on the fictitious disposal, and the justification for this trend is that the protection established in the fictitious one benefits from the ordinary creditor at a later date because this disposal created an apparent situation He was deceived by the ordinary creditor who acted in a serious manner on the same place at a date subsequent to the fictitious disposal, but whoever acquired his right at a date prior to this disposal does not benefit from the protection prescribed in the fictitious because he was not deceived by the apparent disposal that arose from the fictitious simulated(3)

A third party is considered within the scope of the fictitious lawsuit the personal creditor of each of the two contracting parties. If the fictitious contract was a sales contract, for example, then the creditor of the seller and the creditor of the buyer are considered to be from third parties, and this capacity gives the creditor the right to challenge the actions of his debtor because it is most likely that the behavior of the fictitious debtor is with the intent to reduce the general guarantee of the creditors and in the destination Corresponding, this characteristic gives the creditor the right to adhere to the fictitious disposition if this disposition increases the general security of his debtor. The capacity of a third party is established for the ordinary creditor, whether his debt is due for payment or not due for payment, because the lack of maturity of the debt does not prevent the creditor from being covered by legal protection from the effects of fictitious disposal.(4)

Undoubtedly, the ordinary creditor is considered a third party with regard to the fictitious effect, whether his right arose at a date prior to the fictitious disposal or at a date subsequent to it, because the text of Article (368) of the Jordanian Civil Code was general for all creditors, in addition to the fact that this text was mentioned in the chapter on preservation On the general guarantee of the creditors, which means differentiating between one creditor and another in legal protection from the actions of the debtor that are harmful to their interests. Likewise, the

ordinary creditor loses his capacity as a third party with regard to the fictitious effect if he files an indirect lawsuit in the name of his debtor, as it is not permissible for the one against whom the indirect lawsuit is instituted to argue against the creditor by the concealed contract, as what applies against the creditor in this case applies against his debtor as long as he exercises the rights belonging to him.(5)

(3)See Muhammad Abd al-Harashah, *The Idea of Non-Applicability of Legal Disposition, a Comparative Study*, Al Ajyal Press, 2002, pg.

(4) See Sami Abdullah, *The Formal Theory in Civil Law, a comparative study*, Dar Al-Iman and Al-Wafaa for Publishing and Distribution, Beirut, 1977, Paragraph 485, 2003, p. 190. See Anwar Sultan, *Summary of the General Theory of Commitment, Ahkam al-Itizam*, Dar Al-Nahda Al-Arabiya, 2002, Paragraph 158, p. 160.

(5) See Ramadan Abu Al-Saud, *Ahkaam al-Itizam*, Dar al-Jami`ah, 1994, p. 215. See Hassan al-Majali, previous reference, p. 191. Refer to Sami Abdullah, previous reference, paragraph 485, p. 339.

Section two

Special caliphs

The special successor is the one who receives from his predecessor the ownership of a specific thing or a right in kind over this thing. The buyer, the gifted person, and the legatee with a specific specific item are considered each of them a special successor to the seller, the donor and the testator in a specific thing, and this is a succession in the ownership of a specific item. The successor may be in a real right over the thing, so the owner of the usufruct is a special successor to the one from whom he received this right, and the mortgagee creditor is a special successor to the mortgagor in a real right located on a specific property, just as he is considered a special successor who receives his predecessor in a personal right, like the assignee, so he is a special successor to the assignor in assigned right. It is considered a special successor and therefore is considered a non-partisan with regard to the effect of the fictitious behind the special successor.(6)

The following question arises: Is defining what is meant by a third party in relation to third parties with regard to superstition limited to the personal creditor and the private successor of each of the two contracting parties, or does the meaning of the third, ?

To answer this, it can be said that if a person is considered to be a third party, he may adhere to the real contract or the fictitious contract according to his interest. This has been explicitly stated in the Jordanian Civil Law according to Article (368/1) that: (If a fictitious contract was concluded, then the creditors of the contracting parties and the private successor, if they are in good faith, may uphold the fictitious contract, and they may also adhere to the concealed contract and prove by all means the fictitious contract that harmed them).

It should be noted that he is considered the special successor of a third party with regard to the fictitious effect, whether his right was prior to the fictitious disposal or subsequent to it. Likewise, the special successor does not have the characteristic of altruism with regard to the fictitious effect of his succession to his predecessor in a personal investigation, so the assignee

is considered a non-believer in relation to the disposition of his fictitious assignor ancestor who gained him a right on the object of the fictitious disposition, so the assignee may, as a non-fictitious person, adhere to the fictitious disposition, arguing against the assignee fictitiously. contract, and that the real contract remains on the thing whose ownership is disposed of.(7)

Section III

Categories who are not considered goyim

There is no doubt that the third party in relation to the fictitious contract is the one who was neither a party to it nor a representative, and built his dealings with the recipient in good faith, considering that the fictitious contract is the real contract and has a legitimate interest that requires adhering to the fictitious contract. The principle is that the concealed contract, as the contract that has a legal existence, is applicable to third parties and enforceable against him, even if the latter is ignorant of it, believing in the seriousness of the apparent contract. It is necessary to protect the creditor and the private successor in his dealings with the contracting parties, as when a person deals with the law requires his protection from the enforcement of the contract against him. Thus, he may adhere to this contract in the face of the contracting parties, provided that it is of good faith, and therefore in this case he is considered adhering to a fictitious contract contrary to the real will of the contracting parties, which must be enforceable against them and the right of others in principle. As the creditor or the special successor in this case does not ask the judiciary for protection from the binding effect of the real contract, as they are protected according to the principle of relativity of the effect of the contract, but they ask for protection from its prerogative and enforcement against them.(8)

The question that arises here is whether the right to contest a fictitious objection or upholding it is limited to the creditor and the private successor, or are there other persons entitled to do so?

To answer this, we find that the effect of the sham is not limited to harming the rights of creditors and the private concealment of the sham parties, but rather extends them to include other groups whose rights and positions may be affected by the effects of the sham's behavior, and these categories are as follows:

First: the intercessor: The two contracting parties may enter into a fictitious contract, stating in it a price less than the real price in order to pay lower registration fees, or mentioning in it a price greater than the real price in order to deprive the preemptor from owning the property sold on preemption, or they may conceal the real donation contract with a fictitious sale contract to deprive the preemptor also of Owning the property or concealing the real donation contract with a fictitious sale contract. In all these cases, the intercessor has an interest in holding on to any of the two contracts, and a third party cannot hold on to any of the two contracts, whichever of them achieves an interest, unless it is from the category of others with regard to the moot effect. However, jurisprudence has settled on considering the preemptor as something other than the fictitious contract, even if it is not mentioned in the text, as the preemptor has the right to adhere to the fictitious sale contract concluded on the grounds that it is a real contract in the event that the price contained in it is fictitious less than the real price, provided that it is in good faith.

(6) See Abd al-Razzaq al-Sanhouri, previous reference, paragraph 890, p. 982. See Anwar Sultan, previous reference, paragraph 158, p. 160. Sami Abdullah, previous reference, p. 341.

(7) Refer to Abd al-Razzaq al-Sanhouri, previous reference, paragraph 890, pg. 981. See Hassan Ali al-Dhanoun and Muhammad Saeed al-Rahu, al-Wajeez in the general theory of commitment, part two, provisions of commitment, a comparative study, Wael Publishing House, p. 126. See Abd al-Samee Abd al-Wahhab Abu al-Khair, The Theory of Commitment in the Egyptian Civil Law, Part Two, Provisions of Commitment, without a publishing house, 2006, Paragraph 91, p. 181.

(8) See Abd al-Razzaq al-Sanhouri, previous reference, paragraph 891, pg. 982. See Ali Faisal al-Siddiqi, The Other and the Authenticity of the Contract, Constitutional Studies Journal, Issue 3, 2014, p. 14.

Second: The beneficiary in the fictitious stipulation contract:

Article (210) of the Jordanian Civil Code stipulates the following: (1- A person may contract in his name on rights he stipulates for the benefit of others if he has a personal interest, material or moral, in implementing them. 2- This condition results in the third party gaining a direct right before the contractor 3- It is also permissible for the stipulator to demand the execution of what was stipulated in the interest of the beneficiary, unless it appears from the contract that the beneficiary alone has the right to do so.).

It is clear from the text of the above article that the stipulation in the interest of others implies a real departure from the rule of limiting the benefits of contracts to the contracting parties to the exclusion of others. The contractor is bound before the stipulation in the interest of the beneficiary, so the latter gains a direct right, even if he is not a party to the contract. In this sense, the contract itself is a source of this right. This depiction, despite its simplicity and clarity, has the merit of revealing the face of this system and highlighting its diagnoses in terms of its anomaly from the rule of the general rules in the law. The devolution of the benefit of the contract to non-contractual ones from foreign laws was an exception that was applied only in limited cases, but it was elevated to the rank of the original and extended its scope to all cases. The expansion of the application of this principle has reached a great extent, and it has ended with the permissibility of stipulating that if the beneficiary is a future person, or a person who has not been appointed at the time of retirement, as long as it is possible to appoint him when this contract produces its effect, as is the case in insurance for the benefit of the beneficiary and the offspring of the insured.(10)

The second topic

Conditions of exceptional protection for third parties and the content of their protection against imaginary effects

Despite the multiplicity of legal protection for bona fide third parties within the scope of the moot lawsuit, exceptional conditions for legal protection must be available for the content of this protection for the moot effects, and to clarify this we will divide this topic into two requirements as follows: The first requirement: (exceptional protection conditions to others)

and the second requirement: (the content of the protection of others for fictitious effects).

The first requirement: the conditions for exceptional protection for others:

It should be noted that the adjective of altruism alone is not sufficient to benefit from the exceptional protection from the effects of sham. Rather, other conditions must be set in order for others to enjoy this protection, which requires us to address them as follows: (the good faith of others) in the first section and (that the third party has a legitimate interest by adhering to the apparent contract) in the second section as follows:

(10) See the explanatory notes to the Jordanian Civil Law, the Bar Association, Amman, prepared by the Technical Office, pg. 240.

Section One: The Good Will of Others:

The criterion for adhering to the options of Article (368) of the Jordanian Civil Code is the good faith of others, and accordingly the Jordanian legislator stipulated, according to the aforementioned article, that: (If a fictitious contract was concluded, the creditors of the contracting parties and the private successor, when it is in good faith, may adhere to the fictitious contract...).

First of all, it is noted that the Jordanian legislator excluded the ill-intentioned third party from the third-party sect even though he is not a party to the sham party, in order to limit the persons who fall within the sham third-party sect, so that only the bona fide third party enjoys the options of Article (318) above. But the questions that arise here are what is meant by the good faith of others? And what time should good faith be available? What are the factors affecting goodwill?

The jurisprudence and jurisprudence are unanimous that what is meant by good faith, which allows a third party to adhere to a fictitious contract contrary to the principle of relying on the real will of the contracting parties, is that this third party has no knowledge of the fictitiousness at the time of his dealings with one of its parties, i.e. at the time when his right arose, i.e. ignorance of the fictitious existence, since That if he knew of its existence, he would not have been able to adhere to the apparent situation represented in the apparent contract, so the reason for good faith is ignorance of the hidden contract, i.e. being deceived by the formality and relying on the seriousness of the apparent contract and being reassured about it and dealing on its basis.(11)

It follows from this that the knowledge of the fictitious is that the knowledge of the third party of the existence of the concealed contract at the time of his dealings with one of the fictitious parties denies his good faith and prevents the conferment of legal protection on him, so he can no longer adhere to the options of Article (368) of the Civil Code. It is not accepted from the third party to adhere to his ignorance of the formality, because the registration or publicity of the concealed contract loses the characteristic of concealment, because the requirement of registration or publicity is to establish a conclusive presumption that everyone knows what has been registered, so the third party cannot then prove the opposite.(12)

Section Two: That the third party has a legitimate interest by adhering to the apparent contract:

Article (3) of the Jordanian Code of Civil Procedure stipulates that: (1- Any request or defense shall not be accepted in which its owner does not have an existing interest approved by the law. 2- The potential interest is sufficient if the purpose of the request is as a precaution to ward off imminent damage or to ascertain a right to disappear evidence when it is disputed).

(11) See Abd al-Razzaq al-Sanhouri, previous reference, paragraph 892, p. 985. Anwar Sultan, previous reference, paragraph 158, p. 162.

(12) See Ismail Ghanem, *The General Theory of Commitment, Rulings of Commitment*, Cairo, without a publishing house, 1966, p. 240. See Ramadan Abu Al-Saud, *Rulings of Commitment in the Egyptian Civil Law*, University Press, Alexandria, 1988, p. 219.

Based on the above text, it is clear to us that the third party has a legitimate interest in invoking the fictitious, that is, his adherence to the apparent contract, and this interest is represented in defending and maintaining his right and interest and paying the damage incurred by him as a result of the fictitious, and for this he has the right to prove that the fictitious will certainly be harmful to his rights without It proves that actual damage has occurred as a result of a fictitious result, and this is a required condition in any lawsuit or defense, as it is not acceptable for any person to file a lawsuit or make a payment before the courts unless he has an existing legitimate interest approved by the law from this defense or that lawsuit represented in the damages or the damages that may be caused to him, as the possibility of the damage occurring is sufficient to file a moot claim or argue its existence.(13)

It should be noted that if the intent of the third party to invoke the formality is to harm and defame the parties to the contract, then this is not considered as a legitimate interest, and therefore it is not justified for him to adhere to his protection from the effects of the formality. In addition, the interest of others in adhering to his protection from the sham effects is completely negated if the obligations arising from the real contract are implemented, because this legal protection does not amount to nullifying the legitimate legal effects that resulted from the real contract. Undoubtedly, if the debtor committed himself in the real contract to pay an amount greater than the amount mentioned in the fictitious contract and actually paid this, then the creditor has no right to file a lawsuit to recover the difference between the two amounts on the pretext that he adheres to the fictitious contract.

The second requirement: the content of third party protection for imaginary effects:

The Jordanian legislator worked to protect bona fide third parties from fictitious behavior by not executing the real behavior against him by enabling him to adhere to the fictitious contract, and the content of his protection in relation to fictitious effects is determined by proving his right to choose to stick to any of the fictitious or real contracts, whichever is in his interest. And Article (368) of the Civil Code stipulated that: (1- If a fictitious contract was concluded, then the creditors of the contracting parties and the private successor, if they are in good faith, may uphold the fictitious contract, and they may also adhere to the concealed contract and prove by all means the fictitious contract that harmed them. 2- If the interests of the concerned parties conflict, and some of them adhere to the apparent contract and others adhere to the hidden contract, the preference is given to the first. Based on the text of the above article, we find that the Jordanian legislator organized the content of legal protection for bona fide third parties from

sham effects. And we will divide this demand into three branches, as follows: The first branch: (the right of third parties to adhere to the fictitious contract), the second branch: (the right of third parties to adhere to the covert contract), and the third branch: (the conflict between the interests of third parties).(14)

(13) See Johnny Elias Marzoufah, *Surrealism, Its Constituents and Effects*, Master Thesis, Al al-Bayt University, 1998, pg. 224.

(14) See Hassan al-Majali, previous reference, p. 205. See Sabri Hamad Khater, previous reference, p. 200.

The first subsection: the right of third parties to adhere to the fictitious contract:

Undoubtedly, the choice of the right of third parties to adhere to the apparent contract is the essence of protecting bona fide third parties from the effects of sham behavior in general, which the Jordanian legislator referred to for third parties according to the text of Article (368) of the Civil Code, similar to the civil legislation that granted third parties to adhere to the apparent contract. This is because it constitutes a departure from the rule of the general rules governing the realization of the true will of the contracting parties. With this option, the Jordanian legislator gave protection to others, protecting him from exploiting sham behaviors harmful to his interests.(15)

Based on the foregoing, the most important characteristic of the fictitious one emerges, which is the characteristic that distinguishes it from other legal situations, as it is permissible for a third party to cling to the fictitious contract if he has an interest in that, according to the text of Article (1/368) of the Jordanian Civil Code by saying: (If a fictitious contract is concluded, the creditors of the contracting parties and the private successor, if they are in good faith, may uphold the fictitious contract...). It is clear from the text of the above article that the lesson in determining the time of proving good faith is the time of dealing and the emergence of the obligation, which is the time when the contractor was deceived by the fictitious contract of the contracting party with him and based his dealings on it, so the law gave him the right to adhere to this apparent contract in order to protect the good faith that is necessary to act, which is required transaction stability.(16)

There is no doubt that this contract has created an appearance that the third party is reassured by, and then the creditor of the purchaser in the fictitious sale has the right to cling to the fictitious contract so that he can execute on the property that was considered in relation to him to be included in the property of the buyer according to the fictitious contract, even if the right of this creditor is fixed In the possession of the purchaser prior to the issuance of the fictitious sale, as previously stated. Likewise, the creditor of the purchaser does not have the right to implement the property. Rather, all the creditors of the purchaser participate with him in that, for the same reasons that we presented in the creditor of the seller. Likewise, the private successor who earned his right from the purchaser may adhere to the fictitious contract, and if the fictitious purchaser sells the property in earnest to a second buyer, this buyer with the second may adhere to the fictitious contract and consider that the ownership of the property has been transferred to him from the owner.(17)

(15) See Hassan al-Majali, previous reference, p. 206.

(16) Refer to Abd al-Razzaq al-Sanhouri, previous reference, paragraph 892, pg. 984.

(17) See Muhammad Hossam Mahmoud Lotfi, *The General Theory of Commitment*, Al-Ahkam, Cairo, without publishing house, 2008, p. 103.

The interest of third parties is evident in adhering to the fictitious contract in various forms, such as the interest of the fictitious buyer's creditor in adhering to the apparent contract until the sold item enters the general guarantee of his debtor, and also the interest of the private successor of the fictitious buyer in adhering to the fictitious predecessor's contract until the ownership of the sold property is transferred to him. Likewise, the interest of the mortgagor creditor is clear in adhering to the fictitious contract of his predecessor until the ownership of the real estate or movable property is transferred to him to his mortgage debtor in order for him to obtain the right of mortgage. It follows from the third party's adherence to the fictitious contract that the contracting parties will not be able to invoke the real contract against him, so the seller, if disputed by the buyer's creditors or his private successor, does not have the right to cling to the ownership of the sold property or the entire price, on the pretext of the existence of a real disposal that completely cancels the effects of the fictitious disposal or determines the real price of the thing sold. The creditor of the fictitious purchaser or his successor in execution of the fictitious property, even if his right was owed by the purchaser before the fictitious purchase took place, as previously stated.(18)

The following question arises here: Is the availability of the adjective insufficient to adhere to the (apparent) contract?

As long as the basis for the third party's adherence to the apparent contract is his confidence in this contract, then his adherence to it must be in good faith legally established according to the text of Article (368) of the Civil Code, i. Rather, I think that it is a serious contract and reassured him and built his dealings on it. It is enough for him to be ignorant of the fictitiousness of the contract at the time of his dealings, even if he knew about it afterwards. It is assumed that a third party in good faith has no knowledge of the hidden contract, and whoever claims otherwise must prove his claim. Since knowledge of the hidden contract is a material fact, it is permissible to prove it in all ways, including evidence and presumptions.(19)

A question arises here, which is what if a bona fide third party adheres to the fictitious contract, while the two contracting parties had initiated the registration of the real contract?

The registration of the real contract does not achieve the goal that the fictitious contracting parties envisage in concluding the fictitious disposition, but it represents a major problem that hinders the protection of bona fide third parties from the effects of fictitious dispositions, and since the majority of jurisprudence tends to consider the registered or publicized contract an argument against all.(20)

See Anwar Sultan, previous reference, 160, p. 164. See Hassan al-Majali, previous reference, p. 207.

See Abd al-Razzaq al-Sanhouri, previous reference, paragraph 892, pp. 985 and 986. See

Sami Abdullah, previous reference, paragraph 540, p. 373.

Section Two: The Right of Third Parties to Uphold the Concealed Contract:

The principle is that the hidden contract, which is the contract that has a real existence and to which the will of the contracting parties has directed, is the one that applies, even with regard to third parties. As for the apparent contract, it does not exist, because the principle does not apply to it, even with regard to third parties, unless it has an interest in that to adhere to the real contract and challenge the formality of the apparent contract by all methods of proof, and he may adhere to the real contract even if he was unaware of its existence in the first place. There is no doubt that the apparent contract is a serious contract, even if the apparent contract was endorsed by a ruling, that does not preclude contesting it by formality and sticking to the hidden contract.(21)

The interest of a third party in adhering to the covert contract appears in many cases, such as the interest of the seller's creditor in adhering to the covert contract if the fictitious contract is absolute, so that the sold item does not fall out of its general guarantee, and his interest if the fictitious one is relative, if the disposal was a gift that took place in the form of a sale by adhering to the reality of the contract, even It is easy for him to challenge it on the grounds that the dispositions are effective without being assigned to prove the debtor's fraud and the knowledge of the person to whom the disposition was issued.(22)

It should be noted that as part of the interest in adhering to the covert contract, the preemptor adheres to it if the price included in it is less than the price contained in the fictitious contract, as is evident in the interest of the private successor, such as the purchaser or the mortgagee in challenging the fictitious disposition issued by the predecessor or the mortgage debtor to A third person, so that this disposition does not apply to him, and until the right he disposed of passes to his predecessor. However, the adherence of others to the hidden contract may be confronted by the two contracting parties by registering the fictitious contract.(23)

The following question arises here: Is the registered fictitious contract invoked if it is on real estate that has been registered or on movables that must be registered, against third parties?

(21) See Sami Abdullah, previous reference, paragraph 543, p. 376.

(22) See Ramadan Abu Al-Saud, previous reference, pp. 217 and 218.

(23) See Anwar Sultan, previous reference, paragraph 159, p. 162.

Article 5 of the Law on the Disposition of Immovable Funds prohibits contesting the fictitiousness of contracts contained in immovable property that are documented with registration documents, as it stipulates that: (claims for substitution and pseudonymity in property and other immovable property shall not be heard if they are documented in registration

documents). In view of the generality of the above text, the question arises here about the extent to which it applies to others? Is it forbidden to challenge the formality of contracts documented by registration bonds?

To answer this question, it has been dealt with within a jurisprudential and judicial framework. On the jurisprudence level, one of them believes that the prohibition contained in Article 5 of the Law on the Disposal of Immovable Funds relates to contracting parties only, while non-contractors are not prevented from claiming a sham to which they were not a party, especially if the fictitious parties attempt to smuggle their money away from the creditors, who are considered third parties in relation to the fictitious disposal, whether they are creditors of the seller or the buyer.(24)

As for the judiciary, the Jordanian Court of Cassation harmonized between Article Five of the Disposal of Immovable Funds Law and Article Seven of the Evidence Law. The public employee writes down the data contained therein based on what he heard from the stakeholders without having seen it or investigated its validity, which is often related to the subject of the bond, and these bonds do not have absolute validity, so it is permissible to prove the opposite. The information received is often related to the type of disposal, the amount of the price, or its receipt.(25)

Section Three: Conflict between the Interests of Gentiles:

When a third party has the right to adhere to the apparent contract or the hidden contract according to his interest, it often happens that a dispute arises among third parties due to the conflict of interest. It suffices to suppose in a fictitious sale that the seller has a creditor and the buyer a creditor. The seller's creditor has an interest in sticking to the hidden contract, and the buyer's creditor is in his interest to stick to the apparent contract. We cannot take the two contracts together, so one of the two interests must prevail. Either we are keen to respect the true will of the contracting parties. Therefore, the interest of the seller's creditor or the one who has acquired a real right from the seller prevails, and we take the hidden contract, in the sense of stability Dealing and stability, so the interest of the buyer's creditor prevails, or who has earned a right from the buyer, and we take the apparent contract.(26)

(24) See Muhammad Al-Zoubi, *The Extent of the Power of Registering Real Estate Sales in the Jordanian Land Registry*, a research published in the *Journal of the Jordanian Bar Association*, the thirty-fifth year, Amman 1987, pp. 178 and 179.

(25) See Hassan Al-Majali, previous reference, p. 211.

(26) See Abd al-Razzaq al-Sanhouri, previous reference, paragraph 893, p. 986. See Anwar Sultan, previous reference, paragraph 161, p. 165.

The Jordanian legislator settled this matter when it explicitly stated in Article (2/368) of the Jordanian Civil Code that:

It is clear from the text of the above article that the Jordanian legislator has worked to give preference to the interests of the Gentiles who cling to the sham contract. It follows from this that the creditor of the purchaser in a fictitious sale is preferred over the creditor of the seller, so he can execute on the fictitious sold property adhering to the fictitious contract, and the

seller's creditor is prohibited from executing on this fictitious property.(27)

(27) See Hassan al-Majali, previous reference, p. 213.

Conclusion

Praise and thanks be to God Almighty, and after completing the writing of the research and its title, The Effect of Fictitious Behavior on Others in Jordanian Law, and I have reached a set of results and recommendations, which we list as follows:

- 1- We find that there is an ambiguity in the text of Article (1/368) in the phrase (...so the creditors of the contracting parties), as it is considered a header for the meaning of the third party in the formal, by using this phrase, and in order to avoid this ambiguity, it was more appropriate for the Jordanian legislator to use the phrase third party, i.e. the person The third, instead of the phrase "contracting creditors".
- 2- The personal creditor of the fictitious parties is considered to be from a third party, whether his right is due for payment or not, as long as his right is free of conflict.
- 3- That the Jordanian legislator gave the option to a bona fide third party from the sham effects in general, and this constitutes a departure from the general rules governing the acts of the true will of the contracting parties.
- 4- The Jordanian legislator gave a good-willed third party to adhere to the fictitious contract and took a reconciling path between the apparent will and the subconscious will in order to protect the stability of the client and prevent the exploitation of fictitious actions to harm the interests of others.
- 5- The sham suit is a legal basis for the protection of bona fide third parties, and its content is the protection of bona fide third parties in the sham framework is to give him the right to uphold the sham disposal, and had it not been for the conclusion of the sham contract, this right would not have been proven to others.
- 6- The Jordanian legislator did not stipulate, according to the text of Articles (368 and 369) of the Civil Code, that the intercessor be from a third party, but the jurisprudence of the Jordanian Court of Cassation established this rule by considering the intercessor from a third party.

Recommendations:

- 1- We recommend the Jordanian legislator to reformulate the text of Article (368/1) of the Civil Code regarding the ambiguity surrounding the term third party, that is, the third person, by using this phrase in the text of the aforementioned article instead of the phrase creditors of the contracting parties.
- 2- He suggested that the Jordanian legislator stipulate that the moral of the fictitious contract is the real contract, whether between its parties or with regard to others, and that there is no lesson for the hidden contract, and then no one can resort to it for fear of their interests.
- 3- We suggest to the Jordanian legislator to expand the concept of third parties, especially in the sham case, and stipulate that the intercessor be considered from the category of third parties so that he can adhere to the fictitious and maintain the stability of transactions openly and

clearly, however, the jurisprudence of the Jordanian Court of Cassation established this rule by considering the intercessor from third parties, however, The decisions of the Court of Cassation are unstable and it is possible to reverse its decision.

4- We recommend the Jordanian legislator to expand the scope of legal protection for bona fide third parties dealing with the apparent owner, by stipulating the protection of bona fide third parties dealing with the debtor's successor against whom a lawsuit is filed for non-enforceability of the dispositions.

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