

The Moment of Entering into a Contract Under Russian and US Law

Guzel F. Nagumanova

Kazan (Volga Region) Federal University, Kremlevskaya Str., 18, 420008 Kazan, Russia

Abstract: This study substantiates questions of entering into a contract under the US Law and the Law of Russian Federation. In Anglo-American and Continental legal systems, the moment of entering into a contract is determined differently. In Anglo-American system, the contract comes into force when an acceptance has been sent to a person who had forwarded the offer. In Russia, the contract shall be recognized as concluded when a person who had sent the offer has obtained an acceptance.

Key words: Enter into a contract, place of entering into a contract, moment of entering into a contract, person, law

INTRODUCTION

A contract may be defined simply as a promise or set of promises that the courts will enforce (Reitzel and Lyden, 1997). Terms of a contract are essential in Civil Law since it is possible to enforce them through courts. The very moment of entering into a contract is important as well.

The moment of entering into a contract is an important aspect of civil rights and obligations implementation arising from contract. If a contract is recognized to be concluded, it is highly possible to enforce its rights and responsibilities. If a contract is not concluded it is not possible to sum up on its compliance. Therefore, the question of the very moment when entering into a contract is very important in civil practice.

The contract is one of the most important legal devices ever developed in the quest for economic security and a stable society. In common law, it is a prerequisite that both parties offer consideration before a contract can be thought of as binding. The doctrine of consideration is irrelevant in many jurisdictions, although, contemporary commercial litigant relations have held the relationship between a promise and a deed is a reflection of the nature of contractual considerations. If there is no element of consideration found, there is thus no contract formed.

RESEARCH

The moment when contract comes into force is described in Article 433 of Civil Code of Russia. It states that the contract is recognized to be concluded when a person who forwarded an offer gets an acceptance. This rule applies to the majority of contracts in Civil Law of Russia as in most cases the contract is considered to be

concluded at the moment of reaching an agreement on all the essential terms. The contract shall not be necessarily started for execution right away (for example, disposing property, paying money), thus, executing a contract shall not be immediately started after its conclusion.

An understanding of a contract conclusion under the US and Russian Law coincide in many respects. Essential conditions negotiation is recognized to be the moment of entering into a contract. At this point, the contract becomes legally binding and can be enforced.

However, an understanding of contract concluding place in Continental legal system and the Anglo-American legal system is different. In common Law, the “mailbox theory” rule is applied: the contract concluding place is the place of forwarding an acceptance and respectively, the moment of contract concluding is the moment of sending the acceptance to a person who makes an offer (i.e., an offerer). In Continental legal system, it is a place where the acceptance is obtained and respectively, the moment of contract conclusion is upon receipt of response by an offerer on the proposal to conclude a contract. Obviously, these two theories cannot be applied simultaneously.

Provisions of the Vienna UN Convention on Contracts for the International Sale of Goods (Part 2 of Article 18 and 23) also state that a contract is concluded at the time of obtaining the acceptance.

However, at other equal conditions, the “mailbox theory” admits a contract to be enforced earlier compared to the theory where the offerer obtains an acceptance (alike with Continental legal system and Russian legal system), since acceptance delivery time is not considered here. At the same time in mailbox theory, the offerer is already responsible for the transaction before obtaining an acceptance, i.e., the contract will be concluded before

an offerer will be notified about it. There can be various situations where within the time when an acceptance reaches an offerer the situation could change.

It appears that a reasonable balance of contract parties' interests can serve a "mailbox theory": it takes proper account not only of person's interests making an offer but also of person's interests accepting an offer.

Russian legislation has the norm that allows recognizing the time of contract conclusion. According to Article 436 in Civil Code, an offer received by the addressee can not be revoked during the period established for its acceptance, unless otherwise is stated in offer or does not follow from the nature of the proposal or its environment.

The irrevocability of the offer means that the offerer does not have a right to refuse from his proposal if the addressee has already received it, the reaction of the recipient is of little importance here: the addressee is not obliged to accept the offer unconditionally. The rule is dispositive and acts unless otherwise is provided in the offer or in proposal's nature or in its environment.

Therefore, if an offer is irrevocable, it allows the counter party to accept it and thus to establish the rights and obligations under the contract.

Russian Civil Law establishes three reasons for an offer to be recognized as irrevocable: if it says that it is irrevocable and if an offer's nature or its environment allows making such a conclusion. However, the latter two cases allow widest possible interpretation for "offer's nature or its environment". It allows a court without any guidelines established by the law to recognize, the treaty to be concluded in some cases while in others not concluded. This fact is inadmissible from stability and predictability viewpoints of civil practice and uniformity of judicial practice.

In some cases in order to conclude a contract it is not enough to agree on essential terms, disposal of property is needed as well. For example, a loan agreement calls for money transfer to a borrower as a necessary condition. Without a money transfer a loan agreement cannot be considered concluded, even if the parties have reached an agreement on all essential terms (loan amount, interest, repayment period). Therefore, even if there is an agreement, the terms of this agreement cannot be forced.

In some cases, the contract is subject to registration (for example, real estate sale). In such cases in addition to reaching an agreement on all essential terms of a contract, it requires registration at relevant state authority. A contract is considered to be concluded from a moment of such registration.

There are unilateral and bilateral agreements in the United States as well as in Russia. A unilateral contract is one in which only one party makes a promise. From that moment the party to whom the offer was made has a right to demand its execution. In the bilateral contract, besides, needs a promise from the other party.

However, it is not always possible to say for sure whether a proposal is made or whether or not it has a positive response. For example there is a problem in determining a proposal as a public offer. Article 437 of Civil Code of Russia states that advertising and other proposals addressed to an indefinite number of persons cannot be considered an offer. At the same time, the proposal containing all essential terms of a contract and which shows counter party's will to conclude a contract is recognized an offer. This study is very controversial and courts interpret it in different ways.

Russian doctrine proposes to distinguish offers made to an indefinite number of persons and offers which are addressed to all and sundry. If a proposal does not have a specific address and is made in an environment where it may cause an indefinite number of responses, it is considered to be facing the indefinite number of persons and is not recognized as an offer it is considered a call for an offer. In contrast an offer shall be treated as an appeal to all and sundry and has the power of an offer if it can only be accepted by any one any moment and if it could be removed before entering a new acceptance any time.

The «promissory estoppel» institution is used in Anglo-American Law: it is «a promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires».

Institutions' purpose is concluded in the ability to recognize the actual actions of parties' contractual relationship but a way to protect counter party's rights in such an agreement is to compensate the loss or specific performance. The outcomes depend on the type of an offer: unilateral or bilateral.

If it is a unilateral and gratuitous offer (e.g., donation), i.e., it does not oblige another counter party to forward anything in return then that party is entitled to demand fulfillment of this offer. In this case, the application of promissory estoppel places the fact of the unilateral gratuitous agreement.

If the proposal implies not only the rights but also the obligations for party that accepted the proposal then the application of promissory estoppel substitutes the fact of contract conclusion. In this case, the only way to protect the rights of a party that accepted an offer will be to compensate for losses.

This approach is fair: a party making an ambiguous offer that allows for the possibility of committing the response must admit that someone will commit these actions and will incur some costs. Costs arise from counter party's confidence to make an offer and the desire to enter into a contract. However, it is considered that the party making an offer did not want to enter into a contract. Therefore, in order to restore a justice, a party that made an ambiguous sentence can cover contractor's incurred costs. Lost profits are not included into these costs.

The demand for justice advocates another condition of promissory estoppel application: it is used in cases where the fairness should be restored.

Promissory estoppel has a definite advantage over a similar Article 437 of the Civil Code of Russia as it not so much focuses on the offer's content to conclude a contract as more on a possible counter party's reaction to this offer. The court, considering ambiguous legal force of an offer, determines it's content individually case by case which allows it to take into account actual circumstances in which an offer was made and a response that was committed.

Promissory estoppel's task as an institution is to determine the fact of contract conclusion and accordingly, the emergence of legal consequences.

Promissory estoppel also pays attention to the methods of redress (compensation of actual damage). Article 437 of the Civil Code establishes just the rules for qualifying offers for contract conclusion but it doesn't specify possible ways to protect violated rights.

Promissory estoppel is applied taking into account one more factor the parties' ability to be aware of their actions. Contract law allows a person to void a promise that he or she made while lacking mental capacity. Courts traditionally have judged a person's mental capacity by examining the person's ability to understand the promise (Gregory and Dixit, 1998).

A person who lacks mental capacity can void or have a guardian void, most contracts (except contracts for necessities). In most states, the standard for mental capacity is whether the party understood the meaning and effect of the words comprising the contract or transaction.

Therefore, if a party is not aware of its actions, it cannot be induced to execute a contract or to claim damages.

Russian doctrine states that a prerequisite for contract validity is a match between the declaration of a person's will with the will to conclude a contract. Hence, the contract cannot be considered concluded if a person was not aware of the surrounding environment and couldn't control the situation.

CONCLUSION

Reasons for these obstacles can be very different: disease, alcohol (narcotic) poisoning, emotional unrest caused by certain events or actions. At the same time, law stipulates an additional consequence of offer's invalidity made under the influence of delusion in the form of compensation for one of the parties' actual damage (Abova and Kabalkina, 2011).

In this regard, this method is very similar to promissory estoppel which also involves only real damage collecting but the offer it self is repealed oppositely to the law in the United States. In US if promissory estoppel is applied, the contract is still considered valid.

Promissory estoppel can be fully applicable in Russian Law, its essence does not contradict to the principles of civil law (Dobrachev, 2012). Its existence would strengthen legal awareness of participants in civil practice, enhance the enforceability of contracts through the possibility to claim damage in case of sending hasty offers and would limit unfair advertising.

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