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LEGAL REGULATION OF FRAUDULENT TRANSACTIONS IN UKRAINE

The relevance of the issue under study in this article is due to the rapid development of social relations, which leads to the constant emergence of new types of transactions, their formalization and regulation. A transaction is a basic category for the regulation of civil legal relations, including such a type of transaction such as a fraudulent transaction. A comprehensive study of the institute of fraudulent transactions in Ukraine will be a significant basis for further improvement of the current not only civil legislation, but also administrative legislation, and will unify the judicial practice of applying legislation on fraudulent transactions. The following methods were used in the study of scientific cognition, such as: systemic and structural; comparative; and the method of analysis. Based on the analysis of the current legislation of Ukraine in the field of application of fraudulent transactions the author emphasizes that there is no clear definition of a fraudulent transaction, its features, and the consequences of its conclusion. However, the absence of a regulatory definition of a fraudulent transaction in the current legislation of Ukraine causes conflicts in court decisions, as evidenced by the analysis of court practice, including that of the Supreme Court of Ukraine analysis of court practice, including that of the Supreme Court. This legislative gap should be regulated, since the legal regulation of fraudulent transactions in Ukraine plays an important role in the administration of justice and protection of participants whose interests are violated by such transactions. The author reviews of the key categories of this scientific article, including “legal regulation” “fraudulence”, ‘fraudulent transaction’. The author proposes to define a fraudulent transaction as to understand the action of a debtor or a party to a legal relationship which exists at the time of or has a high probability of becoming a party to a legal relationship, which can be expressed by both active and passive legal behavior aimed at avoidance of undesirable consequences for the debtor or a person (probable party to the legal relationship) Consequences aimed at avoiding civil liability, non-occurrence of undesirable civil status, or obtaining a benefit in an unfair manner. The author concludes that it is necessary to improve the legal regulation of a fraudulent transaction in Ukraine in the context of defining its essence, features essential terms of the contract, and legal consequences of its application.

Key words: *fraudulence, fraudulent transaction, dishonest manner, essence, legal regulation, judicial practice.*

Original article

INTRODUCTION. The rapid development of social relations leads to the emergence of new forms of their regulation and formalization. One such form is legal transactions, which serve as a foundational category for regulating civil legal relationships. However, the freedom to contract and the free will of the parties have a somewhat contradictory side – one of the parties may abuse their rights and cause harm to the other. This concern is closely related to the application of fraudulent transactions, which result in the invalidation of such agreements.

In support of this view, A. Zhelbudovska (2024, p. 81) stated that “the rapid development of legal relations has led to the emergence of new legal constructions and phenomena. Among these, fraudulent transactions have gained significant prominence in recent years within judicial prac-

“tice”. According to the scholar A. Buhaiets (2023, p. 27), “in Ukraine, one of the phenomena of the modern legal field is a fraudulent transaction. The latter, according to the author, is not new, but has relatively recently become the mainstream of domestic judicial practice – it is a transaction made with the aim of causing damage to the creditor”.

Emphasizing the importance of distinguishing between fraudulent and fictitious transactions, author O. Belyanevych (2021, p. 14) notes that “the effective consolidation of the debtor’s liquidation estate and the creditor’s claims depends on the correct application of fraudulent transactions (in bankruptcy cases) in judicial practice. To ensure this, the legislator must clearly regulate the concept of fraudulent transactions, enabling their distinction from other legal acts, particularly fictitious ones”.

Thus, it is essential to highlight that the study of fraudulent transactions is increasingly becoming a pressing need and a demand of the times, and scientific research on this topic is relevant and timely. Comprehensive study of the institution of fraudulent transactions in Ukraine will provide a significant foundation for further improvement of current civil and administrative legislation and will also unify judicial practice in the application of laws concerning fraudulent transactions.

PURPOSE AND OBJECTIVES OF THE RESEARCH. The purpose of this scientific article is to define the current state of legal regulation concerning fraudulent transactions (fraudulent legal acts) in Ukraine and to propose ways to improve the existing legislation in this area. To achieve this goal, the following tasks must be addressed:

- to define the basic concepts and categories;
- to provide an overview of the current state of legal regulation of fraudulent transactions in Ukraine;
- to analyze court rulings that govern the application of the fraudulent transaction construct.

METHODOLOGY. The key issues of civil law science are highlighted in this work using methods of scientific cognition. The system-structural method helped define the essence of basic concepts and categories relevant to this scientific article, such as “fraudulence”, “fraudulent transaction”, and “legal regulation”.

To analyze the legal framework regulating the application of the concept of “fraud” and the essence of a fraudulent transaction, the comparative method was used, which allowed determining the rights and obligations of the parties to such a transaction and the consequences of its commission.

The analytical method helped examine the current state of legal regulation of fraudulent transactions in Ukraine and identify gaps in national legislation concerning this issue.

RESULTS AND DISCUSSION. To begin the analysis of the legal regulation of fraudulent transactions in Ukraine, we must first examine the fundamental concepts and categories central to this scientific article. One such concept is “legal regulation”. This category is key not only for civil law but also for administrative, labor, and other areas of law, as the proper establishment of rules for participants in civil legal relations determines whether they can or cannot breach the boundaries of permitted behavior.

According to a modern Ukrainian language dictionary, the term “regulation” means (Kelman M., Kelman R., 2023, p. 15):

1) to organize something, manage something by subjecting it to appropriate rules or a specific system;

2) to achieve the proper functioning of machinery or equipment;

3) to take actions aimed at obtaining specific outcomes.

Educational literature also notes that “the term ‘regulation’ (from Latin *regula* – a bar, a rule) means organizing or setting boundaries through influence on a specific object”¹.

According to I. Vanchuk (2015, p. 10), “legal regulation is a specific system of normative influence on socially significant, deliberate, and willful repetitive social relations, aimed at organizing them through the use of special legal means”. Similarly, a scholar P. Rabinovych (2001, p. 10) emphasizes that “the value of legal regulation lies in its usefulness for the existence and development of individuals, relations, society and the state”. Scholars O. Skakun (2001, p. 203) and O. Kurakin (2013, p. 11) argued that legal regulation is not only the state’s means of organizing relations through the use of law and legal means, but also their legal (normative) formalization, protection, and development. O. Kotenko (2012, pp. 200–201) states that “legal regulation is a special action of the law, distinct in form and content, carried out through the subjective rights and obligations of participants in specific legal relationships. In this case, it is not merely about the influence of law (its impact on feelings, thoughts), but rather clearly defined prescriptions for possible and necessary behavior”. Therefore, legal regulation is a set of legal norms that govern specific legal relations through legal means.

The definition of the legal nature of a fraudulent transaction can begin by tracing the origin of the fraudulence construct and establishing the meaning behind the term “fraudulent transaction”.

It is worth noting that the definition of the term “transaction” aims to encompass all the characteristic features that distinguish it within the system of legal facts. A transaction is identified as a deliberate, purposeful, and voluntary act of participants in civil transactions, whereby they seek specific legal consequences (Davydova, 2018, p. 96).

In the academic literature, it is stated that “fraudulent agreements are agreements that cause or have already caused harm to a creditor.

¹*Legal regulation.* <http://ftplec.nlu.edu.ua/Навчально-методичні%20матеріали/Кафедра%20теорії%20і%20філософії%20права/Теорія%20права/№%206%20Правове%20регулювання.%20.pdf>.

It is noted that the main purpose of such a transaction is the debtor's concealment of their assets (property, money) from the creditor to avoid fulfilling their obligations"¹. In his scholarly works, O. Vozniuk (2022, p. 117) indicates that a fraudulent transaction should be understood as a transaction executed by the debtor to the detriment of the creditor or something similar to this.

Describing a fraudulent transaction as an abuse of rights, the author S. Myrza (2022, p. 708) notes that "a fraudulent transaction is equivalent to an abuse of rights, meaning the intention to cause harm is an indispensable and reliable criterion for recognizing the transaction as fraudulent".

It is important to highlight the opinion of A. Harmatiuk (2023, p. 56), who states that "today, Ukrainian legislation and judicial practice operate on the premise that a fraudulent transaction is a type of void transaction, to which the provisions regarding fictitious transactions apply. This is because if a fraudulent transaction is not executed in kind, it can also be classified as a fictitious transaction. The author emphasizes the inadmissibility of equating fraudulent and fictitious transactions. This is because among the transactions that debtors execute to the detriment of creditors, fictitious transactions are possible, but they do not exhaust the entire scope of fraudulent transactions, as situations may arise where the contract was performed, rendering it non-fictitious".

In our previous scientific works, we concluded that a fraudulent transaction is an action of a debtor or party to a legal relationship that exists at the time of execution or is highly likely to become a party to the legal relationship, which may manifest as either active or passive legal behavior, aimed at avoiding the undesirable consequences for the debtor or party (likely to become a party) to the relationship. These consequences could involve avoiding civil liability, undesirable civil status, or acquiring benefits in a dishonest manner (Hofeld, 2024a, p. 279; Hofeld, 2024b, p. 21).

Having clarified the basic categories, it is necessary to move on to the legal regulation of fraudulent transactions in Ukraine.

First of all, it is worth noting that today, the issues surrounding the construct of fraudulence and the application of fraudulent transactions are

¹ Spector, A. (2022, January 28). *Fraudatoriness – a new trend in the protection of creditors' rights in bankruptcy proceedings*. Legal Newspaper Online. <https://yur-gazeta.com/publications/practice/bankrutstvo-i-restrukturizaciya/fraudatornist-noviy-trend-zahistu-porushenih-prav-kreditoriv-u-procedurah-bankrutstva.html>.

regulated only fragmentarily. Certain aspects of fraudulent transactions are covered in:

The Code of Ukraine on Bankruptcy Procedures (dated October 18, 2018, No. 2597-VIII)², specifically Article 42, which outlines the grounds for recognizing a debtor's transactions as invalid. The article specifies that: "The commercial court, within the framework of bankruptcy proceedings, upon the request of the bankruptcy trustee or creditor, has the right to declare invalid any transactions made by the debtor after the initiation of bankruptcy proceedings or within three years preceding the opening of the bankruptcy case if they violated the rights of the debtor or creditors, on the following grounds:

1) the debtor fulfilled all their financial obligations ahead of schedule;

2) the debtor, before the opening of the bankruptcy proceedings, assumed obligations, as a result of which they became insolvent or the fulfillment of their monetary obligations to other creditors became fully or partially impossible;

3) the debtor disposed of or acquired property at prices significantly below or above market value, provided that at the time the obligation was assumed or as a result of its performance, the debtor's property was insufficient to satisfy the creditors' claims;

4) the debtor paid another person or received property in fulfillment of monetary claims on a day when the amount of creditors' claims against the debtor exceeded the value of the debtor's assets³.

The Law of Ukraine "On the Deposit Guarantee System for Individuals" (dated February 23, 2012, No. 4452-VI)⁴ specifically Article 38, which outlines measures to ensure the preservation of the bank's assets, prevent the loss of property, and prevent losses to the bank.

The Law of Ukraine "On Enforcement Proceedings" (dated June 2, 2016, No. 1404-VIII)⁵, specifically in Part 4 of Article 9, which states that "the execution of a transaction regarding the debtor's property during the term specified in Part 3 of

² Verkhovna Rada of Ukraine. (2018). *The Code of Ukraine on Bankruptcy Procedures* (Law No. 2597-VIII). <https://zakon.rada.gov.ua/laws/show/2597-19>.

³ Ibid.

⁴ Verkhovna Rada of Ukraine. (2012). *On the Deposit Guarantee System for Individuals* (Law No. 4452-VI). <https://zakon.rada.gov.ua/laws/show/4452-17>.

⁵ Verkhovna Rada of Ukraine. (2016). *On Enforcement Proceedings* (Law No. 1404-VIII). <https://zakon.rada.gov.ua/laws/show/1404-19>.

Article 9, which led to the inability to satisfy the creditor's claim from such property, is grounds for declaring the transaction invalid, except in cases of privatization of property included in the composition of the unified property complex of a state or communal enterprise, entered into the Unified Register of Debtors".

The analysis of the above-mentioned legislative acts leads to the conclusion that the issue of applying the concept of a fraudulent transaction is only partially regulated in certain areas, highlighting the growing importance of addressing these issues today.

Additionally, particular attention should be paid to the rulings of the Supreme Court and the judicial practice that has begun to form concerning fraudulent transactions.

In the Supreme Court ruling dated December 7, 2018, case No. 910/7547/17, when reviewing a claim regarding a disputed transaction, the court established that "from the structure of Part Three of Article 13 of the Civil Code of Ukraine, it follows that actions by a person involving the exercise of their rights, but carried out with the intent to harm another person, constitute a form of abuse of rights. The execution by the owner of property of a transaction to dispose of their property with the intent to prevent the satisfaction of a creditor's claim against that property may be qualified as an abuse of ownership rights, as the owner is using their authority to dispose of the property to the detriment of the creditor's interests"¹.

It is also necessary to mention the ruling of the Grand Chamber of the Supreme Court dated July 3, 2019, in case No. 369/11268/16-c. The panel of judges concluded that "it is advisable to establish the criteria that distinguish the structure of fictitiousness from fraudulence since a fictitious transaction does not intend to create legal consequences, whereas a fraudulent transaction does – property is alienated, and so forth. The judges concluded that the plaintiff has the right to file a lawsuit to declare a contract invalid as one aimed at avoiding enforcement against the debtor's property, based on the general principles of civil legislation (paragraph 6 of Article 3 of the Civil Code of Ukraine) and the inadmissibility of abuse of rights (Part 3 of Article 13 of the Civil Code of Ukraine), and to refer to a specific norm providing grounds for declaring the transaction invalid, which could be either the grounds provided for by Article 234 of the Civil Code or an-

¹ Resolution of the Commercial Court of Cassation as part of the Supreme Court dated December 7, 2018 No. 910/7547/17. LIGA 360. <https://verdictum.ligazakon.net/document/78484783>.

other ground, such as that provided by Article 228 of the Civil Code of Ukraine"².

A practically significant position of the Supreme Court is also outlined in the ruling dated October 7, 2020, in case No. 755/17944/18³, where it is stated that the structure of "fraudulence" assumes that a contract made to the detriment of creditors (a fraudulent contract) may be either a compensated or uncompensated agreement. The structure of a fraudulent contract applied to compensated civil-law contracts includes the following elements (Buhaiets, 2023, p. 30):

- the moment the contract is concluded (when the debtor realizes that the property will be taken for debts);

- the counterparty with whom the debtor enters the disputed contract (for example, a relative of the debtor, an affiliated or related legal entity);

- the price (market/non-market), the presence or absence of payment of the price by the debtor's counterparty.

Summarizing the above, we note that these court decisions defined some of the key provisions regarding the application of fraudulent transactions in Ukraine, including the essence, characteristics, and essential conditions of fraudulent transactions.

The court decisions regarding the use of fraudulent structures in Ukraine and the invalidation of such transactions need to be considered in more detail.

According to the ruling of the Korolyovskiy District Court of Zhytomyr dated April 11, 2024, in case No. 296/7282/23, regarding the invalidation of a sale and purchase agreement and the application of the consequences of the invalidity of the transaction, the court partially satisfied the claim, and specifically, the judge recognized the transaction as fraudulent. It should be noted that, for illustration, we have chosen a compensated fraudulent transaction. What arguments did the judge base the decision on?

1. One of the fundamental principles of civil law is good faith (paragraph 6 of part one of Article 3

² LIGA ZAKON. (2022, May 25). *Fraudulence: The Supreme Court judge explained in which cases it is appropriate to apply it*. https://jurliga.ligazakon.net/news/211442_fraudatornst-sud-dya-vs-poyasniv-u-yakikh-vipadkakh--dotslnozastosovuvati.

³ Resolution of the Supreme Court composed of the panel of judges of the Second Judicial Chamber of the Civil Court dated October 7, 2020 (Case No. 755/17944/18). Unified State Register of Court Decisions. <https://reyestr.court.gov.ua/Review/92315178>.

of the Civil Code of Ukraine). This provision means that all actions of participants in civil legal relations must be in good faith – the behavior of participants should be transparent, honest, and show respect for the interests of the other party to the contract or the relevant legal relationship.

2. Private law instruments should not be used by participants in civil turnover to avoid or prevent the payment of debts (funds, damages, harm) or the enforcement of court decisions on the recovery of debts (funds, damages, harm) that have come into legal force. The abuse of rights and the use of private law instruments contrary to their intended purpose is manifested in the fact that: a person (or persons) “used their rights maliciously”; negative consequences (of various kinds) for other persons exist (these negative consequences represent a certain state in which other subjects, whose rights are directly connected with the rights of the person abusing those rights, find themselves; this state does not satisfy other subjects; for them to exercise their rights, certain facts and/or conditions are lacking; the occurrence of these facts/conditions directly depends on the actions of another person; this other person may be in specific legal relations with these persons who “suffer” from the abuse of rights, or may not be)¹.

In the course of the court session, the court noted that: “the invalidity of a fraudulent transaction in non-competition disputes must ensure the interests of the creditor(s) through the possibility of access to the debtor’s property, even property located with other persons. The purpose of non-competition challenging is to return the property to the debtor to subject it to enforcement, that is, to restore the creditor to the position they held before the fraudulent transaction”.

3. In court practice, the qualification of a fraudulent transaction in non-competition disputes is allowed as fictitious (Article 234 of the Civil Code of Ukraine) or as one that is carried out contrary to the principles of good faith and the inadmissibility of abuse of rights. Both grounds for qualifying a transaction as fraudulent are constructed by the legislator based on the model of a contestable transaction. In other words, the challenging of a transaction must be initiated by the creditor as an interested party by filing a claim to declare the transaction invalid (rescissory claim).

Under these circumstances, the court concluded that the sale and purchase agreement was

executed contrary to the principle of good faith and aimed at abusing rights, which resulted in the inability to subject the debtor’s property to enforcement and generally reduced the debtor’s assets (GTOF “Theseus LTD”), and thus, it is deemed a fraudulent transaction².

Analyzing the above court decision, it can be concluded that the judge identified the moment of the fraudulent transaction – the sale of the car was made during the court case concerning the collection of the debtor’s debt (GTOF “Theseus LTD”) – and established the purpose of such a transaction.

The next example is the decision of the Kryukiv District Court of the city of Kremenchuk, Poltava Region, dated February 23, 2024, case No. 537/1374/23³ regarding the recognition of a transaction as null and void (where the fraudulent transaction was without consideration). In the course of the case review, the court established the following:

The private enforcement officer of the Poltava Region enforcement district filed a lawsuit against “Bio-Aktivv” LLC and PERSON_1, requesting the court to invalidate the donation agreement dated August 18, 2020, concluded between “Bio-Aktivv” LLC and PERSON_1, certified by the private notary of the Kremenchuk City Notarial District of Poltava Region under registry No. 2295, on the basis of which the ownership rights of PERSON_1 were registered.

In substantiating the claim, the enforcement officer stated that an enforcement proceeding is pending regarding the recovery of UAH 1,915,756.81 from the debtor “Bio-Aktivv” LLC, representing unreasonably retained funds in the form of rent, and UAH 28,736.35 for court costs. During the verification of the debtor’s financial status, it was established that after the Poltava Regional Economic Court initiated proceedings in case No. 917/473/20, “Bio-Aktivv” LLC, based on a donation agreement dated August 18, 2020, certified by a private notary of the Kremenchuk City Notarial District of Poltava Region, alienated its real estate, specifically gifting PERSON_1 a property – a 1/25 share of 73/100 shares in the ownership of a boiler house, a salt warehouse, and a transformer substation located at ADDRESS_1. The enforcement officer noted that as of the time of filing the lawsuit, there were no other movable

² Ibid.

³ *Decision Kryukiv District Court of the city of Kremenchuk, Poltava Region, dated February 23, 2024 (Case No. 537/1374/23)*. Unified State Register of Court Decisions. <https://reyestr.court.gov.ua/Review/117520191>.

¹ *Decision of the Korolyovskiy District Court of Zhytomyr dated April 11, 2024 (Case No. 296/7282/2)*. Unified State Register of Court Decisions. <https://reyestr.court.gov.ua/Review/118293282>.

or immovable assets or funds in the debtor's accounts that could be seized to satisfy the debt and execute the court decision. Additionally, the debtor was not taking any actions to fulfill its financial obligations. Therefore, the enforcement officer asserted that the donation agreement dated August 18, 2020, was concluded by the debtor to harm the creditor by avoiding asset seizure and concealing such assets from future enforcement. The fraudulent nature of the agreement was also evidenced by the fact that the real estate, which belonged to a business entity whose purpose is to generate profit, was transferred without consideration to PERSON_1, the brother of PERSON_2, who had exited the company as a founder and beneficiary just one month prior to the contested transaction. The enforcement officer believed that the debtor acted in bad faith by transferring real estate to a related party under the contested donation agreement to prevent asset seizure by the creditor¹.

After hearing both parties, the court concluded that the fact that the transaction with the third party, under which the debtor transferred the property, was executed does not exclude the possibility that it was aimed at avoiding asset seizure by the creditor. As such, the transaction may be invalidated based on the general principles of civil law. A transaction made by a debtor during a period of financial obligation to repay a debt, as a result of which the debtor becomes insolvent, raises questions about its good faith and bears the hallmarks of a fraudulent transaction (a transaction made by the debtor to harm the creditor). The court also noted that the donation value specified in the contested agreement was UAH 3,207, which is evidently far below the real value of the real estate. Additionally, the court took into account that the alienation of the property was contrary to the purpose of a limited liability company, which is to generate profit (income) through business activities, and that the transaction was without consideration. As a result, "Bio-Activv" LLC, being aware of the ongoing civil case and the existing debt to the Kremenchuk City Council, acted in bad faith and contrary to the interests of the creditor by entering into a gratuitous real estate donation agreement with a person close to **PERSON_2**, who had left the founders of "Bio-Activv" LLC just a few days before the agreement was concluded. The established circumstances

indicate dishonest behavior and an abuse of rights, as the transaction was aimed at concealing this property from future execution of the court decision regarding the recovery of funds, which, in turn, harms the interests of the creditor – the Kremenchuk City Council of the Kremenchuk District, Poltava Region².

Based on the foregoing, the court concluded that there are grounds to invalidate the contested donation agreement. The donor, who alienated the property under a gratuitous agreement in favor of a related party while having outstanding financial obligations to the creditor, represented by the plaintiff, acted in evident bad faith and abused rights in relation to the creditor. The alienation of "Bio-Activv" LLC's real estate under the contested donation agreement reduced its solvency and was aimed at preventing the creditor from seizing the debtor's property. Therefore, the contested agreement is fraudulent, meaning that it was concluded to the detriment of the creditor. The plaintiff's interest in the contested agreement meets the following criteria: 1) the rights and legitimate interests of the interested party were directly violated by the agreement; 2) as a result of the agreement being declared invalid, the property interests of the interested party will be restored; 3) the interested party will receive the property through restitution³.

Thus, the court established not only the grounds for the nullity of the transaction as provided by law but also the fact of the violation of the civil rights of the person on whose behalf the plaintiff addressed the court.

In conclusion, in both cases, the court established all the necessary criteria to determine the agreements as fraudulent and subsequently null and void, with the aim of restoring good faith, fairness, and protecting the legitimate interests of the other party in the legal relationship.

Therefore, the legal regulation of fraudulent transactions in Ukraine today requires improvement and precise regulation. The beginning of the formation of a unified judicial practice concerning fraudulence is a highly positive step. However, referencing specific legal norms when issuing a court decision ensures a person's right to a fair and impartial judgment.

In other words, it is important to note the lack of a unified doctrinal understanding of the essence of fraudulent transactions and the absence of adequate legal provisions governing fraudulence, highlighting the urgent need for further scientific research in this area.

¹ *Decision Kryukiv District Court of the city of Kremenchuk, Poltava Region, dated February 23, 2024 (Case No. 537/1374/23)*. Unified State Register of Court Decisions. <https://reyestr.court.gov.ua/Review/117520191>.

² *Ibid.*

³ *Ibid.*

CONCLUSIONS. Currently, the legal framework surrounding the concept of fraudulence and the application of fraudulent transactions is only partially regulated by the existing legislation of Ukraine. Certain aspects of fraudulent transactions are addressed in the Law of Ukraine “On the Deposit Guarantee System for Individuals”, the Law of Ukraine “On Enforcement Proceedings”, the Code of Bankruptcy Procedures of Ukraine, and in some provisions of the Civil Code of Ukraine. A distinct area of legal regulation for fraudulent transactions in Ukraine also includes the rulings of the Supreme Court.

The legal regulation of fraudulent transactions in Ukraine should be understood as a comprehensive set of legal provisions that define all the essential conditions, nature, characteristics, and consequences of such transactions. Although modern judicial practice is only beginning to form a unified approach to the application of legislation concerning fraudulent transactions, certain provisions still require legislative refinement. Future academic research should focus on studying European experiences in applying fraudulent transactions.

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ПРАВОВЕ РЕГУЛЮВАННЯ ФРАУДАТОРНОГО ПРАВОЧИНУ В УКРАЇНІ

Актуальність питання, що досліджується у статті, зумовлена стрімким розвитком суспільних відносин, що призводить до появи нових видів правочинів, їх формалізації та регламентації. Правочин є базовою категорією для регулювання цивільних правовідносин, у тому числі такого виду правочину, як фразудиторний правочин. Комплексне дослідження інституту фразудиторного правочину в Україні стане вагомим підґрунтям для подальшого вдосконалення чинного не лише цивільного, а й адміністративного законодавства, а також дозволить уніфікувати судову практику застосування законодавства про фразудиторні правочини. У процесі дослідження використано такі методи наукового пізнання, як системно-структурний, порівняльний і метод аналізу. На основі аналізу чинного законодавства України у сфері застосування фразудиторних правочинів наголошено на відсутності чіткого визначення фразудиторного правочину, його ознак і наслідків укладення. Разом із тим відсутність нормативного визначення фразудиторного правочину в чинному законодавстві України спричиняє колізії в судових рішеннях, про що свідчить аналіз судової практики, зокрема Верховного Суду України. Ця законодавча прогалина має бути врегульована, оскільки правове регулювання фразудиторних правочинів в Україні відіграє важливу роль у здійсненні правосуддя та захисті інтересів учасників таких правочинів. Здійснено огляд ключових категорій цієї наукової статті, зокрема «правове регулювання», «фразудиторність», «фразудиторний правочин». Запропоновано під фразудиторним правочином розуміти дію боржника або учасника правовідносин, який існує на момент виникнення або має високу ймовірність стати учасником правовідносин, що може бути виражена як активною, так і пасивною правомірною поведінкою, спрямованою на уникнення небажаних для боржника або особи (ймовірного учасника правовідносин) наслідків, спрямованих на уникнення цивільно-правової відповідальності, ненастання небажаного цивільно-правового статусу або отримання вигоди в недобросовісний спосіб. Зроблено висновок про необхідність удосконалення правового регулювання фразудиторного правочину в Україні в контексті визначення його сутності, особливостей істотних умов договору та правових наслідків його застосування.

Ключові слова: *фразудиторність, фразудиторний правочин, сутність, правове регулювання, судова практика.*

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