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DISPOSITIVE TRANSACTIONS IN RUSSIAN CIVIL LAW

Specialty 5.1.3. Private law (civil) sciences

DISSERTATION ABSTRACT
for the degree of Candidate of Legal Sciences (PhD in Law sciences)

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Relevance of the research topic. Currently, there are a number of controversial issues in Russian legal doctrine concerning the theory of transactions. Dispositive transactions are understood to be transactions that are directly aimed at transferring, encumbering, changing, or terminating a right, while obligatory transactions merely create obligations.

Legal regulation of transactions, including dispositive ones, is of paramount importance for the dynamics of civil legal relations, ensuring the movement of goods in civil circulation, which has a direct impact on both the activities of all subjects of civil legal relations and the economy as a whole (economic aspect).

The perception of dispositive transactions in Russian civil law raises many theoretical and practical questions, in particular about their legal nature and their place in the civil law system. Resolving these and other issues relating to dispositive transactions is largely a matter of legal policy, and the answers to these questions are of significant social importance and may have a substantial impact on the distribution of risks between subjects of civil law, as well as on social relations in general (socio-political aspect).

However, Russian civil law doctrine not only lacks a developed theory of dispositive transactions, but some scholars question the very division of transactions into obligatory and dispositive ones, as well as the fundamental applicability of the category of dispositive transactions in Russian civil law. Resolving theoretical issues related to dispositive transactions is of great importance for the doctrine of modern Russian civil law (doctrinal aspect).

The Supreme Commercial Court of the Russian Federation and the Supreme Court of the Russian Federation have repeatedly pointed out the actual existence of a division of transactions into obligatory and dispositive ones under Russian civil law, and sometimes have directly classified certain transactions as dispositive. This circumstance indicates the demand for dispositive transactions in Russian law enforcement practice (law-making and law enforcement aspects).

At the same time, there are currently no comprehensive studies of dispositive transactions that address the numerous controversial aspects of the topic under

consideration. Thus, we believe that this study of dispositive transactions in Russian civil law is relevant and of interest to both legal scholarship and practice.

The degree of the scientific problem elaboration. The origins of the theory of dispositive transactions can be found in German civil law doctrine, primarily in the works of such great jurists as F.C. von Savigny and R. von Jhering. The basis for the emergence of the category of dispositive transactions was the historical school of law and the Pandectists, developed by such scholars as J. Baron, O. von Bulow, B. Windscheid, G. Derburg, G.F. Puchta, G.A. Heise, and others.

At the beginning of the 20th century, dispositive transactions became an integral part of German civil law and were subsequently considered by the classics of German civil law: R. Sohm, K. Larenz, D. Medicus, A. von Thur, W. Flume, F. Heck, L. Enneccerus, and others. Among contemporary foreign scholars whose works are devoted to dispositive transactions, we can note D.H. Molkenteller, A. Stadler, A.B. Simokat, H. Bickman, and others.

In the pre-revolutionary period, specific issues related to dispositive transactions were discussed in the works of scholars such as K.N. Annenkov, E.V. Vaskovsky, Yu.S. Gambarov, D.I. Meyer, V.I. Sinai, I.N. Trepitzyn, V.M. Khvostov, G.F. Shershenevich, and others.

During the Soviet period, certain aspects of dispositive transactions were addressed in the works of M.M. Agarkov, O.S. Ioffe, O.A. Krasavchikov, E.A. Fleishits, B.B. Cherepakhin, and others.

In the modern period, the theory of dispositive transactions has been consistently developed in the works of representatives of the Yaroslavl civil law school, primarily E.A. Krashennnikov, as well as Y.V. Baigusheva, A.V. Voshatko, V.V. Grachev, and others. A comprehensive study of traditio as a type of real contract and dispositive transaction was conducted by D.O. Tuzov. The works of A.V. Egorov, which provide an in-depth and consistent examination of dispositive transactions, deserve special mention. L.Yu. Vasilevskaya's doctoral dissertation is devoted to issues of property transactions under German law.

In addition to the works of the aforementioned scholars, administrative transactions are discussed in the works of R.S. Bevzenko, V.A. Belov, V.M. Budilov, A.G. Karapetov, L.A. Novoselova, A.A. Pavlov, V.V. Rovniy, S.V. Sarbash, B.L. Khaskelberg, and others.

Specific issues related to administrative transactions are examined in the dissertations of A.V. Voshatko, M.A. Miroshnikova, I.V. Beklenishcheva, and others.

The purpose and objectives of the study. The purpose of this dissertation research is to analyze and identify the legal nature of dispositive transactions under Russian civil law, to develop theoretical and practical provisions for the category of dispositive transactions, to identify the substantive elements of this legal category, and to resolve certain theoretical and practical issues related to dispositive transactions under Russian civil law.

The objectives of the study are determined by the stated goal and are as follows:

- to study the history of the emergence and development of the legal category of dispositive transactions, as well as the principle of dividing transactions into obligatory and dispositive ones, including from a comparative legal perspective;
- examine the grounds for distinguishing dispositive transactions in Russian civil law;
- analyze the principles of abstraction and causality of dispositive transactions, establish the applicability of these principles in Russian civil law;
- identify the legal nature, highlight specific features, and establish the basic principles of dispositive transactions;
- examine various types of dispositive transactions and the applicability of civil law transaction classifications to such transactions;
- analyze the peculiarities of the invalidity of dispositive transactions;
- examine various dispositive transactions based on their legal effect on subjective civil rights, identify patterns and characteristics of such transactions;

- examine specific types of translatative, constitutive, law-changing, and remissionary dispositive transactions, identify their specific features and models of execution.

The object and subject of the study. The object of the study is social relations related to the conclusion of dispositive transactions, actions of civil law entities aimed at transferring, changing, encumbering, and terminating subjective civil rights. The subject of the study is the norms of Russian and foreign law and legislation, the practice of their interpretation and application, judicial acts, and doctrinal sources devoted to the issue of dispositive transactions.

The theoretical and methodological basis of the research. The theoretical basis of the study consists of works by foreign and Russian scholars on fundamental issues of civil law, transaction theory, and contract theory.

The work is based on the works of such foreign scholars as H. Brox, B. Windscheid, F. Wieacker, L.P.V. van Vliet, W. Wolker, H. Dernburg, R. Sohm, R. von Jhering, H. Kotz, H. Kohler, H. Koziol, K. Larenz, B. Markesinis, D. Medicus, G.F. Puchta, B. Ruters, F.C. von Savigny, W. Sagaert, R. Sacco, M. Talamanka, A. von Tuhr, W. Flume, K. Zweigert, R. Zimmermann, D. Schwab, L. Enneccerus, and others.

Among Russian scientists whose works formed the fundamental basis of the research, the following scientists should be noted: M.M. Agarkov, S.S. Alekseev, V.A. Belov, E.V. Vaskovsky, Yu.S. Gambarov, D.D. Grimm, O.V. Gutnikov, D.V. Dozhev, N.L. Duvernoy, A.G. Karapetov, D.I. Meyer, I.A. Pokrovsky, V.I. Sinaisky, I.N. Trepitsky, R.O. Khalfina, B.B. Cherepakhin, G.F. Shershenevich, E.A. Fleishits.

The theoretical provisions of the study as applied to dispositive transactions are formulated on the basis of the works of such Russian and foreign scholars as V.V. Baibak, Yu.V. Baigushev, R.S. Bevzenko, H. Bickman, V.M. Budilov, V.V. Vanin, L.Yu. Vasilevskaya, A.V. Voshato, V.V. Grachev, K.V. Gnicevich, A.V. Egorov, A.Yu. Zezekalo, E.A. Krashennnikov, A.N. Latyev, L.A. Novoselova, A.A. Pavlov, E.Yu. Petrov, V.V. Rovny, S.V. Sarbash, A.B. Simokat, D.O. Tuzov, B.L. Khaskelberg, A. Stadler, and others.

The paper also highlights and examines the positions of critics of dispositive transactions in Russian civil law: V.V. Gruzdev, M.V. Krotov, K.I. Sklovsky, S.A. Sinitsyn, E.A. Sukhanov, D.A. Malinovsky, and others.

This study is primarily based on Russian civil law doctrine. In addition, in order to achieve the stated objectives and use the comparative legal method, the work examines the doctrinal provisions of German law, which is due to the genesis of the category of dispositive transactions, as well as the laws of Austria, England, Italy, China, the United States, France, Switzerland, and some other legal systems.

In conducting the research, the following scientific methods were used to achieve the objectives and solve the tasks set: general philosophical methods (dialectical, metaphysical), general scientific methods (analysis and synthesis, induction and deduction), specific scientific historical methods, and special legal methods (comparative legal, formal legal). The application of these methods made it possible to comprehensively and thoroughly examine the problems of dispositive transactions in Russian civil law.

The information base of the study. The empirical basis for the study was provided by the regulatory legal acts of the Russian Federation, primarily the Civil Code of the Russian Federation, as well as other regulatory acts, in particular, legislative acts governing legal relations in the field of securities, real estate, legal entities, and bankruptcy. The information base of the study also includes the legislation of some foreign countries, primarily Germany and Austria, as well as others.

The study also drew on judicial acts of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, the Supreme Commercial Court of the Russian Federation, the judicial practice of other courts, and judicial statistics.

The validity and reliability of the research results are ensured by the author's arguments and conclusions based on the analysis of scientific research and doctrinal sources, normative legal acts, law enforcement practice, and the application of scientific research methods, which together made it possible to build a systematic study with the author's position on the issues under investigation.

The scientific novelty of the dissertation research lies in the fact that it solves an important scientific problem: it develops a theoretical basis for further scientific development of the category of dispositive transactions under Russian civil law. It is shown that dispositive transactions have important doctrinal and practical significance in Russian civil law, their legal nature, legal composition, and features are identified, and models for concluding dispositive transactions are studied.

The provisions submitted for protection and having scientific novelty are formulated by the author based on the results of the conducted research.

1. It is reasonable to assume that the dynamics of civil turnover are determined by the disposal of subjective civil rights through their transfer, encumbrance, modification, or termination. Recognition of the transactional nature of dispositions allows them to be considered as transactions and subject to legal norms governing transactions, which streamlines their legal regulation and determines the place of dispositions in the civil law system. The category of dispositive transactions allows for the effective regulation of civil turnover by dividing all transactions into obligatory transactions, which create obligations, and dispositive transactions, which have a direct legal effect on subjective civil rights (*regulation submitted for defense corresponds to clause 1 and clause 7 of the specialty 5.1.3. Private law (civil) sciences*).

2. The content of a dispositive transaction under Russian civil law is disclosed. It is shown that the object of dispositive transactions is subjective civil rights, and the subject is a person who has the authority to dispose, the essence of which is expressed in dispositive power. It is substantiated that under Russian civil law, the existence of dispositive power is a necessary condition for the validity of a dispositive transaction; it follows from the legal capacity of a person, may be limited, and dispositive power may be vested in another person who will be authorized to enter into a dispositive transaction (*regulation submitted for defense corresponds to clause 7 of the specialty 5.1.3. Private law (civil) sciences*).

3. It is reasonable that dispositive transactions are differentiated into abstract and causal ones. In accordance with the principle of abstraction, the validity of a dispositive

transaction does not depend on the existence of a cause or the validity of the underlying obligatory transaction containing the cause. In accordance with the principle of causality, the validity of a dispositive transaction is conditioned by the existence of a cause and the validity of the underlying obligatory transaction containing the cause. It has been proven that Russian civil law, as a general rule, is based on the principle of causality of dispositive transactions related to provisions, unless otherwise provided by regulatory provisions and the legal nature of the dispositive transaction.

The principle of abstraction of dispositive transactions may be established in relation to those types of dispositive transactions whose causality does not correspond to their essence and purpose in civil circulation (*regulation submitted for defense corresponds to clause 7 of the specialty 5.1.3. Private law (civil) sciences*).

4. It has been proven that dispositive transactions are present in all sub-sectors of civil law and can be either unilateral or multilateral. General rules on contracts apply to dispositive contracts, unless otherwise specified by the nature of the transaction. The need to apply the principle of a closed list (*numerus clausus*) to all dispositive contracts does not follow from the current legal regulation of dispositive transactions. As a general rule, dispositive transactions may be concluded unless otherwise provided by their substance and the law (*regulation submitted for defense corresponds to clause 7 of the specialty 5.1.3. Private law (civil) sciences*).

5. It has been proven that general rules on the invalidity of transactions apply to dispositive transactions. A dispositive transaction may have its own defects and be invalid regardless of the underlying obligatory transaction.

From a theoretical point of view, dispositive transactions, in addition to general grounds for invalidity, have their own specific grounds for invalidity, among which the following are proposed to be distinguished: 1) lack of dispositive power; 2) violation of a prohibition or restriction on the disposal of property by virtue of law; 3) absence of cause or invalidity of a transaction containing a cause for causal dispositive transactions.

The statute of limitations for claims regarding the consequences of the invalidity of a void transaction and the recognition of such a transaction as invalid shall be

calculated from the moment of its conclusion, given the impossibility of performing dispositive transactions (*regulation submitted for defense corresponds to clause 7 and clause 11 of the specialty 5.1.3. Private law (civil) sciences*).

6. It is reasonable that bankruptcy proceedings apply special rules for challenging dispositive transactions, which are stipulated by bankruptcy legislation and whose application is considered in conjunction with the circumstances and economic rationale for such transactions. A dispositive transaction may independently fall within the period of suspicion and should not be invalidated as having been performed with unequal consideration by the other party. The invalidity of a transaction made during the observation procedure without the consent of the temporary administrator should be considered a type of invalid transaction made in violation of a prohibition or restriction on the disposal of property by law and should be recognized as null and void (*regulation submitted for defense corresponds to clause 7 of the specialty 5.1.3. Private law (civil) sciences*).

7. It has been proven that a translative dispositive transaction transfers subjective civil rights from one person to another. For the dispositive effect to take place, a legal structure is required, which is established in relation to specific transactions. The following models of translative dispositive transactions have been identified, in which the dispositive effect takes place:

1) a dispositive transaction in the absence of any other legal facts or actions, which is abstract in nature (a will, a non-cash payment);

2) a binding transaction or other legal fact and a causal dispositive transaction, which may be supplemented by an actual action or real act (transfer of movable property into ownership on the basis of a contract, assignment transaction on the basis of a binding contract);

3) a binding transaction and a causal dispositive transaction, as well as an act of registration (transfer of immovable property to ownership on the basis of a contract);

4) a dispositive transaction of an abstract nature and an act of registration (transfer of rights to securities through organized trading, transfer of rights to digital financial

assets) (*regulation submitted for defense corresponds to clause 7 of the specialty 5.1.3. Private law (civil) sciences*).

8. It has been proven that constitutive dispositive transactions in Russian civil law are based on the model of constitutive succession. As a result of such a transaction, the initially existing subjective right is not terminated, but an independent subjective right is separated from it, simultaneously encumbering the original right. The dispositive effect of such a transaction is usually achieved by establishing a new right on the basis of a contract (*regulation submitted for defense corresponds to clause 7 of the specialty 5.1.3. Private law (civil) sciences*).

9. It has been proven that remissionary dispositive transactions directly terminate subjective rights. Such transactions may be aimed at terminating obligations or exclusively at terminating subjective civil rights, for the validity of which the cause is irrelevant. In order to regulate civil transactions, it is advisable to stipulate that in the second case, the subjective civil right is terminated only at the will of the disposing person (*regulation submitted for defense corresponds to clause 7 of the specialty 5.1.3. Private law (civil) sciences*).

The theoretical and practical significance of the research is determined by the author's conclusions and recommendations formulated in the dissertation, which can be used in research on transaction theory and civil law in general, as well as in improving Russian civil legislation on transactions. The results of the dissertation research can also be applied in educational activities, in particular, in the training of personnel in the field of law, lawyers in educational organizations, including the Institute of Law and National Security of the Presidential Academy within the framework of the discipline "Civil Law".

Approbation of the research results. The dissertation was completed, discussed, and approved by the Department of Business, Labor, and Corporate Law of the M.M. Speransky Faculty of Law at the Institute of Law and National Security of the Russian Presidential Academy of National Economy and Public Administration (Presidential Academy).

The main provisions of the dissertation research are reflected in the author's presentations at eight international and all-Russian scientific conferences, in six articles (reports) published in collections issued following scientific and practical conferences, as well as in four articles published in scientific print publications, including peer-reviewed scientific publications included in the list of the Higher Attestation Commission under the Ministry of Education and Science of the Russian Federation, with a volume of 2.7 printed sheets.

The structure of the dissertation is determined by the objectives and tasks of the research. The work consists of an introduction, three chapters, each of which consists of three paragraphs, as well as a conclusion and a bibliography.