

LEGAL IMPLICATIONS OF A LEASE-TO-OWN CONTRACT BEFORE PAYMENT OF ALL INSTALLMENTS

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ABSTRACT

A lease-to-own contract is indeed a compound one, starting with a lease and ending with owning the article on which the contract has been signed. This compound contract complies with the terms and conditions of the two types of contracts, i.e. leasing and owning, unless a conflict occurs between them. If such contradiction takes place in the provisions of these contracts, one type shall prevail. In a lease-to own contract, for instance, the state of selling overrules the renting, and it states from the beginning that it is a sale contract and ownership is suspended due to one condition, and that is the completion of installments. In the current research, we have investigated the legal implications of a lease-to-own contract before payment of installments are completed, coming up with a number of essential conclusions and recommendations.

Keywords: Legal, Contracts, Payment

INTRODUCTION

A lease-to-own contract is a type of contract that has been applied in the U.S.A., Canada and Malaysia since 1983 constituting 28% of the total banking transactions that are related to lease-to-own issues. The idea of this financial system is based on the following: a lessor finances the purchase of an asset at the request of a lessee to invest this asset for a period not less than 75% of the asset's life span, and in return the latter has to pay to the former periodic installments as if in the form of a leasing contract. However, the lessor shall keep the ownership of the asset until the end of the contract, and the lessee has the options of buying the asset at the end of the leasing period, return it to the lessor, or renew the leasing contract. It has been given this name, i.e., a lease-to-own contract because it is valid for a certain period of time.

The two parties shall come to an agreement in the contract about the residual value of the leased property. In most cases, the property is purchased with this remaining value. Car rentals is a good example for this type of contracts.

This contract indeed includes two components: lease and sale. In other words, it is made up of two contracts, leasing an asset in the first, and selling the same property with the second. A person, for example, needs to purchase a car or anything else, but he cannot buy it in cash. The alternative is to resort to any lease-sale institution, such as a company, a bank, or even a person. He signs with them a contract according to which he becomes obliged to pay monthly installments for five years or less or more. Before this period comes to an end, this person shall have the status of a lessee, but after the total value is paid, he becomes owner to this property. In the current research, we shall investigate the most important obligations of both parties, lessor and lessee as well as the implications of this type of contract. We shall end up the research with our conclusions and recommendations.

Importance of Research

Importance of the current research comes from the urgent need to legally explore the civil aspects of organizing this type of contract due to its wide spread in business markets, and

becoming as one of the most important tools in the world of investment. Accordingly, our main focus is investigate the essence as well as the components of lease-to-own contract as an essential step to distinguish it from other types of contracts.

Research Problem

As stated above in the introduction, a lease-to-own contract is somehow considered new in the Middle East, and therefore, various councils, bodies and contemporary jurists do still have different views about its character and how to be treated and differentiated from other contracts. In addition, this type of contract could have deep effects on the financial status of the institutions that deal with it. One of the issues to be investigated in this research is whether a lease-to-own contract comprises in its inner structure the element of compliance, and what effects that this contract could have before payment of installments is completed.

METHODOLOGY

In the current research, we should adopt a mix of analytic and comparative approaches. While we use the analytic approach to analyze the legal text and conclude related provisions, the comparative approach is required as the research is somehow new in the United Arab Emirates. Besides, the selected countries for comparison have good experience in this field, and we shall benefit from their legislations.

Definition of Lease-to-Own Contract

A “Lease-to-Own Contract” is considered as one of the modern means of financing in the world of business, which is used nowadays to meet the needs of many people who want to own, but unable to pay in cash. This type of contract has different images in different fields. We shall investigate it through two main issues: definition and identification.

Definition

Jurisprudence has defined the lease-to-own contract as “an agreement between two parties, in which one of them leases to the other a specific commodity, and in return, the lessee, that is the second party, shall pay certain fees in the form of installments during a defined period after which the ownership of this commodity transfers to the lessee if he pays the last portion of its value with a new contract”.¹

It has also been defined as “a leasing contract including a promise for sale according to which, one of the contracting parties leases something to the other party for a certain period, and at the end of this contract the lessee has the option to purchase it at a fixed price”²

Another expert has defined the lease-to-own contract as “a means of financing which combines sale with rent, and it is based on buying a commodity with a fixed value, but the purchaser cannot own it until he pays all the rental installments that shall be equal to the total price of the commodity and the lease contract as per the relation between them before receiving it.”³

According to this type of contract, the rights of the lessor are completely preserved as the lessee cannot dispose of the commodity in any way, such as selling it for example. Besides, it is considered as an essential tool for financing projects and various commodities. The lessee, on the other hand, can obtain the product he wants with comfortable installments, while the lessor is benefitting from the typical features of leasing and selling.

As for the adaptation of the lease-to-own contract, divergent trends have been raised, and we shall investigate them and as follows:

First Trend

Proponents of this trend claim that the lease ending with ownership is nothing but a sale by installments. However, it depends on the condition of paying the total installments before it is turned into an ownership.

This trend has been criticized due to considering the lease-to-own contract as a sale by installments, which is not permissible as per the Islamic Sharia. A sale by installments is not allowed in Islam because of two prohibited issues. The first prohibition is related to the fact that both the price and the product transfer are deferred. Secondly, the intention that lie behind a sale contract is to transfer ownership, whereas it is deferred in the case of this type of contract

Second Trend

Proponents of the second trend posit that it is a leasing contract with the condition of granting or selling. The commodity according to this viewpoint is leased, but meanwhile it shall be granted or sold at the end of the leasing period.⁴

Third Trend

Those who represent this trend assume that a lease-to-own contract is a leasing one with a promise for grant or sale. Accordingly, subsequent ownership shall be associated with a promise not with a condition or an agreement. The contract might include, for example, a statement, which says, “I have leased you this commodity for this period, and I promise to sell it to you at the end of the period for such and such price.”⁵

The Federal Civil Transactions Law considers the lease-to-own contract as a sale contract, suspended on one condition, that is the commitment to transfer ownership after the purchaser pays the full price. Article 513 of this law stipulates that if the price is deferred or in installments, the seller has the right to suspend transfer of ownership until the purchaser pays the whole price even if the sold commodity has already been delivered.⁶

However, we go with the trend, which claims that the contract is a lease one at the start, and then turns into a sale contract at its end when the lessee pays all the rental installments. In this way, the rights of the lessor are protected in case of the lessee’s bankruptcy, and the former could retrieve the commodity. Similarly, those rights are preserved if the lessee dies, as the contract is not towards the latter’s heirs, and therefore, the contract shall be replaced within 90 days as per the UAE System, or they express their inclination during the same period to complete the contract. If it has been a sale contract from the beginning, there shouldn’t be such option because the contract will become part of the legacy of the deceased.⁷

Distinguishing the Lease-to-Own Contract from Other Suspicious Ones

Our attempt here is to distinguish the lease-to-own contract from the other ones that could be mixed with it.

Differentiating between a Lease-to-Own Contract & a Lease Contract

The UAE legislator defines a lease contract in Article No. 742 of the UAE Civil Transactions Law as “offering the ownership of an intended benefit of a leased item for a certain period in return of specific amount of money”.

According to the legal concept of a lease contract, and as identified above, a person named a lessee obtains the benefit of something that belongs to another person named a lessor for a specific period and in return of a compensation. The essential elements of a lease contract therefore are benefit, period and rent.⁸

The Federal legislator in this definition has used the phrase “ownership of a benefit”, and this does not comply with a lease contract because the lessee acquires a personal right not a real right. Ownership is a permanent right, which cannot be associated with a specific period, whereas the right of a lessee is a temporary one, and this is quite evident in the difference between the two types of contracts, sale and lease.⁹

It has been also noted through the definition of the Federal legislator to the lease contract that the commitment of the lessor is somehow negative as it confined to offering the ownership of a benefit to the lessee to use it the way he likes. However, there should be a reconciliation between the negative and positive nature of the commitment since the lessor receives an already known compensation for a specific period.

It has become obvious that there are lots of similarities between a lease contract and a lease-to-own contract. For example, both are accepted and confirmed types, which are concluded once approval of both parties is offered with no need for any formal procedure. Besides, they are both binding contracts as they impose mutual obligations on the parties. However, we should take into consideration that while the ownership of the commodity in a lease-to-own contract is transferred to the lessee at the end of the contractual period, this issue does not exist in a lease contract. Moreover, a lease contract is not based on personal considerations, *i.e.*, it does not come to an end by the death of one of the two parties, and it remains valid and applicable with the new party, whether a lessor or a lessee. On the contrary, a lease-to-own contract depends on personal considerations.

Differentiating between a Lease-to-Own Contract & a Sale in Installments

A sale in installments is a contract in which the price is paid in periodic portions, such as monthly, quarterly, or annually, for instance. This type has spread widely, especially in the sale of cars as well as electrical and electronic devices so as to enable people with limited income to acquire these goods without being burdened financially, and meanwhile traders could increase their sales.

A sale in installments might include some risk for the trader as the ownership of the sold item shall transfer to the purchaser as soon as the contract is signed, and the latter, *i.e.*, the purchaser may become bankrupt or insolvent before payment of all installments. Besides, the purchaser could sell the commodity in question to a third party who in turn has the right to claim ownership.¹⁰

Similarities between the two contracts in question, concerning the contractors' self-intent as well as final consequences, both agree to announce the lease and conceal the installments, and the lease represents the installment that a purchaser pays in a sale. They also agree that with the payment of the last installment, the leased property shall transfer into an ownership, and the state of lease turns into a sale.¹¹

However, a lease-to-own contract is different from a sale in installments in terms of composition, as the first is constituted of two contracts, one for lease and another for ownership, and the second becomes valid as soon as the lease comes to an end and the price is fully paid.¹²

Besides, a sale in installments differs from a financial leasing as the ownership with the former transfers to the purchaser by force of law once he pays the full price, whereas the ownership does not transfer by force of law in a lease-to-own contract. It requires the lessee's agreement to purchase the leased item on the date and the price as identified in the contract.¹³

Consequences of Lease-to-Own Contract before Full Payment of Installments

A lease-to-own contract has several consequences, and they differ as per the stage of the contract as there are specific obligations for the two parties during the payment stage, and other types of commitment after full payment. We shall investigate these obligations and their consequences in the forthcoming subsections.

Lessee's Obligations

According to the lease contract, the lessee is bound by four obligations: paying the lease, maintaining the leased item, using it for the purpose it has been used for the purpose it has been prepared for, and to return it to the lessor after the lease period comes to an end. These four obligations shall be explored as follows:

a. Payment of the Lease

Payment of the lease is considered an essential part of the contract, and the two parties are free to determine the amount of this rent. If they agree on a specific amount, the lessee is committed to pay exactly that sum of money to the lessor.¹⁴ But if they have ignored to determine the rent, or neither of the two parties is unable to prove it, the lessee is obliged in this case to pay a similar rent,¹⁵ and if he fails to pay it, a compulsory real execution shall be taken if possible, or a request for annulment with compensation will be the solution.¹⁶

b. Maintaining the Leased Item

According to Article 776 of the Emirati Civil Transactions Law, the lessee shall maintain the leased item as well as its attachments as part of his obligation rather than achieving an objective.¹⁷ Besides, the lessee is committed not to leave the leased property unused if such action might cause damages.¹⁸

c. Using the Leased Item for its Specified Purpose

The lessee is obligated to use the leased property as per what is agreed upon in the contract and in accordance with Article No. 777 of the Emirati Civil Transactions Law, which states that “who rents a house for the purpose of living in it, he cannot transfer it into a restaurant, and if the contract does not refer to the type of use, the lessee in this case shall use the leased property according to what has been prepared for and in accordance with the prevalent social customs.

However, the insight behind imposing such procedure, *i.e.*, changing the type of using the leased property is to protect it from any damage, and if changing the type of use does not bring any harm to the leased item, the restriction shall be nullified and it becomes irrelevant.¹⁹

d. Returning the Leased Item on Time

Article No. 784 of the Emirati Civil Transaction Law states that “1. The lessee shall return the leased item to the lessor at the end of the lease period in a state similar to that when he receives it unless it has been damaged or destroyed for uncontrolled reasons; 2. If the lessee keeps the leased item in his possession illegitimately, he is obliged in this case to pay a similar lease with a damage guarantee; 3. If returning the leased item requires loading, then the transport fee is paid by the lessor.

By any means, the lessee is obligated to return the leased property to the lessor at the end of the lease period, otherwise, he shall be deemed as breaching to his obligation.²⁰

e. Failing to Pay All Installments

The payments that the lessee is committed to pay to the lessor are called by both parties as rent allowances, whereas in fact they are the installments of the leased item's value. The question to be raised here is what shall happen if the lessee failed to pay the amount money as specified in the contract?

In reply to the question above, the lessor shall request, as per the general rules, for terminating the contract, and accordingly, the leased item shall be returned to the lessor, but he will keep the paid installments or a large part of them in return of using the leased item during the previous period by the lessee. On the other hand, the lessee will ask for retrieving part of the installments, claiming that the amount paid is highly exaggerated. The lessee certainly has the right to ask for such action even if the compensation amount has been determined as per a penalty clause within the general rules. The person affected by the penalty clause has the right to demand a reduction of the compensation amount so as to cover any damages that may result of the terminated contract.²¹

Lessor's Obligations

Similarly, the contract imposes a number of obligations on the lessor and they are as follows:

a. Delivering the Leased Item

The lessor's obligation to deliver the leased property is subject to the same provisions of a seller's when handing over the sold item to the purchaser, especially what is related to specifying the attachments as well as the time and place of delivery.²²

The process of delivering the leased property shall be implemented according to two conditions. These two conditions are

1. The leased property shall be completely under the command of the lessee so that he could own it and make use of it.
2. The lessee shall be licensed to legally use and benefit from the leased property without any restrictions.

It is remarkable to note that the process of delivering the leased property is of two types, tangible and intangible. The first type, *i.e.*, the tangible or physical takes place in different ways depending on the nature of the leased item. For example, it could be delivered by hand if it can be carried, such as the keys. If the leased property is a real estate, it shall be evacuated with the removal of barriers, if any, so as to be ready for handing it over. As for the intangible way of delivering the leased item, it occurs by changing hands. For instance, if the leased money is originally possessed by the tenant as a creditor mortgagee, and then he leases the mortgaged item from the lessor. His status in this case shall be changed from a mortgagee to a lessee, and there is no need to return the money to lessee and get it back again. This is what we call an intangible delivery.²³ However, in all cases, delivering the leased item shall not be considered as complete unless all types of barriers are removed.²⁴

Besides, delivering the leased item shall take place as soon as the lease is paid. Nevertheless, the two parties may agree that the leased property shall be delivered once the contract is signed, whereas payment of the rent could be postponed to another specific date, or they may agree that the lease shall be paid in advance, while delivering the leased item can be delayed to another date. As for the place of handing over the leased property, the general rules shall be applied.²⁵

The lessor may violate the process of delivering the leased item. The reasons are traced to one of the following:

1. If the lessor has been late in delivering the leased property, then part of the rent shall be deducted in return of the delay. But if the delay is caused by the lessee, then he shall pay the whole rent.
On the other hand, it is believed that the lessee has the right to ask for nullifying the contract due to the delay in delivering the leased property. Those who come up with such viewpoint claim that a leased contract is binding to both parties.²⁶ indeed, the lessee can ask the lessor for real execution, *i.e.*, to hand over the leased property. Besides, the lessee can also request for compensation because of delay in delivery. In all cases it is considered a violation to the provisions of the contract whether to deliver the leased property as soon as the contract is signed or on a specific assigned date.

2. The lessor may violate the provision of delivering the leased item due to its destruction, and if so, three assumptions are raised in reply to this situation. They are as follows:
 - If the destruction of the leased property has occurred after signing the contract and before delivering it due to a foreign cause, the leased contract shall be terminated, and the lessee shall not ask for a compensation and his obligation to pay the lease comes to an end if the destruction is total.
 - If the destruction of the leased item has been caused by the lessor, the lessee shall ask for a compensation due to the damage resulting from not receiving the property on time.
 - If the destruction of the leased item has occurred after delivering it due to a foreign cause, the lessor shall be responsible for this destruction being the owner of the property. But if he is not, the real owner is the one who endures it unless the destruction has been caused by the lessee.

b. Maintaining the Leased Item

Article No. 767 of the Emirati Civil Transactions Law states that “1. The lessor is obligated to renovate any defect that might occur to the leased item that could affect the achievement of the proposed benefit. If he does not, then the lessee may cancel the contract, or obtain a permission from the Court, which authorizes him to the defect and lessor shall endure the cost; 2. If the defect is a simple one or urgent that cannot be delayed, and the lessee asks the lessor to fix it, but he is late or it is difficult to contact him. In this case, the lessee can fix the defect and deduct the cost within the known amount from the rent”. The text above confirms that the lessor is committed to carry out all repairs in the leased property if there is a defect that leads to a breach to the intended benefit. Moreover, these repairs shall include the attachments as well.

The repairs that the lessor is obligated to do are the ones that are necessary to prepare the leased property for proper use whether they are necessary to protect it from destruction or not.²⁷ Some of the repairs that are considered necessary are the repairs of the walls, the ceilings, the stairs and the water pipes and taps. As for the minor repairs, it is familiar that they are part of the lessee’s responsibilities and as stated in Article No. 779 of the Emirati Civil Transactions Law. Though sometimes it is very difficult to differentiate between necessary and minor repairs, and therefore it is left to a widely authorized Court to determine this issue. If the lessor refuses to carry out the necessary repairs, then either the contract shall be terminated, or the maintenance to be implemented as per a permit issued by the Court, and the lessor endure the expenses.²⁸

c. Non-Encroaching & Hidden Defects Guarantees

The lessor shall promise the lessee not to disturb him while using the leased property, and this promise or guarantee is part of lessor’s obligation to enable the lessee to quietly and completely make use of the leased item.

The legislator indeed has discussed in details the non-intervention guarantee as well as the merits in a sale contract, and these interventions as well as the merits can be taken into account in a leased contract whether they tangible or intangible. Besides, it includes the intervention that is caused by the other and based on a legal reason, but not the tangible one.²⁹ Finally, the civil law imposes on the lessor the obligation of fixing all the defects that could be found in the leased property and may hinder the lessee to completely making use of it.

CONCLUSIONS & RECOMMENDATIONS

The current study has come up with following conclusions and recommendations.

Conclusions

1. The Federal Transactions Law has considered the lease-to- contract as a sale contract suspended for one unimplemented condition.
2. A lease-to-own contract is based on personal considerations, and this could be taken as the feature in which it differs from a lease contract in its normal status.

3. If the lessee fails to implement all the provisions of the contract by not paying the whole determined price, the lessor, in this case and after canceling the contract has the right to keep a large part of the money that has already been paid as a compensation for the previous period. We believe that this condition is somehow severe and it requires to be annulled or amended.

Recommendations

We recommend the following:

1. The Emirati legislator shall determine the people and bodies that have the right to practice the lease-to-own system similar to that of the financial leasing.
2. A schedule shall be issued including the amounts of compensation that the lessor has the right to keep if the lessee fails to complete the agreement.
3. The Emirati legislator is required to issue a law related to the lease-to-own contract.

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