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Effects Of Material Exposure Issued by Management to The Lessee

By

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Abstract

Undoubtedly, the obligation of the lessor to guarantee exposure is one of the most important obligations entrusted to him. The administration is often exposed to the tenant in fulfilling the intended benefit from the contract without being based on a right of its own. Rather, it is subjected to material exposure with its powers for the public interest, such as decisions to impose curfews or decisions to develop the public facility. Thus, the lessee's use of the leased property is disrupted, or he is deprived of the use of the leased property. And that the exposure may be within the limits of the law or outside the limits of the law when the authority abuses its right. And as it is known that the lessor does not guarantee the material exposure issued by third parties. But he bears the consequences, and this results in cases of recourse, so the lessee can have recourse against the lessor and the administration. And that the Iraqi legislator did not organize the effects of this exposure in special texts, so confusion arises in the reference when referring to the general rules. Especially since the Iraqi legislator did not regulate the material exposure issued by others except in the case of forcing.

Introduction

First: A Defining Entry to the Research Topic

The purpose of the lease contract is for the lessee to benefit from the leased property in the manner intended by the contract. And since the lessee is obliged to pay the rent in exchange for the quiet use of the property. The lessor is obliged to enable him to benefit in return for the rent, because the lessor's obligation is an obligation to achieve a result, not an allowance for care.

The management exposes the tenant to a material exposure in many cases. For example, it performs, with its powers and authorities, works that would prejudice the use of the leased property. It may abuse its powers, hence the importance of adhering to the management's exposure to the tenant. And if this exposure occurred, what is its legal regulation?

Especially since this guarantee is distinguished by the peculiarity of the fact that the objecting party is the administration, and the administration is not like individuals.

We find that comparative legislation has regulated it with explicit texts such as the Bahraini Civil Code, the Qatari Civil Code and the Omani Civil Transactions Law, in contrast to the Iraqi legislator, who did not address this important issue.

Second: Importance of the Study and Reasons of Choosing this Topic

First: The importance of the study is manifested in addressing the legislative

shortcomings, as is the case with the rest of the comparative civil legislation.

Second: The ambiguity of this type of exposure, especially as it interferes with acquisition.

Third: The failure to regulate it by the Iraqi legislator leads to wasting the tenant's right to have recourse against the lessor and the management.

Third: Research Problem

The problem of the study lies in the fact that the Iraqi civil law did not address the legal implications of the physical management exposure to the tenant. As well as not being organized, the judiciary differed in its adaptation.

Fourth: Hypotheses of the Study

First: The hypotheses of the study are manifested about what is the legal effect of exposure to the material management of the tenant.
Second: Can the lessee have recourse against the lessor and the objector together?

Fifth: Research Methodology

The scope of the study is determined in addressing management's exposure to the material tenant and following the analytical approach. The legal texts and jurisprudential opinions will be analyzed and some of them are preferred over the other. As well as following the comparative approach within the scope of the Iraqi Civil Law No. (40) for the year 1951, the Bahraini Civil Law No. (19) for the year 2001, the Qatari Civil Law No. (22) for the year 2004 and the Omani Civil Transactions Law No. (29) for the year 2013. To find out the similarities and differences between The different legal systems and the introduction of the most suitable ones. As well as following the applied approach to citing the provisions of the decisions of the Iraqi, Bahraini, Qatari and Omani judiciary whenever possible.

Sixth: Research Plan

In order to understand the study of the research, we must divide it into three sections:

In the first section, we will discuss the return of the tenant to the management, in the second section the return of the tenant to the lessor, and in the third section, the return to the lessor and management, and then a conclusion in which we present the most important results and recommendations.

First Topic

Return of the tenant to the administration

The lessee can refer to the administration (Abu Al-Saud, 1986) in the event of material exposure in two cases:

The first case: If her work is within the limits of the law.
The second case: If her work is outside the limits of the law.

This is what we will show later
First requirement
The work of the administration within the limits of the law

The administration issues actions that affect the fulfillment of the intended benefit due to its powers. These actions may be the expropriation of property for the public benefit or works

to preserve public health or the safety of individuals and so on. In the event the ownership of the property is expropriated for the public benefit of the lessee, he has the right to refer to the administration for compensation in accordance with a special law.

The Iraqi legislator did not regulate the exposure issued by the administration, nor did it regulate the material exposure issued by a third party, except in the case of usurpation, unless we find in its texts the basis for the tenant's return to the administration. While we see that the Bahraini Civil Code permitted in the text of Article (521/1) the tenant's recourse to the objector (the administration), as it states: (The landlord does not guarantee the tenant the material objection if it is issued by a third party as long as the objector does not claim a right. The lessee has the right to file a claim for compensation and all seizure claims in his name against the person who has seized the property. Article (600/1) of the Qatari Civil Code corresponds to it, and has no equivalent in the Omani Civil Transactions Law.

The interpretation of this is that the Bahraini legislator and the Qatari legislator granted the lessee the right to file possession lawsuits. Under the above texts, the lessee may refer to the administration with claims of possession.

From all of the foregoing, we can rely on the tenant's recourse to the administration if it was exposed to the tenant in the text of Article (11) of the Iraqi Civil Procedure Code. Where Article (11) stipulates: (Possession lawsuits are: 1- A lawsuit for recovering possession, which requires the presence of a person whose hand has been removed. 2- A lawsuit to prevent exposure, which requires that the holder has not reached the limit of dispossession. 3- A lawsuit to stop new works, which requires the occurrence of exposure to the holder as a result of new works that did not threaten his possession). Based on that, if the administration embarks on work that threatens the benefit of the lessee, he may refer to the administration. If the administration builds a factory next to the leased property, and the administration begins its work by making use of the tenant's use of the property, he may refer to the administration claiming to stop the new works (Al-Obaidi, 2022).

We believe that there is no obstacle that prevents the tenant from returning to the administration by filing lawsuits for possession of the administration in his personal name for the following reasons:

1- The primary objective of tenure lawsuits is to protect tenure itself.

2- The lessee is an accidental holder of the property rights and is the original holder of his right as a lessee. Possession lawsuits are intended to protect his possession as a tenant. As in the case of the administration's seizure of the property for an illegal reason, here the tenant defends his personal right. Especially since the law allows each holder to file possession claims based on whether or not they are based on a right. It was a fortiori to give this right to the tenant, as it is based on a valid reason and interest under the lease contract. We would like if the Iraqi legislator explicitly gave the tenant this right. It should be noted that the Saudi legislator gave the lessee this right, unlike the Iraqi legislator. This is in the system of legal pleadings according to Royal Decree No. (M/1) dated 22/1/1435. As Article (209/1) stipulates that possession mentioned in this article is what is actually in possession of real estate that is disposed of by use or usufruct in the manner Continuing according to the article, even if he is not an owner like the lessee).

3- It is in the tenant's interest to file all claims of possession against the management, as he is the beneficial owner of the property according to the contract concluded between him

and the lessor based on the text of Article (722) an Iraqi civil, which defines the lease contract as (ownership of a known benefit).

Through the foregoing, we see that the Bahraini legislator and the Qatari legislator are right to grant the tenant the right of recourse against the administration in its exposure (Article (521) and (600) of the Bahraini Civil Code).

We believe that the Iraqi law must allow this with an explicit text to provide protection for the tenant.

The Iraqi legislator dealt with the tenant's recourse to management in the event of acquisition by a special law, as well as the Bahraini, Qatari and Omani legislators.

Whereas Article (35) of the Iraqi Acquisition Law No. (12) of 1981 states: (A- If a third party attaches to the owned property a usufruct right… or the right of long lease. The compensation for the property is estimated to be stripped of these rights, and its owners are entitled to an expropriation allowance and also Instead of benefiting from it for the remaining years of its term....).

We note that the Iraqi legislator limited the compensation to the tenant as a long lease, and from our point of view, the legislator has been wrong in protecting the tenant. Since whoever rents a property, whether it is industrial or prepared for housing or commercial, the intent of the lease is the need for the renter, that is, the need for the benefit that is the motive for the contract.

As for the Bahraini law, Expropriation Law No. (8) for the year 1970 indicated in the text of Article 12: (The Valuation Committee, in the event of an apparent discrepancy between the market value of the property subject of expropriation and what is contained in the documents submitted by the stakeholders, may take into account the market value of the property. The administration shall notify the owners of the aforementioned real estate and the owners of rights over them of the value of the compensation estimated by the committee, by registered letter with acknowledgment of receipt at its known place of residence. The date of issuance of this resolution. The owners and rights holders are deemed to have acted upon this resolution as soon as it is published.

And part of the jurisprudence (Roqaya, 2015) went to say that expropriating the Leasehold property for the public benefit or seizing it for a certain temporary period is considered an illegal material exposure, whether it was issued based on the provisions of the law or in violation of the provisions without taking into account the procedures for that or it involves the arbitrariness of the urgency of the authority. It is considered as a force majeure and takes the same ruling as the destruction of the property and the material exposure issued by others. This is what was confirmed by the Bahraini Court of Cassation in Appeal No. (276) of 2015 at the April 3, 2017, session (expropriation of the leased property for the public benefit is considered total destruction leading to the termination of the lease contract by virtue of the law and on its own due to the impossibility of its implementation).

As for the Qatari law, the compensation of the tenant for expropriating the property for the public benefit is dealt with in Law No. (13) of 1988, as amended by Law No. (8) of 2012. As he referred to the owners of the rights appearing on the property expropriated for the public benefit (Article (12) and Article (15) of Law No. (13) of 1988 regarding the temporary expropriation and appropriation of property for the public benefit, State of Qatar).

Therefore, if there is a lease contract on the property at the time of the issuance of the expropriation for the public benefit, the tenant will have a share of the amount of compensation estimated by the Expropriation Department for the public benefit (Al-Abasiri, 2015).

This was also confirmed by Article (2) of Qatar Cabinet Resolution No. (20) for the year 2013, where it clarified that among the tasks of the Empowerment Committee: (Estimate the value of compensation due to tenants and beneficiaries of expropriated shops and buildings).

Accordingly, if the property expropriated for the public benefit is burdened by a lease contract and a decision has been issued to expropriate it for the public benefit, then the right of the tenant is transferred to the amount of compensation obtained by the owner, whether in relation to the right to (rent) first or to (erecting plants on the expropriated property) secondly. The Qatari Court of Cassation, in its ruling No. (34) of 2011, went to the Court of Appeal ruling, which ruled that the tenant was entitled to claim compensation for the remaining period of the lease contract. And it concluded that the legislator (had included the ostensible rights holders in addition to the owners and everyone who presented an appointed right on the property to refer to the administration to obtain what they may demand of compensation if they have a right over the expropriated property. This was not limited to the eligibility of the challenger as a tenant Or it concluded that the appellant has the right to resort to the court and claim compensation, and the judgment was valid according to the provisions of the law and has its proven origin in the papers, and then the obituary of the foregoing is unfounded).

The question may arise whether the tenant's right to compensation is limited to the right to rent, or is it based on the building or planting he has erected on the legitimately rented property. The Qatari Court of Cassation went to appeal the ruling of the Court of Appeal, which ruled that the tenant has the right to compensation for the construction he built on the expropriated property. The Court of Cassation considered that the owner of the leased property is the only owner of the sole right to obtain the amount of compensation in a lawsuit whose facts are summarized as follows: (A) rented a property for ten years to be a school, and the contract included a condition that the ownership of the buildings and facilities established by the tenant would be transferred to the lessor when The expiry of the lease Then came the decision to expropriate the property for the public benefit before the expiry of the lease term, so the administration decided to compensate the owner of the leased property in full. Appeal and the Court of Cassation upheld the landlord's request and ruled his right alone, without the tenant, to obtain the full compensation prescribed for the expropriation of the property for the public benefit.The court relied on Article (11) of the Qatari Premises Lease Law No. (2) of 1975, which states: (If the leased property is destroyed During the rental, the contract is completely destroyed, and the contract is terminated by itself. It was also based on the text of Article (28/1) of the aforementioned law, which states that: Improvements committed to leaving at the end of the lease unless there is an agreement to the contrary). Since the contract concluded between the lessor and the lessee stipulates that the ownership of the facilities and improvements in the lease contract shall be transferred to the lessor, it shall be in accordance with the legally established general principle, and it entails that the ownership of these buildings shall pass to the lessor upon the expiry of the lease contract. If the ownership of the property is expropriated and this results in the termination of the lease contract, the right of the owner is transferred to the compensation estimated by the expropriating authority.

Hence, the court elevated that the provisions of the Qatari general rules in the field of renting premises give the full right to compensation for the expropriation of the leased property to the leased owner and not the lessee. On the grounds that the decision to expropriate property

for the public benefit is a form of legal force majeure that leads to the termination of the lease contract by force of law. Thus, the tenant does not have the right to participate in the rented owner's compensation, which is decided by the Expropriation Department for the public interest (Al-Abasiri, 2015).

However, this ruling deprived the lessee of obtaining a part of the compensation determined for the lessor for the improvements and facilities that he built on the leased property, and it is subject to criticism. On the basis that Article (12) of Law No. (12) of 1988 regarding the expropriation of property for the public benefit is not the sole property of the landlord or owner, but is shared by the owners of visible rights, including the tenant. Thus, he gave protection that makes the tenant reassuring. And also, in Article (2) of Cabinet Resolution No. (20) of 2013 issued in implementation of the Law of Expropriation for the Public Interest related to the establishment of two evaluation committees. Where it expressly stated that one of the tasks of the evaluation committees is to estimate the compensation due to the tenant of the property upon expropriation of its ownership. This applies to every right of the tenant over the expropriated property, whether it is a right to rent or a right to building or a plantation created by the tenant. And since this decision is like a private and private law that restricts the general, and by the general law we mean the Premises Rental Law No. (2) of 1975, and this leads to the tenant's entitlement to compensation, whether for the remaining period or for the facilities and plants that it created.

This was confirmed by the Qatari Court of Excellence in Judgment No. (34) of 2011. It emphasized that the tenant's right to obtain part of the compensation for the owner of the expropriated property for the public benefit, as one of the owners of the apparent rights stipulated in the expropriation law. On that basis, if a decision of expropriation for the public benefit was issued before the expiry of the lease contract, the tenant has the right to obtain part of the compensation awarded for expropriation for the public benefit before the lease contract expires. The tenant has the right to obtain part of the compensation for the expropriation of the property. He also has the right to obtain compensation for the facilities and buildings he built in the expropriated property (Decision No. 30 of 2011, the Qatari Court of Cassation).

Hence, we see that the Qatari legislator gave special protection to the tenant by a special law regarding expropriation because he is the owner of the benefit. The motive behind the contract was to obtain the benefit he needed. We feel that the expansion of the scope of compensation is laudable.

As for the Omani law, it deals with compensation of the tenant for expropriation for the public benefit in Article (8) of Royal Decree No. (78/64). Where he referred to the rights holders, and we understand from this that the tenant has recourse to the administration to claim compensation because he is the owner of a rental right.

As for the other management activities that affect the tenant's fulfillment of the desired benefit, which in turn is due to the management's powers, meaning (within the limits of the law), the lessee has no right to refer to the management for compensation. This is because the public benefit takes precedence over the private benefit, because the legal permissibility contradicts the guarantee.

For example, if the municipality undertakes paving and paving of streets, and this affects the tenant's benefit from the rent, he is not entitled to refer to the administration for compensation. But it is possible to refer to the lessor and this is what we will separate later.

And the fact that the Iraqi legislator did not regulate this opposition, nor the cases of its return, contradicted the decisions of the Federal Court of Cassation. Sometimes it went that if the administration was not abusive in its work, it would not ask for compensation, and thus it went with a decision: The discriminator was found to be incorrect and in violation of the law, and that the appellant/the plaintiff had based his initial lawsuit by claiming the discriminator/the defendant for compensation on the fact that the discerning/in addition to his job closed the outlets and entrances leading to his place, which led to his depriving him from practicing his work normally. It was distinguished for the purpose of protecting the building of the department and its surroundings, its employees and the lives of citizens within the area, and these procedures are considered a use of a legitimate right with which the guarantee is selected in accordance with the rule (legal passport contradicts the guarantee). The appellant/in addition to a job that has abused his right to defend his department and his property, and everyone knows it. The case was dismissed for the above reasons. And since it contradicted the viewpoint presented above, which violated the validity of its distinguished ruling. He decided to rescind it and return the file....) (For more, see the Federal Court of Cassation's decision in No. (210/compensation/2007) on 05/28/2007, the issuing authority, the Federal Court of Cassation).

At other times, it went to the view that the administration compensates the tenant as a result of its actions that missed him to benefit from the leased property> where it went in a decision: (On examination and deliberation of the expanded civil body in the Federal Court of Cassation, it was found that the discriminatory appeal was submitted within the legal period, so he decided to accept it in form. Kindness of consideration was found to be incorrect and contrary to the law in terms of both formality and objectivity..... From the objective point of view, it was found that the committee did not follow the cassation decision issued by this court by number..... with all its paragraphs, especially those related to a report Experts, because it is established from the ongoing investigations that (the plaintiff/the appellant) rented an area of (100) dunams for the purpose of constructing lakes on it to raise fish, according to the contract concluded with the Directorate of the Basra Ministry of Agriculture, and that the defendant (the plaintiff/the defendant) entered the contract area within the areas covered by oil explorations The defendant was prevented from exploiting it, and therefore the committee had to verify whether the ban was permanent or not, because in the event that it was proven that the prevention was permanent, the plaintiff was entitled to compensation all at once in light of the loss of benefit, provided that the elected experts understand, taking into account the established grounds. In estimation without exaggeration...) (Decision of the Federal Court of Cassation No. (59 / Extended Civil Commission / 2020) on March 16, 2020). Hence, we see the need for the legislator to regulate this commitment and cases of return.

The second requirement
Management work outside the limits of the law

If the work of the administration is contrary to the law, or if it is abusive in the use of the authority, the tenant has the right to recourse to it to cancel its decision. He also has the right to claim compensation.

If the administration refused to grant the lessee a permit to practice a specific profession, the refusal was in violation of the law, or if one of the employees in the administration closed a commercial store because it competed with a shop for him, or if the decision to expropriate the property for the public benefit did not meet the fundamental approvals.

There is no doubt that the administrative decision tainted with the defect of deviation

in the use of power is an illegal decision. Any individual with an interest may request the administrative judiciary to cancel it before it is finally issued, i.e. before it is enforceable. However, in other times, the decision is implemented before it is rescinded, and this implementation creates harm to individuals. In this case, the infringed right holder has the right to claim compensation for damages (Samir, 2012).

The illegality of the administrative decision resulting from the defect of deviation in the use of authority leads to the establishment of the responsibility of the administration if it results in harm. This is based on the fact that this defect is caused by a number of serious mistakes that fall from the administration (Ali, 2012).

The second topic

Return of the lessee to the lessor

If the origin is that the lessor does not guarantee the exposure issued by a third party if it is material, but this does not prevent recourse to the lessor if its conditions are met. The Iraqi legislator did not regulate the management's exposure to the tenant by an explicit text, nor did it regulate the material exposure issued by third parties. Therefore, we see that the Iraqi legislator stripped the tenant of legal protection. As a result, the decisions of the Court of Cassation contradicted him. And this kind of forgiveness from the Iraqi legislator is a major shortcoming, which is considered as stripping the tenant of legal protection. With this, the Baghdad Appeals Court went in its original capacity with its decision: (Since the facts of the case, its evidentiary evidence, the minutes of the current examination dated 9/3/2014, and the report of the five experts elected by the Court of First Instance dated 11/3/2014, said that the number of shops is (35) Commercially located within the Tahrir Tunnel in Tahrir Square / near the Freedom Monument, and all the stairs leading to the tunnel and shops were closed by the Baghdad Operations Command, Al-Rusafa. The provisions of the aforementioned civil Article (754), therefore, the plaintiff's lawsuit (the appellant) to demand the termination of the contract concluded between him and the defendant (the appellant) and the return of the rent amounts paid to the Municipality of Baghdad, amounting to one million dinars, along with the sums of insurance amounting to fifteen million dinars, is supported by law As for his claim to claim what he missed of profit, it has no basis in the law because depriving him of benefiting from these profits was not for reasons related to the lessor, but rather because of the security measures taken by the Rusafa Operations Command by closing it completely. The stairs leading to the tunnel and shops. Since the five experts estimated the rent and insurance allowances paid by the plaintiff (the appellant) in the amount of forty-seven million one hundred and ninety-one thousand seven hundred and eighty-one dinars minus the period of his use of the rented premises for a period of 114 days, which is the period specified from 10/3/2011 to 25/1 /2012 (Al-Rusafa Operations Controlled the Tunnel Ports). And since the experts' report has been justified, causal and complete, there is no exaggeration or unfairness in it, and it can be a reason for judging in accordance with the provisions of Article (140) evidence. Since the appealed court of first instance has violated the foregoing legal point of view, which requires the annulment of both. Accordingly, and for all the foregoing, and with the request, the court decided to rescind the ruling of the Rusafa Court of First Instance No. (1307/b/2013) on 4/10/2014 No. Termination of the contract between the plaintiff (KNH) and the defendant, the Secretary of Baghdad Al-Rusafa, in addition to his job No. (120/2011) on 4/9/2011, and the obligation of the defendant, the Mayor of Baghdad, in addition to his job, to perform it to the plaintiff (KNH) an amount of seven Forty million one hundred and ninety-one thousand seven hundred and eighty-one dinars. The plaintiff's claim for the increase was rejected and the parties charged the relative expenses. The defendant shall be charged with

fees, expenses, and attorney fees for the plaintiff's attorney, attorney (H. P. Al) an amount of five hundred thousand dinars. The plaintiff shall charge the fees, expenses, and attorney's fees for the defendant's representative, attorney (H. P. Al) an amount of five hundred thousand dinars. The plaintiff shall charge the fees, expenses and attorney's fees for the defendant's representative, attorney (F. H. C) an amount of five hundred thousand dinars. The judgment was issued by agreement based on Articles (21 and 22) Evidence, (754) Civil and (159, 160, 161, 166 and 193) Civil pleadings in presence, identifiable and publicly understood).

Whereas, the Bahraini Civil Code regulates the tenant's recourse to the landlord when the management is exposed in the text of Article (523). As well as the Qatari legislator in the text of Article (602) of the Civil Code. As well as the Omani legislator in the text of Article (550) of the Omani Civil Transactions Law.

The Bahraini Civil Law and the Qatari Civil Law stipulated that the tenant had to return to the landlord if the work issued by the administration was within the limits of the law (a significant decrease in the tenant's benefit). If the exposure results in a significant deficiency, he may demand the termination of the contract or the reduction of the rent. Whereas the Omani legislator stipulated in the text of Article (550) that if the competent authorities issued something that prevents the total use of the leased thing without a reason from the lessee, the lease shall be rescinded and the rent shall be forfeited from the time of prohibition. If the prohibition is partial, the lessee may terminate the contract and the rent shall be forfeited from the time of informing the lessor.

It is required that the work of the administrative body is included in the lease contract and affects it. Among the judicial applications is what the Bahraini Court of Cassation decided by a decision on: (... and since this obituary is rejected.... What the legislator stated in the text of Article (523) was that the tenant may request the termination of the contract or the reduction of the wage in the event that it results from work Issued by the public authority within the limits of the law A significant decrease in the lessee's use of the leased property for a reason for which he is not responsible.The scope of this work is focused on the property itself and its accessories, so the lessor is not responsible for the actions issued by the government entity if these actions are outside the scope of the lease. In addition, the condition of expiration of the tenant's obligation to pay the wage according to the provisions of Article (518) of the Civil Code, in the event of the contract being terminated by itself, is that the property perishes completely for a foreign reason. The rent or termination of the lease in accordance with Paragraph (B) of this Article, unless the destruction of the property is partial or has become in a condition in which it is not suitable for full benefit and the lessor has not returned the property to its original condition. business What was carried out by the Ministry of Works is the paving of the street in which the fallout shops are located, and the consequent disruption of activities and shops for a period of three months, due to the presence of one entrance to the street, entry of equipment and bulldozers, shoveling of earth, and backfilling. Which indicates that these works are not directly related to the leased property and its annexes, even if it would make the exploitation of the property less useful during the period of its implementation and then become more beneficial as a result of the improvement works made by the administration in paving the street. The lessor has nothing to do with him, whether he suffers a loss or a profit after that, and he is not responsible for these actions. If the appealed judgment agreed with this consideration and decided to uphold the primary judgment to vacate the premises and oblige the appellant to pay the rent, then he would not have violated the law and the obituary would be sacrificed on him without foundation. (The Bahraini Court of Cassation appealed No. 275/2015 on 9/5/2017).

And she went in another decision for her (... The works carried out by the Ministry of Works are paving the street in which the fallout shops are located. This resulted in the disruption of activities and shops for a period of three months, as there was only one entrance to the street, and the entry of equipment and bulldozers, shoveling earth, and backfilling. Which indicates that this The works are not directly related to the leased property and its annexes, even if it would make the exploitation of the property less useful during its period as a result of the improvement works brought about by the administration in paving the street. Appeal response submitted), (Bahraini Court of Cassation Appeal No. (7) for the year 2020 on February 15, 2021).

Likewise, the management's decision issued within the limits of the law must have a negative impact on the tenant's use of the property. This is what was confirmed by the Bahraini Court of Cassation, where it went in its decision to: (... and since this obituary is rejected, the meaning of Article (523/1) of the Civil Code is that if it results from an action issued by the public authority within the limits of the law Significant decrease in the lessee's usufruct, he may terminate the contract or reduce the rent unless the work of the public authority is for a reason for which he is responsible. It was established - in the judiciary of this court - that the subject court has the authority to understand the reality in the case and estimate the value of the expert's work. With this report, because it is convinced of its validity, it is not obligated to respond independently to the appeals addressed to it or the documents submitted by the litigants, because it is not obligated to follow the arguments of the litigants or respond independently. That was and it was confirmed by the expert's supplementary report dated 25/1/2009 that he concluded that the suspension of licenses for Arab and foreign artistic performances for rent did not lead to a decrease in the tenant's use of them. Based on the reasons for Here is its origin in the papers, for the contested judgment, if it based its judgment on the conclusions of this report, which was reassured by the trial court, would have based its judgment on justifiable reasons sufficient to carry it. The obituary against him for these reasons is an objective debate about the authority of the trial court, which may not be raised before the Court of Cassation.... Since this obituary is rejected, since the appealed ruling ended in annulling the appealed ruling and rejecting the appellants' claim because the licenses for Arab and foreign artistic performances were suspended. The lease did not lead to a decrease in the use of the lessee. Hence, what the appellants raise for this reason - whatever the opinion in it - is unproductive. The foregoing should be dismissed appeal. (The Bahraini Court of Cassation appealed No. (382) for the year 2009 on November 8, 2010).

Either if the management's decision is related to the use of the rented property, the tenant may request annulment or a decrease in the rent according to Bahraini law and Qatari law. Thus, the Bahraini High Civil Court went in a lawsuit that summarizes the facts of which are that the plaintiff is an academic (LLC) filed a lawsuit on 23/11/2020 against the defendant (BN Real Estate Company). She requested a decrease in the fare due to the government's decisions to close sports clubs and its stipulation of certain conditions for their opening. And since the club's activity is to teach martial arts and the administration's decision to distance and prevent the sport of cohesion, which led to a lack of use of the leased property. Which led to her losing a huge financial loss because her activity is combat sports such as wrestling, karate and others. A female student, according to Article (523) of the Bahraini Civil Code, is sentenced to a decrease in the wages. The court decided to refer the case to the expert, and then the expert's decision was stated that: (The plaintiff incurred net losses in the amount of 57,145/290 dinars per year. Accordingly, the court decided to reduce the monthly rent for the unit… located in the Juffair area by 40% to become 2,220 Bahraini dinars instead. From 3,700 Bahraini dinars for the period from August 2020 to July 2021 based on Article (523) Bahraini

civilians) (Case No. (25/2020/2890/2) dated 7/10/2021).

The same applies to the opinion of the judiciary in the Sultanate of Oman, where it ruled: (According to Article (550) of the Omani Civil Transactions Law that: (If the competent authorities issue something that prevents the total use of the leased thing without a reason from the lessee, the lease is rescinded, and the rent drops from the time of prohibition) It follows from that article that if the committee has closed wedding halls and events, the contract is automatically terminated for not using the rent without the need for a judicial ruling) (Decision No.

As for the tenant's recourse to the landlord because of the management's decision issued on the basis of a reason from the tenant himself, we note that Article (523) is a Bahraini civilian and Article (602) is a Qatari civilian, the phrase (unless the work of the public authority is for a reason for which he is responsible), meaning if it is a reason The administration is presented by the administration because of the lessee. The administration also issued a decision to withdraw the licenses because the lessee did not comply with the management's conditions. Here, the lessor is not asked about this and there is no recourse to him by reducing the rent or rescinding the contract. While the Omani legislator did not address this issue. Meaning, the tenant must not have an income in the occurrence of exposure by the management. Therefore, if the interference occurred as a result of the negligence or negligence of the lessee, he shall not have the right to recourse, neither by requesting a decrease in the rent nor termination of the contract despite the occurrence of a breach of his use of the leased property. The same applies if the exposure was positive or negative.

And a part of the jurisprudence considers that if the material (management) third party was exposed and led to the deprivation of the usufruct of the property, and the lessee did not cause its occurrence, did not contribute to it and was not able to pay it, and the lessor was not related to him, as if the ownership of the property was expropriated, then this is considered as force majeure (Mansour, 1956). .

But if the exposure was due to the landlord, as if he did not protect and restore the property, which led to its collapse, and the administration issued a decision to demolish it, here and according to Article (523) Bahraini civil: The lessor is responsible for it). Article (602) is a Qatari civil recourse against the lessor to request compensation based on which there is no equivalent in the Omani Civil Transactions Law.

It should be noted that whether the exposure is due to management or to force majeure, and as long as the cause is not attributable to one of the contracting parties in the sense that it is not due to the reason of the lessor or the lessee, then the lessee does not have the right to recourse to the lessor with the guarantee, and he may return at the risk of loss either by reducing the rent or rescinding the contract and the basis for that bears the liability In contracts binding on both sides.

Therefore, the judicial claim is as follows

First: reduce the fare

Allowing the legislator for the tenant to request a reduction in rent is a way to save the lease contract from termination. If the conditions that allow the lessee to return to the lessor are met after the management is presented according to the text of Article (523) of a Bahraini civilian and Article (602) of a Qatari civilian, it shall be in proportion to the shortfall in fulfilling the benefit. The reduction of the rent shall be to the extent appropriate to the tenant's failure to meet the benefit (Hassan, 2010).

Second: Termination of the contract

The termination of the contract is the claim that the civil law allowed the lessee to request from the judiciary under Article (523) Bahraini Civil, Article (602) Qatari Civil and Article (550) of the Omani Civil Transactions Law. But this request is restricted, as it may not be combined with a request for a reduction in the fare. The request for rescission, according to what was stated by the Bahraini and Qatari legislators, is if the administration has been exposed to the lessee and its exposure has led to a serious deficiency in the benefit of the lessee in the property. Whereas the Omani legislator gave the tenant the right to request rescission if the prohibition was partial. It is noted that the request for annulment is subject to the discretion of the judge.

We note that the legislations (the Bahraini legislator, the Qatari legislator, and the Omani legislator) have gone wrong by giving the lessee the right to terminate the contract. It would have been desirable to give him the right to request termination of the contract, and we said this based on the following:

1- The general rule resulting from the termination of the contract is to erase its effects in the past and return the contracting parties to the situation they were in before (Balaior, 1986). This is impossible in the lease contract because time is an essential element in it. This means that both the lessor and the lessee recover what they gave to the other.

2- If the contract is retroactively terminated due to the termination, the lessor must return all the amounts that he has earned during the period of the contract. The tenant is obligated to return the benefit through the implementation of the contract, and this matter is impossible in the lease contract (Abdullah, 2018).

Third: Termination of the contract

The Omani legislator, in the text of Article (550) of the Omani Civil Transactions Law, indicated: (1) If the competent authorities issue something that prevents the total use of the leased thing without a reason from the lessee, the lease shall be rescinded. We note that the Omani legislator has described the administration's exposure to the lessee who prevents his use of the leased property entirely by force majeure that was affected by the termination of the lease contract.

Fourth: fall of the fare

The Omani legislator did not give the lessee the right to reduce the rent, but rather gave him the option to stay or terminate the contract in case of partial prohibition. As for the forfeiture of the rent, we find that the legislator decided in the case of missing out on the benefit, regardless of its cause, a legal effect, which is the fall of the rent. stressing that what was stated in Clause (2) of Article (549) is a partial loss of the benefit, meaning that the missing part of the thing under lease was not missed. benefit entirely. Therefore, it allows the lessee - without the lessor - the right to annul and forfeit the rent or to waive the continuation of the diminished benefit without forfeiting the rent. What is taken on this article is that the fee corresponds to the benefit. In addition, the lease is based on the benefit and not on the leased property only. It does not imagine the benefit without possession of the leased property. Possession is already an integral part of utility. Thus, we cannot consider possession alone as a criterion for entitlement to the wage, as indicated by the text of Article (523) of the Civil Transactions Law: (The wage is due by the payment of the benefit, or the ability to pay it). Article (549) of the same law: (1) If the whole of the leased thing is missed, the rent forfeits from the lessee for the period of missing the benefit, and the lease is terminated by the total destruction of the leased thing. The fee is forfeited from the date of cancellation). It also emphasized this as well, the first paragraph of Article (520) of the same law: (It is stipulated that the benefit contracted for

it be: be able to fulfill it...). It is clear that the legislator has linked the lessor's entitlement to the rent and the fulfillment of the benefit or the ability to collect it. So that the lessee has the ability to reap the benefits of the leased property. Accordingly, the benefit does not mean that the lessee will be able to possess the leased property or place the requirements of the activity in it. As it has already been said that the rent is mainly based on the benefit and not on the leased property only. As it is decided to spend the fee for the benefit. The fulfillment of the benefit is the motive motivating the tenant to contract.

We believe that the Bahraini, Qatari and Omani legislators praise them for regulating the tenant's return to the lessor when management is exposed. But we believe that it would have been better for them to draft the article with (reducing the rent or terminating the contract), since the lease contract is one of the term contracts. What has passed from time does not return and the situation cannot be returned to what it was in the lease, since the term is an essential element in the contract. Annulment is one of its effects to restore the situation to what it was, as time is an essential element in the lease contract, and this was supported by a part of the Iraqi judiciary (Al-Obaidi, 2022).

Third Topic

Return of the tenant to the lessor and management.

First of all, the lessor is not obligated to guarantee the material exposure issued by the third party and the administration, as it is foreign to the contractual relationship, but bears the risk of loss. The Bahraini, Qatari, and Omani law permitted the tenant's recourse against the one who was owed, and we also explained his permission to recourse against the objector.

But the question may be raised, does the tenant have recourse against the landlord and the management together? Or in the sense that, after returning to the administration for its material actions within the limits of the law or outside the limits of the law, does the lessee have the right to appeal to the lessor by rescinding the contract or requesting a decrease in the rent?

The lessor is not obligated to pay the physical exposure and does not guarantee it, but it bears its liability as a result of the contractual liability arising from the conclusion of the lease contract, but bears the liability of the management exposure. If the lessee returns to the administration and makes reparation for the damage he sustained, the causal link in the contractual liability by his return to the lessor will cease. For example, the administration imposes a curfew during epidemic periods and the tenant turns back to the administration to request compensation based on the text of Article (521) of the Bahraini Civil Code: (The lessor does not guarantee the lessee the material exposure if it is issued by a third party as long as the one who is exposed does not claim a right. But this does not prejudice the rights of the lessee. He has the right to file a claim for compensation in his name against the objector. Here, after the tenant has completed the compensation and the decision has been issued, if he returns to the lessor with a request for annulment or a reduction of the rent, the case is not based on the reasons that the administration forced the damage and thus did not disturb his desired benefit from the contract.

Or if he returns to the administration claiming to stop the new business and obtain a judgment in his favour. Here, he is not permitted to refer to the lessor with a request to reduce the rent or terminate the contract (Al-Aradi, 2022).

But what is the ruling if the lessee, when the administration is subject to the limits of

the law, recourse against the lessor to reduce the rent or terminate the contract, and then resort to the court, asking the administration to compensate for its decisions that violated his use of the leased property?

If the tenant returns to the lessor and decides to redress the damage, he has suffered by reducing the rent or rescinding the contract, the tenant has no recourse to the administration to request compensation because the causal relationship to the responsibility of the tort management has ceased (Al-Obaidi, 2022).

Through the foregoing, we conclude that the tenant has no recourse against the lessor and the objector at the same time. The fact that the lessor has incurred the responsibility of the management, he will have fulfilled his obligation arising from the contractual relationship, even if a decision is obtained against the management under the rules of tort or possession claims.

Conclusion

First: Results

1. The Iraqi legislator did not regulate this kind of exposure, unlike the Bahraini, Qatari and Omani legislators.

2. The administration's material exposure in two ways is first within the limits of the law when it relies on its powers, and it is outside the limits of the law if it is abusive in the use of its powers.

3. When the material management is exposed to the lessee, cases of recourse by the lessee shall be imposed on the lessor and on the management.

Second: Suggestions

We hope that the Iraqi legislator will address the provisions of the administration's exposure to the lessee by including the following text (**A**- If, within the limits of the law, the administration's work results in a decrease in the use of the rented property, the lessee may request a reduction of the rent or termination of the contract, unless he is responsible for the management's work, and the lessee may return In his name, the administration claims possession and claims compensation.

B- Unless the agreement requires otherwise

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