

OPPOSABILITY AND EFFECTS OF DEBT ASSIGNMENT

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Abstract: *Nowadays, the modern trends and the more frequent use of debt assignment have led, both in comparative law and in the Romanian legislation, to a different approach on the assignment of receivables. We find this approach more fair and more accurate than that in the previous Romanian Civil Code, taking into consideration, on the one hand, the effect of assignment, namely the transfer of a right (the right to receivables) and not of a tangible asset, as well as, in fact, as shown above, debt assignment can be achieved (and could be achieved also under the old civil code) by means of other types of contracts, other than sale contracts, for example by means of donations.*

Key words: *debt assignment, assignment of contract, opposability of assignment, assigned debtor.*

1. Opposability of debt assignment

1.1. Introductory remarks

The important specific regulations on the legal requirements for the effects of debt assignment refer mainly to its *opposability* to third parties. In literature, in order to define the requirements for the opposability of assignment the phrase effectiveness conditions is sometimes used, justifiable by the fact that debt assignment bears no legal effects in the absence of the formalities of publicity / opposability [1]. Without claiming that the word *effectiveness* is wrong, we would rather use the traditional word of *opposability* used in the Romanian law, especially because the law itself uses this latter concept.

Third party means, for this purpose, the assigned debtor, its fidejussor, the

successive assignees of the same debt and, generally any person that may claim the existence of debt assignment, such as the creditors of the parties signing the assignment (especially the assignor's creditors). But, as in fact the assigned debtor and its fidejussor are "special" third parties, we will discriminate between the opposability of assignment to the assigned debtor/fidejussor of the assigned debtor and the opposability of the assignment to other third parties, therefore the approach of the matter of opposability shall be governed by such discrimination.

1.2. Opposability of debt assignment to the assigned debtor and to fidejussor

The Romanian law stipulates expressly two manners whereby the assignment becomes opposable to the assigned debtor,

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namely by *communicating* the assignment to the debtor and by the *acknowledgement* of the assignment by the debtor. The civil code of Quebec – the most important source of inspiration for our own civil code – mentions, in addition to the elements mentioned before, a third manner of opposability of assignment, namely *any other evidence* of the assignment opposable to the assignor, such as an unequivocal notice on a document or statement of bank account sent by the creditor to the debtor, but also a *collective* version of publicity, very peculiar, and being required due to the existence of several Canadian provinces that have different legal regulations, which, obviously is not appropriate for our domestic laws[2].

But the opposability of the assignment to the *fidejussor* is regulated expressly by the law in the same manner. We hereby refer to the *fidejussor* who guaranteed in person for the performance of the obligation under debt assignment, along with the assigned debtor. In this matter the new civil code is extremely clear and leaves no room for interpretation: the assignment is not opposable to the *fidejussor* unless the formalities required for the opposability of the assignment to the debtor were fulfilled for the *fidejussor* as well.

It is interesting to notice that, unlike the previous regulations (art. 1.393 of the Civil Code. 1864), the formalities of opposability of debt assignment to the assigned debtor are not as strict; thus, the old civil code required either the communication of the assignment by means of a bailiff (and not in any written form as now), or its acknowledgement by the assigned debtor by means of true document (not with fixed effective date, as required by the current civil code), even if, in practice, a more simple opposability of assignment was accepted (for example, by

document with fixed effective date or passive acknowledgement).

1.3. Communication of assignment to assigned debtor

The communication is the most frequent form of opposability of the assignment, and it is obviously more simple than the acknowledgement of the assignment by the assigned debtor; furthermore, this formality (notification) may be fulfilled both by the assignor and by the assignee and bears the same legal effects (it is obvious that the assignee is more interested in communicating the assignment). With the communication of the assignment the condition of its opposability to the assigned debtor is fulfilled, so that as of the day the communication has been received, the debtor is under the obligation of payment to the assignee; on the other hand, before the receipt of communication, the assigned debtor cannot be released from obligation unless by paying to the assignor. The communication of the assignment to the assigned debtor is a compulsory obligation even in the case of universal debt assignment, which nevertheless requires an additional condition of publicity, namely the registration of the assignment in the archives. However, the law does not require a deadline for communication, but it is obvious that such will be carried out without delay by the assignee (as he has the priority interest herein, as shown above), in order to avoid the case when the assigned debtor, being unaware of the assignment, makes a valid payment to the assignor.

The first important aspect to be borne in mind is that the requirement for communication is not aimed at the validity of the assignment document, but only at the *opposability* to the assigned debtor of the assignment. For this purpose, to

consolidate the legal nature of notification, the law states that debts are assigned by mere agreement between the assignor and the assignee, without the notification to the debtor, which means that the assignment between its parties bears full effects upon its signing, even if the opposability or publicity procedures have not been carried out; on the contrary, to the debtor, the assignment shall be binding upon the day such assignment has become opposable to them. Here, let us focus on the *form* of notification. The assigned debtor shall be notified by *written communication* addressed to them either by the assignor or by the assignee. With regard to the physical form of the notification, this may be on paper (by mail or fax), or electronically (e-mail), as the legal requirement is that such notification shall be made *in writing*. Therefore, the form of communication is in accordance with the provisions of the new civil code on notifications (for instance, also for the notice of delay to the debtor), which, as a rule does not stipulate strict requirements for the manner of communication, as was the case with the old civil code, where the notification was performed by bailiff. Thirdly, as to the *content* of assignment notification, it shall include some minimum information about the assignment, namely:

- it shall state at least the *assignee's* identity, including all the identification data, as a natural or legal entity;
- it shall identify in a reasonable manner the assigned *debt*, and in case of partial assignment, the notice shall state the scope of assignment, that is the amount of receivables under assignment; in order for the assignment notice to be fully binding it is necessary that, along with the notification, the assigned debtor shall provide a copy of the assignment document, otherwise the debtor is entitled to suspend payment.

- it shall *request* the debtor to pay for the debt to the assignee; in other words, irrespective of who carries out the notification – either the assignor or the assignee –, the debtor shall be requested to pay the debt to the assignee as of the day such debtor has become aware of the assignment.

Finally, let us note that when the assignment is communicated at the same time with the action submitted against the debtor, the latter cannot be forced to pay for trial expenses if such debtor pays the debt being the subject matter of the assignment before the first court hearing, except when upon the day the assignment has been communicated, the debtor was already in delay [3].

1.4. Acknowledgement of assignment by the assigned debtor.

Acknowledgement is the second legal manner (along with communication) whereby the opposability of debt assignment is ensured to the assigned debtor and to their fidejussor. However, the concept of *acknowledgement* of assignment used by the law should be construed neither as a *sine qua non* condition of validity nor as a sole condition of opposability of the agreement between the assignor and assignee. The acknowledgement of assignment by the assigned debtor is only an *alternative* to the notification, a formality that may be used instead of notification, which before, shall be communicated in writing. In other words, the evidence of acknowledgement of assignment by the assigned debtor (such as an acknowledgement notice by the debtor on the assignment document or on a different instrument issued by the debtor and stating the acknowledgement) saves the parties (assignor and assignees) the effort of notifying in writing the assignment to the assigned debtor. But, at

the same time, provided the procedure of assignment communication has been carried out, its acknowledgement by the assigned debtor or fidejussor is not necessary.

In terms of the form of acknowledgement, it is stated that, in order to clear any doubts concerning the will of acknowledgement, it shall have the form of a document with a fixed effective date and not an original document [4]. By virtue of law, the date of a document under private signature shall become opposable to third parties as of the day it has become effective in one of the manners stipulated by art. 278 of the new Code of Civil Procedure.

In the matter of debt assignment let us also bear in mind an aspect of essence; namely the *consent* of the assigned debtor, which we would believe that must be obtained for the validity or opposability of assignment. On the contrary, the general rule requires that the parties of debt assignment do not have to ask for the consent of the assigned debtor, the debt assignment is operated from the assignor to the assignee, irrespective of the debtor's stand. Such clarification is necessary taking into consideration the provisions of art. 1.317 par. (1) NCC on contract assignment in general, where the consent of the assigned party is necessary in advance. These provisions do not apply in the matter of debt assignment, as the latter are special legal norms that do not require any consent by the assigned debtor; on the contrary, from this entire legal regulation it is inferred that the assignment of receivables is allowed by default to the creditor, without the debtor's prior consent. However, *in exceptional* cases, the debtor's consent is requested only when, if applicable, the receivables are essentially connected to the creditor. We are referring here to the obligations taken *intuitu personae*, but only to such

obligations that do not give rise to debt that has been deemed as unassignable by law, which cannot be assigned even with the debtor's consent (the right to caretaking, either legal or conventional and the right to compensation for non-property damage).

1.5. Opposability of debt assignment to third parties (other than the assigned debtor and fidejussor)

The matter under discussion refers to the circumstances under which debt assignment becomes opposable to genuine third parties, for which, in certain cases, (and, we would add, as an exception to the principle of the opposability of the effects of a contract in general), specific *publicity* requirements shall be fulfilled. In terms of such third parties, we should distinguish between the case of debt assignment and the case of universal debt assignment.

An individual debt assignment should obviously have no effect on a third party, if we take into consideration the principle of contract binding relativity, as provided by art. 1.280 NCC. On the other hand, the principle of opposability of contract effects, as provided by art. 1.281 NCC states that a contract is opposable to third parties, who cannot prejudice the rights and obligations under contract; but, at the same time, the third parties may benefit from the effects of a contract, without being entitled to request its performance. Therefore, it shall be borne in mind that, as a rule, debt assignment is opposable to third parties without any other formality and any third party shall comply thereto. However, there is one exception, namely when the receivables being the subject matter of assignment arise from a lease contract, in which case both the lease contract and the contract assigning the revenues from rent shall be registered with the land register in order to ensure

publicity and opposability to third parties (art. 902, par. 2, entry. 6 NCC).

With regard to the opposability of a universal debt assignment, art. 1.579 NCC stipulates that such assignment whose subject matter is the current or future debt (but not universally, but individually), is opposable to third parties provided that the assignment is recorded in the *archives*. Nevertheless, recording the assignment in the archives does not suffice for the assigned debtor, as to such debtor, the assignment is opposable only by complying with the above mentioned requirements, namely communication of assignment or, where applicable, acknowledgement of assignment [5].

Another clarification is required here. Even if the law requires only the registration of the assignment whose subject matter is a universal debt in order that such assignment be opposable to third parties, the recording of any assignment in the archives is necessary in order to avoid the case when several so-called assignees claim the same debt. Thus, for successive assignees of the same debt, the assignee who was the first to register their assignment with the archives (*qui prior tempore potior jure* or *he who is earlier in time is stronger in law*) is preferred, irrespective of the assignment date or the assignment communication to the debtor (as for the debtor, however, there is no derogation regarding opposability of successive assignments, so that the assigned debtor shall be released by paying the assignment that was the *first* to be communicated to them or that such debtor acknowledged *first* by means of a document with fixed effective date).

Should the legal requirements on publicity not be observed, the general rules on publicity under the new civil code shall apply, namely *non-opposability* of assignment to third parties, except when it is proved that such third parties have

become aware of them in other manner. When the law states that simple awareness does not replace the lack of publicity (as is the case of assignment, where, in our opinion, the special opposability requirements on archive and land register registration are imperative), its absence may be claimed by any stakeholder, including the third party having become aware of the debt assignment in another manner. However, in all cases, the mere knowledge of debt assignment does not replace the lack of publicity to parties other than the third parties, who were aware of it. Finally, in our opinion, the publicity formalities shall be fulfilled *cumulatively* (and not alternatively, as other authors stated), because, according to the general rules under art. 23 NCC, the failure of performance of a publicity requirement is not covered by the performance of another.

2. Effects of debt assignment

2.1. Assignable right effect

The basic effect of the conclusion of an assignment agreement is the *definitive transfer* of some rights from the assignor to the assignee. Thus, in compliance with the law, the debt assignment transfers to the assignee all the rights that the assignor holds in connection to the assigned debt, as well as the rights of warranty and all other accessories of the assigned debt.

The most important right arising from a binding rapport is generally the right of the creditor to receive the specific *debt* assumed by the debtor or to cash such debt, when such debt is an amount of money. In our case, the assignee acquires such right by means of debt assignment. It is important to bear in mind here also that the assignee acquires the right of cashing the value of the debt under assignment and

not the value of the price paid by such assignee to the assignor, which, most of the times has a lesser value than the value of debt or may not exist if the assignment has been carried out free of charge. But the right of debt includes, in its broadest meaning, all the *actions* which such right involves in order to be fully capitalized, if applicable, namely the right of requesting the termination of contract for failure of performance or the right of requesting forced enforcement of obligation; all these action rights shall become the property of the assignee, who will be able to dispose of them as they deem appropriate, to the same extent as the assignor before the assignment.

In the same manner, the assignee acquires the exclusive right of cashing debt *accessories*. That means interests (both the proper interest, with penalties, calculated as damages of delay, and the remunerative interest, when the assignment is that of a debt arising from a loan contract), penalties (deferred interests or compensatory damages) and, in general, any other accessories the debt generates or has generated and to which the assignee is entitled by virtue of the old principle *accessorium sequitur principalem* (the accessory rights have the fate of the main right, therefore if the assignee has the right of cashing the debt, he also has the right to cash all accessories arising from such right). Furthermore, by virtue of the same principle, which, as we have seen, refers to the time of the main right acquisition, the interests and any other revenues connected to the debt, which have matured to the time of assignment but have not been capitalised by the assignor, are due to the assignee as of the date of assignment (however, upon agreement, the parties may derogate from such rule, so that the assignor be able to collect such accessories).

With regard to guarantees, the fundamental rule is that according to which, once the debt has been assigned, all guarantees connected to the debt shall be assigned along with it by the assignor to the assignee [6]. Therefore, fidejussion, mortgage and other real warranties shall be transferred. For example, the fidejussor brought by the assigned debtor to warrant for the performance of the obligation to the original creditor (assignor) shall be maintained for the assignee as well; chattel mortgage or real property mortgage on behalf of the original creditor (assignor) to ensure the performance of obligation by the assigned debtor shall be fulfilled also by the debt acquirer (assignee). There are two exceptions from the rule of default assignment of warranties, namely pledge, as well as for fidejussion.

Thus, when the guarantee of the debt is a pledge, the assignor cannot transfer to the assignee the ownership of the goods under pledge without the *consent* of the constitutor (i.e. the assigned debtor who is also a pledgee debtor). For instance, if there is a due debt to the assignor by their debtor and such debt has been guaranteed by means of a pledge on property surrendered to the assignor, debt assignment (possibly along with the interests or other due accessories) shall not automatically give rise to the assignor having to transfer also the property under pledge. Such property may be assigned (surrendered) by the assignor to the assignee still as real debt guarantee (pledge), provided that the assigned debtor (having constituted the pledge) consents to it. Should the pledge constitutor (assigned debtor) oppose it, believing that the assignee is not sufficiently trustworthy to take possession of their property, such pledged property shall stay in the assignor's custody. Similarly, when the assigned debt guarantee is a fidejussion,

such assignment shall not be opposable to the fidejussor unless the formalities required for the assignment opposability to debtor have been complied with also for the fidejussor themselves. It means that, if the fidejussor was notified by written notice or acknowledged the assignment by a privately signed document, by means of the assignment effect, such fidejussor shall become the fidejussor of the assignee, more exactly the fidejussor of the same debt, but such fidejussor may be prosecuted by the assignee. If, on the contrary, the formalities for opposability to the fidejussor have not been complied with, the debt shall be duly assigned, but the fidejussor may not be prosecuted by the debt assignee, in case the debtor does not pay the debt.

2.2. Obligations of the parties

2.2.1. Submission of documents

With regard to the obligation of submitting documents, the assignor shall submit to the assignee in true copy the document acknowledging the debt, as well as other instruments proving the assigned right; the submission the document confirming the debt is without any doubt an obligation of *doing* and not of *giving*, as, by its nature, debt assignment is not a real contract unless its subject matter are bearer bonds. In case of *partial* debt assignment, the assignee is entitled to an authenticated copy of the document confirming the debt, as well as to the true copy mentioning the assignment and being signed by the parties. Should the assignee acquire the remaining debt, then the original document shall be submitted. At the same time, the assignor shall send all the documents certifying debt accessories and/or guarantees, such as fidejussion or mortgage contracts.

2.2.2. Debt guarantee obligation

In terms of the guarantee obligation, it is important to note from the start an important aspect of the assignor's guarantee obligation, which, from this perspective may seem similar to the obligation of a seller guaranteeing the purchaser against the defects of property under sale. There are two distinct concepts to be discussed here, namely the guarantee for the existence of debt and the guarantee for creditor's solvency.

The guarantee for the existence of debt is a *lawful* guarantee, which cannot be removed or limited, in our view by the agreement of the parties, because otherwise the assignment agreement would have no subject matter and no cause. The guarantee for the solvency of the debtor is optional, i.e. it may be settled, within certain limits, by party agreement. From this perspective, the *fundamental rule* to be noted in this matter is that according to which the assignor *shall* guarantee to the assignee only for the *existence* of debt and *not* for the solvency of the assigned debtor. In other words, the assignor guarantees that there are real receivables which the assignor has toward a third party (assigned debtor) and that such receivables are valid *at the time of assignment* (they arise from a perfectly valid binding relation, according to general rules); when guaranteeing for the existence of the debt, the assignor implicitly guarantees for the existence of the accessories and guarantees accompanying it (but not for the completion of such guarantees). However, there are two exceptions from this rule, so that the assignor shall be liable also for the solvency of the assigned debtor (and not only for the existence of debt) in the following two cases: when the parties have so specified in the assignment document; when the law expressly provides for such liability.

In the first case, the assignor may undertake expressly, by virtue of the assignment *agreement*, to guarantee for the solvency of the assigned debtor, but even under such circumstances, it is presumed that only the solvency at the time of assignment was taken into consideration, i.e. the assignor guarantees that at such time, the assigned debtor was able to perform their assigned obligation.

In order for such presumption to be overturned, for full and permanent liability of the assignor to the assignee concerning the debtor's solvency, a clear clause is necessary, which should state unequivocally that the assignor shall be liable if the debtor does not perform their obligation, irrespective of the time when insolvency occurs; in such case it is irrelevant whether the debtor was solvent at the time of assignment.

Nevertheless, irrespective of circumstances and of the time the obligation of the assignor to guarantee for solvency refers to, the assignor's liability for the assigned debtor has a *limited* scope, i.e. such liability can be in existence only until the concurrence of the assignment *price* (and not of the value of the assigned debt), and the expenses borne by the assignee in connection to the assignment. Only if, at the time of assignment, the assignor had not known of the assigned debtor's insolvency, would the legal provisions on the liability of a seller in bad faith for hidden defects of the sold property have applied accordingly (to be discussed hereinafter).

But the guarantee for debtor's solvency may be required as an exception also by *law*, in specific cases, such as within company law, where companies, either with or without legal personality have expressly acknowledged the right of capitalising the debt as a contribution by a shareholder. Thus, for companies with legal personality, the shareholder having

submitted as contribution one or more debts is not free of debt as long as the company has not acquired *the payment* of the amount for which such contribution was submitted, and if payment could not be acquired by prosecuting the assigned debtor, the shareholder is liable for damages, as well as for the amount due, bearing legal interest as of the day the debts are due. In the same manner, for simple companies, without legal personality, under the new civil code, the shareholder contributing a debt is liable for the existence of the debt at the time of contribution and its *capitalisation* on due date, having the obligation of covering the amount, its legal interest starting to lapse on the due date and any damages resulting from the debt not being capitalised in full or partially (the same liability holds the shareholder contributing a bill of exchange or another credit instrument).

Finally, let us bear in mind that the obligation of guaranteeing for the existence of debt is presumably the responsibility of the assignor only when there was a fee paid for the assignment and not when such assignment was free of charge, as in the latter case, according to the law and as shown before, the assignor does not guarantee for the existence of the debt at the time of assignment.

2.2.3. Obligation of guaranteeing for eviction

With regard to the obligation of guaranteeing for eviction, the assignor shall be liable in all cases, provided that, by direct deed (alone or concurrent with the deed of a third party), the assignee does not take possession of debt or cannot make it opposable to third parties.

In such circumstance, in order to determine the scope of the assignor's liability the legal provisions on the liability

of a seller in bad faith for hidden defects of the sold property apply.

According to the rules of sale contracts, which we adopt herein, a defect is deemed hidden if such defect, at the time of takeover, could not be identified without specialist support by a prudent and diligent buyer; therefore, the hidden defect of a debt is the circumstance affecting debt validity, which could not be identified by the assignee, irrespective of its prudence and diligence.

Unless the parties agree otherwise, the general rule states that the assignor has the obligation to guarantee against the debt hidden defects, even if such defects are not known to him.

Nevertheless, any clause excluding or limiting the liability for hidden defects shall be a void clause according to the law in case of an assignor in bad faith, that is when such assignor was aware of such defects or had to be aware of them at the time of the conclusion of contract.

Provided that the assignee can prove that the assignor was aware of the debt defects, the assignee may claim, in addition to the rights acknowledged by law (regardless of the assignor's good or bad faith), the right for damages for the damage caused.

Furthermore, the assignor having concealed the serious defects of debt cannot claim that the assignee's right of termination as provided by law should be cancelled.

2.3. Assignment effects to assigned debtor

There are two essential aspects, or rather principles in terms of the effects of assignment to the assigned debtor.

The first principle arises naturally from the *relativity* of contract effects, because an agreement cannot affect in any manner the rights and obligations of a party not having taken part in such agreement. Our civil code does not state expressly this rule

for debt assignment, but it may be implied, as we have shown before, on the one hand, from the general principles governing obligations and, on the other from the interpretation of specific provisions.

By virtue of law, an assignment transfers all the rights the assignor holds in connection to the assigned debt (art. 1.568 par. 1, letter a NCC), and, in case of a partial debt assignment whose subject matter is a performance other than the payment of an amount of money, the law requires that such assignment should not generate an obligation substantially more expensive for the debtor (art. 1.571 par. 2 NCC).

Therefore, we imply that the assignment cannot transfer more rights towards the assigned debtor than the assignor holds; also, if the obligation is divisible, it may be partially assigned provided that it does not become more expensive for the debtor [7].

The second fundamental principle to be applied to the effects of an assignment to the assigned debtor refers to *payment*. A debtor's main obligation, as it results from the legal document giving rise to such obligation, is to perform (to pay the amount of money) on the due date. Therefore it is certain that: a debtor shall perform their obligation. The problem here is to know to whom the debtor shall make the payment, to the assignor or to the assignee respectively, and, for this purpose, a distinction is relevant based on the notification or acknowledgement of the assignment by the assigned debtor.

Thus, if the debt assignment was communicated to the assigned debtor or if the assigned debtor acknowledged the debt assignment, payment shall be made to the *assignee*, as this is the only way whereby the assigned debtor may be released from obligation; should the debtor pay to the assignor, the assignee may request the assigned

debtor to make the same payment to the assignee, and the assigned debtor shall recover the payment made by him from the assignor.

On the contrary, before acknowledging or receiving the notification, the debtor can only be released by paying to the *assignor*; of course, if the assignment document had already been concluded (but had not become opposable yet in one of the manners provided by law to the assigned debtor), such document becomes binding for the assignor to refund the amount received from the assigned debtor to the assignee, but such obligation bears no effect on the validity of the payment made by the assigned debtor to the assignor.

With regard to the right of the assigned debtor of refusing the payment, we base our arguments on the principle expressly regulated by law, which, in our opinion, is essential in this matter, according to which the debtor may *oppose* to the assignee all the means of defense that such debtor would have been able to claim against the assignor.

Thus, as shown above, a debtor may oppose to the assignee the payment made to the assignor before the assignment became opposable, irrespective of whether or not such debtor is aware of another assignments. At the same time, the debtor may claim toward the assignee any other cause of settling the obligations, which had occurred before the assignment became opposable to him, such as compensation, substitution and even prescription. Furthermore, the debtor may oppose the assignee the payment that such debtor or his fidejussor made in good faith to an *apparent creditor*, even if all formalities required making the assignment opposable to the debtor and third parties were fulfilled [8].

References

1. Pop, L.: *Tratat elementar de drept civil. Obligațiile (Basic Treaty of civil law. Obligation)*. Bucureşti. Universul Juridic Publishing House, 2012.
2. *** Art. 1.641 Civil Code of Quebec (C.C.Q.); Collection de Droit 2011-2012 – *Obligations et contrats*. Quebec. Yvon Blais Publishing House, 2011.
3. *** Art. 1.522 paragraph (5) NCC and art. 454 New Code of Civil Procedure, for the same purpose serve the provisions of.
4. *** Art. 1.690 par. (2) French Civil Code; P. Canin – *Droit Civil. Les obligations*. Hachette Superieur Publishing House, Paris 2005, p. 140.
5. *** High Court of Cassation and Justice, Commercial Dept., Decision no. 2868/2005, on www.scj.ro.
6. *** Art. 1.692 French Civil Code.
7. *** Art. 1.637 par. (2) C.C.Q.
8. *** Art. 1.643 C.C.Q.