

Foreign Cause as a Means of Preventing Civil Responsibility to the Estate Registrar in English Law and Iraqi Law

Baraka Karim Madhi¹ and Dr. Zeina Qudra Lateef²

¹Iraqi University / Faculty of Law and Political Science

²Assis. Prof., Iraqi University / Faculty of Law and Political Science

Abstract: We mentioned in this paper the foreign cause, which is one of the most important means used to pay responsibility in general, whether at the civil, criminal or administrative level, as after the civil Responsibility of the real estate registrar is achieved as a result of the error issued by him, which in turn led to the damage of the customer, some cases may arise that in turn lead to the payment of responsibility for the registrar, including the foreign cause in all its forms of force majeure and emergency circumstance or the act of others Or the fault of the injured party himself, as after fulfilling the conditions that must be met in it, the matter leads to severing the causal relationship between the fault of the registrar and the damage of the injured party, and as a result the responsibility of the real estate registrar is negated.

Keywords: Foreign cause, Real estate registrar, Civil Responsibility, Force majeure and contingency, Act of other, fault of the injured party.

INTRODUCTION

The real estate registrar is one of the persons charged with registering and recording real estate transactions through the authorities granted to him by the Practice Guide No. (39) for correction and compensation in England, and the Real Estate Registration Law No. (43) of 1971, as amended in force in Iraq, as it entails a set of obligations that fall on him within his job duty, perhaps the most important of which is the recording and registration of all real estate transactions, and since he may err like the rest of the people during the implementation of his work, and that his mistake leads to damage The customer requesting the service, thus leads to the rise of his civil Responsibility as a result of this damage, and despite that, this matter is not inevitable, some cases may arise that lead to cutting the causal relationship between the registrar's error and the customer's damage, including the foreign cause, and since the causal relationship is one of the pillars of the civil Responsibility of the real estate registrar, the absence of this element leads in turn to the absence of the responsibility of the real estate registrar, and based on the above, we show this through this paper , by dividing it into two requirements, the first is devoted to the statement of the concept of foreign cause and the position of comparative laws on it, while the second is devoted to the statement of foreign cause images.

The First Requirement: The Concept of Foreign Cause and the Situation of Comparative Laws on It

To clarify the concept of foreign cause, it is necessary to indicate its definition and conditions, and this is what we will address through the first

section, either the second section, in which the position of comparative laws is mentioned.

Section One: Definition and Conditions of Foreign Cause

The foreign cause is defined as: "any act that is not attributed to the real estate registrar and that would make it impossible to prevent the occurrence of the harmful act" (Al-Sarhan, A, 2008), and also as: "every fact that arises independently of the will of the debtor, and this debtor cannot foresee or prevent its occurrence" (Hamdallah, S.W.K, 2009), noting that this definition came to include all forms of foreign cause in addition to explicitly including the conditions of the foreign cause. As for the conditions that must be met in the foreign cause, they are a set of conditions as follows:

That cause has made it impossible for the real estate registrar to carry out his obligations entrusted to him, and thus he cannot perform his assigned work in the Real Estate Registration Department, as is the case after he was able to register the gift in the property, and this is known as the impossibility of the cause that paid the damage.

If this cause is foreign to the real estate registrar, and has nothing to do with it, in the sense that there is no knowledge and correlation between the cause and the real estate registrar, and this is known as the absence of the documentd (Al-Sarhan, A).

Section Two: The Position of Comparative Laws on Foreign Cause

The English law did not know the foreign cause, but it was limited to the direction of the English courts by taking pictures of the absence of causal relationship and thus the absence of the responsibility of the real estate registrar (Goudkamp, J, 2013), and the Iraqi law also had a similar position to the English law, there was no definition of the foreign cause, and despite that the Iraqi judiciary had a major role in its rulings issued by acknowledgment as the foreign cause as a means of excluding civil Responsibility, and this is what the Federal Court of Cassation approved in one of its decisions that: "Damage caused by a foreigner who has no hand of the defendant, such as force majeure, the act of third parties or the fault of the injured party, is not bound by the guarantee unless there is an agreement or provision to the contrary" (IFCC, 2009). In light of the above, we put a simple definition of the foreign cause as: (It is the occurrence of an unexpected matter by the real estate registrar and his will has nothing to do with the latest one, which in turn leads to the interruption of the causal link between his fault and the expected damage and thus negates his responsibility).

The Second Requirement: Types of the Foreign Cause

The foreign cause has multiple pictures, each of which has a special case, but all of them play the same role in preventing the civil Responsibility of the real estate registrar, and thus we will address through this requirement to mention these pictures, as we show through the first branch force majeure and emergency circumstance, and in the second the act of others, and finally in the third branch the fault of the injured.

Section one: Force Majeure and Emergency Circumstances

Force majeure or emergency circumstance is defined as: "What was done by nature so that it cannot be expected or avoided" (Abu Beih, H.H.K, 2018), as it is clear from this definition that force majeure or emergency circumstance was limited to the means of nature, and this is not permissible as it may be by force majeure a specific incident as a result of doing something or an internal incident in the person, and also: "Every act has nothing to do with the will of the debtor and did not enable him to anticipate it or pay it and the implementation of the obligation becomes impossible" (Selim, M.M.E.D, 2007), referring to comparative laws we find that the English law did not come with any fixed or inherent definition of force majeure, and despite that the concept is well-established, and in

general the events of force majeure are external events, but English jurists have defined force majeure as: "Certain acts, events or circumstances beyond the control of the parties, for example, natural disasters or the outbreak of acts of aggression, as the force majeure clause usually exempts one or both parties from civil Responsibility after the occurrence of events, since its basic principle is that when certain events occur beyond the control of the party, that party is exempt from being entitled to suspend the performance of all or part of its obligations, and thus that party is not responsible for its errors in the performance of obligations (Reuters, T, 2022) , as the English law in force majeure stipulated that the event be unforeseen by the parties, and the real estate registrar is ready to show that the force majeure event is the only effective cause of non-performance, as the registrar is obliged to prove that his obligation has become legally or materially impossible and not difficult or unprofitable (Enser, J, 2022), and also the judicial precedents in England had an impact on the conditions that must be met in force majeure, as it ruled in one of the judicial precedents not to deny responsibility despite The presence of force majeure, but it was not alone, but the defendant had stopped working and drilling before the occurrence of force majeure, and that its occurrence was not the only cause for the defendant's failure to perform his obligation and cause harm to others (Tuhg, H, 2022). In the same vein, Iraqi law tended not to distinguish between force majeure and sudden accident, and also considered them as causes for the absence of the responsibility of the real estate registrar, through what is stipulated in Article 211 of the Iraqi Civil Law, which states: "If a person proves that the damage has arisen from a foreign cause that he has no hand in, such as a heavenly scourge, a sudden accident, force majeure, the act of a third party or the fault of the injured party, he shall not be bound by the guarantee unless there is a provision or agreement to the contrary" (ICL). And in a modern direction of the Iraqi judiciary differentiated between them, by considering that the Corona epidemic is a force majeure and not an emergency circumstance and that the place of distinction between them lies through the inability of the parties to carry out their obligations in the event of force majeure, either sudden events lead only fatigue through the implementation of the obligation and not the inability to do so, in addition to that requires the impossibility of the real estate registrar to pay this incidental cause, that is, the participation of both unpredictability

and impossibility at the same time, and that each of them is The only cause for the occurrence of the damage, so that the causal relationship advances and thus negates civil Responsibility, and therefore when it is proved to the court that the accident that caused the damage to the plaintiff is due to force majeure or emergency circumstance, the claim of the real estate registrar to whom the accident was assigned to compensate for the damages caused by the accident is not required, as his responsibility is negated by the interruption of the causal relationship, as is the case if the real estate registrar did not register the judicial division or gift, or the real estate ownership judgment was not marked and force majeure occurred. Such as fire, for example, which in turn led to the destruction of real estate records, this event is not in the hands of the real estate registrar in it as it was not expected to happen and he cannot pay it, as his responsibility is negated and there is no way to bear compensation for the damages that occurred.

Section Two: Acts of Others

Third party means "a person other than the injured party, who is not the owner of the fault, and other than the persons about whom the attachment of the wrongdoer is asked" (Al-Sanhouri, 2007), and also it is the person whose subjectivity differs from the subjectivity of the defendant, or his representatives, and every harmful act issued by him that discriminates against the fault of the injured party or force majeure, as it would impose Responsibility in whole or in part, whether this unknown person is unknown or unknown (Salman, Q.J.M, 2015), As the judiciary and jurists did not require appointment in the capacity of others, and therefore it can be appointed or not appointed, and accordingly, if the real estate registrar proves that the error was caused by someone other than him and not the affected customer, thus the causal relationship between the damage and his act is eliminated, and therefore there is no responsibility, as is the case if a person impersonates his brother or another person by proving any forged document or based on the similarity between the principal and him and uses it to sell a property, and therefore The role of the registrar, under which he can avoid responsibility for himself, is to deny the causal relationship that the damage is a direct result of the fault of the wrong third party alone, and based on the above, the fault of the third party on which it is based to deny the responsibility of the real estate registrar must meet several conditions, which are as follows:

The real estate registrar must prove that the act of third parties is the direct cause of the damage to the customer.

The real estate registrar shall not have any error that led to the facilitation of the damage, otherwise it shall be considered a joint error between him and the client, as the act of others shall not raise responsibility for personal acts or mitigate them, unless this act is considered a mistake in itself and alone caused or contributed to the damage (Yadak, M.T, 2021), but in the event that both the fault of the real estate registrar and the fault of others had an affair in the events of the damage, and one of the two faults was taken for the other, the error taken was considered the only cause In the event of damage, in the event that the fault of the registrar is absorbed by the fault of others, the registrar is fully responsible, as there is no effect of the fault of third parties in this responsibility, but in the case of the fault of third parties absorbing the fault of the real estate registrar, the third party alone is fully responsible, and also there is no effect of the fault of the real estate registrar in this responsibility (Al-Sanhouri), and in the event that both errors exist and do not take each other, and it is considered that each of them is the cause of the damage, as there are many responsible for Injurious act, and therefore they shall be jointly liable in their obligations to compensate for the damage, and the Responsibility shall be equal between them, unless the judge appoints the share of each of them in compensation. Looking closely at the laws of comparison, it is clear that English law considers the act of others as one of the causes for the payment or absence of civil Responsibility of the real estate registrar, as it is also focused on denying the causal relationship, provided that the burden of proving that the civil error occurred by the act of others falls on the real estate registrar, if he succeeds in proving this, his responsibility is eliminated (Goudkamp, J). As for the Iraqi law, we find that he followed the approach of laws that stipulated the term act of others, through Article (211) of its Civil Law, as It stipulates that: "If a person proves that the damage has arisen from a foreign cause that he has no hand in, such as a heavenly scourge, a sudden accident, force majeure, the act of others, or the fault of the injured party, he is not bound by the guarantee unless there is a provision or agreement to the contrary" (ICL), and thus negates the responsibility of the real estate registrar in the event that the fault of third parties is available with its conditions.

Section Three: Fault of the Injured Party

The injured party must first be defined as: "Any person other than the defendant, who has suffered damage and has taken the capacity of a defendant in claiming compensation for the damage caused" (Malouki, I.A.J, 2009). The fault of the injured party is defined as: "that act that is issued by the injured party himself and for this act is involved in the events of the damage because of the lack of causal relationship"(Sultan, A, 1987), as the real estate registrar, who is the one from whom the harmful act occurred, has participated in his act with the act of the injured client in the events of the damage, and therefore if it did not occur By the real estate registrar, any error, whether fixed or assumed, and the damage was caused by the client's action only, so in this picture the registrar must not be held responsible for the damage (Al-Sanhouri).

It is clear from the above that the fault of the injured party is the act of the injured client, who in turn took the fault of the real estate registrar and was considered the only cause for the damage events, so the occurrence of this type of error leads in turn to the severance of the causal relationship and thus the absence of the responsibility of the real estate registrar and his failure to bear compensation. In order to clarify the position of comparative laws on the fault of the injured party, it is clear to us that they dealt with the fault of the injured party, but they differed among themselves in the conditions that must be met in the fault of the injured party, some of them stipulated the existence of all the conditions stipulated in force majeure, as they recognized that there is no sense in studying the fault of the injured party independently of force majeure, while other legislation dealt with the matter in an independent manner from the subject of force majeure, as the fault of the injured party, which has a significance in causing damage, also has an effect In the responsibility of the real estate registrar, if the act issued by the injured party is not a mistake, but it is just an ordinary act, as it is not correct that it would erase the responsibility of the registrar, and he has the right to refer to the registrar with full compensation for the damage he suffered, and the real estate registrar can also have the right to invoke the fault of the injured party against his heirs after his death, if the affected customer has made a mistake, and his mistake was the cause of the accident that ended with his death, the real estate registrar could invoke the error of their affected inheritance as if As if alive (Al-Sanhouri, D.A.R), and in the event that the damage is

achieved due to both the fault of the registrar and the customer, it is necessary to identify any event that affects the fault of the injured in the Responsibility that resulted from the fault of the real estate registrar, any error takes the other and leads to the lack of causal link is the error produced and therefore entails responsibility on the owner (Ibid) As English law tended to consider the fault of the injured as well as negligence or negligence of the causes that lead to the absence of civil Responsibility for civil error, as It provided the plaintiff with an opportunity to pay his responsibility, by invoking the defendant's error, negligence or negligence, and thus as it was proven that the defendant's fault or negligence is the basis for the damage, the defendant's responsibility was eliminated, and therefore there is no Responsibility or compensation towards him (Goudkamp, J), and accordingly the responsibility of the real estate registrar is excluded in the event that it is proven that the damage occurred due to the negligence or default of the affected client, and thus the English law took the issue of the absence of civil real estate registrar Responsibility as a means Legal to negate civil Responsibility resulting from civil fault.

As for the Iraqi law, it is considered an impediment to civil Responsibility, and it is considered a form of foreign cause, and despite that, Iraqi law is not satisfied with that only, but also several symptoms of the absence of the causal link, and thus leads to the absence of the responsibility of the real estate registrar, and this is confirmed by Article (211) of the Iraqi Civil Law.

With regard to the requirement for the existence of force majeure conditions in the fault of the injured party, Iraqi law has tended not to require the existence of force majeure, and they considered that each of them separately.

CONCLUSION

As we conclude from the foregoing that the foreign cause of force majeure or the fault of others or the fault of the injured party, in turn leads to the severance of the causal relationship between the error of the real estate registrar and the damage of the client and thus the absence of civil Responsibility of the real estate registrar, and consequently the effects of its establishment are negated, and this is what both English law and Iraqi law turned to, and the matter was also supported by judicial precedents in England as well as judicial decisions in Iraq.

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