J. Basic. Appl. Sci. Res., 5(2)6-13, 2015

ISSN 2090-4304
Journal of Basic and Applied Scientific Research
www.textroad.com

A Survey on the Claim's Conditions of Direct Action (DA)

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Received: November 28, 2014
Accepted: January 26, 2015

ABSTRACT

According to the rules and regulations, in case of violation or denial of the right, for the plaintiff created a right under the law. Thus, she/he can claim in the appropriate courts. In order to apply this right, she/he should have some requirements. The purpose of this study was to investigate the particular conditions of the DA in different countries. This study is a qualitative research and descriptive survey and comparative methods are used to answer the research questions. The literature review in the field of law in international level used for the collecting data. After the analysis the legal texts, based on the research objectives, findings classified to; a) Conditions of the claim by right and demand in "Payment Direct Action" (PDA) and "Warranty Direct Action" (WDA) & b) Conditions of the claim about sub-debtor with regard to insolvency and joinder.

KEYWORDS: Payment Direct Action (PDA), Warranty Direct Action (WDA), Claim the Rights and Demands, Main Debtor Lawsuit, Sub-debtor or Secondary Debtor Lawsuit, Fulfillment of the Obligations, Termination of Obligation

INTRODUCTION

One of the main tasks of the legislature is legislation and prediction of necessary mechanism to regulate the legal relationship between the parties. Parties in their legal relations with each other are in many situations such as the creditor and debtor, secondary debtor and creditor. This is necessary for the legislation, in order to protect creditor against the debtor or the secondary debtor foresee and develop many ways.

For claiming demand from the debtor or secondary debtor general and specific conditions must be met. In this case, the claim shall be eligible for hearing in the court. Including the general Conditions is certainly plaintiff's interest. Wherever the plaintiff isn't an interested person, there isn't possibility to bring an action. In Article 2 the Iranian Civil Procedure Code Act (ICPCA) of 1379 provides that: "No court shall not deal the litigious unless the person or interested persons or lawyer or lawful deputy or their legal representative request a hearing accordingly".

In the second, the plaintiff must be beneficiary to bring an action. As the article is mentioned to the different ways of the law. Thirdly, it is necessary to have a disputable case to bring an action, as to the matter if do not make a difference, no reason for bringing the lawsuit. In some cases, the legislator with deviating from this requirement allows the creditor to bring an action against the secondary debtor and claim for whatever that the sub-debtor is responsible for it. Here there isn't any legal relationship with the sub - debtor.

RESEARCH OBJECTIVES

The main objective of the study was to investigate the particular conditions of the DA in different countries. This paper examined the specified conditions of DA and is trying to achieve the following specific objectives:

- To indicate the conditions of a claim of right and demand
- To indicate the conditions of the PDA of claim of right and demand
- To indicate the conditions of the WDA of claim of right and demand
- To indicate the conditions of the claim about the debtor
- To indicate the conditions of insolvency in the case of the debtor
- To indicate the conditions of joinder in the case of the debtor

STATEMENT OF PROBLEM

The main problem of this research stemmed from the terms and conditions of the claim has been brought in the CPC and regulations in any country. These conditions are related to personnel actions and for bringing specific actions, its plaintiff should have the general and special conditions. In this case, the claim should be eligible for adjudication. One of the examples of specific actions, is the DA which should have both general and

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specific conditions of eligibility. Based on this action, the plaintiff can demand her/his right of the secondary debtor and locate it directly in her/his assets and other creditors cannot request a partial share of it. Thus, two actions that these actions have examined. The first type is "In-Direct Action"(IDA) and whereby it, each creditor can claim her/his right from sub-debtor if the main debtor neglect in claiming her/his right and this negligence leads to insolvency and increasing insolvency of the main debtor. In this lawsuit, not only creditor benefits from her/his claim, but other creditors benefit because the aim in this lawsuit or action is supporting of the demand's public bail for all creditors. There is another type of action which is referred to as the IDA. It has been established for indirect legal relations. In this action like DA, the creditor brings an action against the sub-debtor which to regulate legal relationships and based on the IDA give this right to bring an action in her/his name and account against sub-debtor without third party comes to the lawsuit. So this action is a lawsuit in the true meaning of the word because it has all the general conditions of a legal action such as having plaintiff, defendant, subject matter and action cause and finally will be issued a verdict for or against the plaintiff.

SIGNIFICANCE OF THE STUDY

This section will provide brief description on the various significance of the study given the two categories DA and IDA. In the case of DA, firstly the question must be answered. What is the nature of the DA? As previously mentioned, DA has a dual nature. On the one hand, the case is quite direct and on the other hand, indirect lawsuit also included. For its performance, all conditions must be met. Survey on the DA's conditions has some benefits such as: avoid conflicting rulings, save time and avoid jurisdiction, protection against the risk of insolvency, and be exempted from the provision of Foreigners. The degree of importance of study on the DA's conditions is to extent that lawmakers are considered it in the civil law and the rules of civil procedure in civil and criminal matters. These cases indicate the importance of the study and it can also open in development of this study.

RESEARCH METHODOLOGY

The study's type was a qualitative research and also descriptive- analytically survey is used to the answer research questions. Since the DA isn't from the general rules, but by virtue of the legal provisions of this lawsuit have been identified .To provide a general theory in this regard we need to describe and analyze the various legal provisions in this subject and also we need to obtain court orders in addition analysis of the authors' opinions and courts' comments.

Also, the comparative method is used in the early stages of the development of DA's conditions in law. It helped to the researchers to ascend from the initial level of exploratory DA's conditions to a more advanced level of it. Our objects were similar in some respects but they differ in some respects. These differences became the focus of examination. The goal in this study was to find out why the DA's conditions in different countries are different to reveal the general underlying structure. Comparative research methods have long been used in cross-logical studies to identify, analyze and explain similarities and differences across different countries' law. Attempts to find solutions to these problems involve negotiation and compromise and a sound knowledge of different national contexts. The benefits to be gained from cross-logical work include a deeper understanding of other cultures and of their research processes. Also, comparative method: This method is currently one of the methods that are used most of the research work in the field of law. Using this method, differences and similarities in legal systems around the world will be better recognized.

The research tools in this study was the literature review and analysis of legal texts. Firstly, the terms of the lawsuit of DA and IDA in the CPC has been studied in various countries. Then, the results compared with terms in the Iranian Civil Procedure Code (ICPC). Ultimately specifics terms of the lawsuit in regards right and demands of creditor against the main debtor and secondary debtor has been analyzed. Descriptive findings are the following sections.

FINDINGS

The analysis of data has been done in qualitative method. Comparative analysis is used to compare the terms between several countries. Table 1 show that different studies about DA during different years.

Table 1. The studies about DA

No.	Researcher/s	Subject	Date
1	Geoff Hoffman	Corporate law: Direct Action by creditors against directors - 'McCracken'	**2011**
2	G Hoffman	Corporate law: Direct Action by creditors against directors-'McCracken'	**2011**
3	S Dordevic	Governing Law for a Direct Action of the Injured Party against Wrondoer's Insurer according to the Rome II Regulation	**2010**
4	S Wei-li	Comments on the direct action by the claimant against the insurer for the owner's liability for pollution damage: comments on the legislative perfection of Article 97 …	**2009**
5	Q Shang, G Gao	On the applicable law of direct action in the liability insurance	**2008**
6	Yue Yan	Comments on the direct action against the insurer under the Maritime Procedure Law	**2005**
7	Adriana icenza Padovan, Zagreb Croatia	Direct action of a third party against the insurer in marine insurance with a special focus on the developments in Croatian law	**2003**
8	G. Plant	International law and direct action protests at sea	**2002**
9	RW Benson	Threat of Trade, the Failure of Politics and Law, and the Need for Direct Citizen Action in the Global Environment Crisis	**1992**
10	TF Icard Jr	Applicability of Florida Direct Action in the Law of Admiralty	**1973**
11	Donald Von Eschen, Jerome Kirk	The Conditions of Direct Action in a Democratic Society	**1962**
12	SB Galloway	Constitutional Law-Constitutionality of Louisiana Direct Action Statute-Suits on Out-of-State Contracts Containing No-Action Clauses	**1955**
13	Barbara Page	Choice of Law Problems in Direct Action against Indemnification Insurers	**1952**

The findings are based on a few fundamental questions. First, the lawsuit conditions in the two parts of PDA and WDA in the law of civil procedure were analyzed. Then between the two conditions on the debtor's insolvency or joinder of the CPC were analyzed and results are presented as follows:

TERMS LAWSUIT TO THE RIGHT TO SEEK

The first condition of the specific terms DA, is the original creditor who is plaintiff demanding on the right. This requirement can be found in two types of PDA and WDA and in a separate paragraph will be examined.

a. Condition of claim about the right and demand in PDA

PDA is the necessary to have certain conditions. The creditor who requires to DA, he should have a right for being granted and demand to bail the debtor, although it isn't certain [1, 2, 3]. Because this type of lawsuit which is seeking of payment claims, creditor whose credit is conditional or not due, cannot claim the debt of owed to the debtor by DA.

However, in DA the injured party against the insurance company is exempt from this requirement and in this case, a credit doesn't need to be definite and injured party even with demand of a contingent claim can bring a DA, but in other cases the existence of an established credit is of the specific circumstances of demand's claim of the sub-debtor.

In contrast, it is not necessary that demand is given for the order parameter, because if we know being specified as a condition, we bet the lawsuit against opportunity from creditor and may in the time of indicating debt, the middle debtor can possess in its own right. In this type of claim because the payment is a representation of performance of existing obligation and it is not possible to enforce payment that is not contentious or unknown value. So a debt must have the ability judicially to be demanded. A debt that has not been achieved in the judgment is resolving disputes, because there is a doubt on the case that the debt is established between two things also applies. So a debt that is subject to condition is considered debt if that is not yet be definite. Since there isn't being forced to play but contingency debt is definite subject to cancellation though its survival is not proven, but not necessarily at the time of DA the demand of the debtor to be owes the sub-debtor. In addition, it is not necessary that the claim to be certain, ddetermined and demandable, because the benefit of the creditor requires before the end of time middle debtor's debt, can order to bring an action until sub-debtor refuses to pay the debt to the middle debtor. Here creditor has a situation like a person seize property or money of third party (secondary debtor) to obtain payment of money owed and his action is a precautionary measurement. About DA sustains a question whether at the time of serving notice that the credit shall be adjudicative or not? The answer is in order to protect the holder of DA despite his/her desire cannot claim of the middle debtor, the creditor can serve a notice. Because the first effect of DA is possible precaution and claim to be demandable when is necessary to effect the transferring of the outcome of litigation. In this context, France on December 13, 1983 as the third branch of the Supreme Court commented.

"In the absence of contrary judgment, Article 12 of the Law of 31 December 1975 concerning the subcontractor this presumption doesn't apply whereabouts the date and time of serving notice where claim it from sub-debtor.

In the tax issue has also been accepted that DA can be filed. When that sub-debtor's debt is conditional, therefore, with regard to the aim of DA is blocking the middle debtor's demand, the holder of DA cannot be collect her/his demand at the same time Unless the payment is due. Such a rule of incomplete DA is very important. Because it allows the holder to out the demand of debtor urgently and freeze money owed in the hand of sub-debtor.

Debt's amount: unlike IDA whereby the creditor can claim all middle debtor's demand withdraw the amount owed, because the creditor is an interested party as the same legal representative for middle debtor in IDA. In DA, the creditor cannot claim an accrual debt from middle debtor's by lawsuit against sub-debtor, but in DA, the creditor can claim from sub-debtor solely on the amount owed from the middle debt. In other words, in DA, creditor can claim for the minimum demand, or at least demand is a creditor's claim or at least demand is middle debtor's demand that sub-debtor is responsible for it.

It is obvious that sub-debtor is liable about DA holder the amount of his/ her debt against the middle debtor and during DA hasn't over the debt and his responsibility as surety or guarantor isn't obliged to pay all the debts of middle debtor.

In contractor agreement, the Court of France in the exercise of Article 12 of the 1975 Act also emphasizes on it and provides that " the employer does not owe except to the extent that the middle debtor at the time of receipt of a copy of the notice referred to in Article 12 has been responsible (2).

Termination of Obligation to Pay: Obligations can be extinguished in the following ways: by fulfillment of the obligations, by rescission, by discharging from the obligation, by substitution of a different obligation (Accord and satisfaction), by set off and recoupment and by acquisition of the debt [16]. Now the question in DA case under what conditions, sub-debtor can refer to termination of obligation to pay against the middle debtor. So the answer would be under general rule if termination of obligation to pay toward sub-debtor have been created before creating or imposing DA, sub-debtor can protect against the DA holder to her/his versus middle debtor.

In such circumstances there isn't the possibility of discuss on the DA because sub-debtor's commitment fell down against the middle debtor and there isn't any debt that the creditor cannot demand it. In contrast, while after applying DA, from creditor provide a means of termination of obligations of sub-debtor's falling debt against middle debtor, sub-debtor cannot present to her/his debt versus creditor. Because with applying DA, middle debtor's demand, which is located in the sub-debtor's assets will be blocked and banned on behalf of the DA holder.

Another question is raised, if the sub-debtor pays her/his debt to middle debtor early and before the deadline for debt, whether is excused her/his debt with the payment before maturity or not? The answer: Iranian Civil Law (ICL) does not have ruling in this regard. However, Article 1753 the French Civil Law in landlord tenant law prescribes that sub-tenant cannot refer to pay prematurely versus the landlord.

And in paragraph 2 of Article L. 13-121, French insurance law is stated: "The payments have been paid in good faith before the ban to be considered valid" and in the laws of Islamic countries so can be found the regulations commented at this particular, included in paragraph 2 of Article 596 the Egypt Civil Law is accepted fulfillment of obligation before the deadline:

1. The advance payment will be made in accordance with customary law.
2. The payment is made based on the agreement at the second time writing of lease contract.

But in other cases, performance of obligation, is similar conditions in by accord and satisfaction and by set off and recoupment. If the legal requirements of set off are ready before applying for DA, against DA can be cited. In this case, the French Court states pursuant to sentence about the contractual agreement, contractor can refer to set off against the sub-contractor of ramification of delay by the sub-contractor who becomes a debtor [2]. But in assigning right of demand, the French Law on this matter inclines if the conditions of Article 1690 the ICL, be respected, notice to the debtor or the pass certificate against DA holder can be able to refer to. About the transfer of claims that according to the bordereau daily or promissory note are done, should be notice to time of the demand transfer to assets from third parties that it is in promissory note maturing time and in the bordereau daily is the time of submission. So as long as the transfer isn't done, DA is acceptable [4].

Proof of Debt: One of the major tasks of the DA holder is the proof of debt. The DA creditor for state of the DA have a more difficult situation to prove a case and provide proof evidence than other case, because he/she is responsible about the proof of debt. In the absence of proof of a possibility to collect demand from the sub-debtor. According to the general rule contained in Article 1257 the ICL dictates that: "Anyone who claims a right has to establish the same and if the defendant, wishing to defend himself, claims something which may require evidence, it is he who must prove it". The plaintiff is responsible about the right proof and this case in DA requires both proof:

1. Proof of middle debtor against the creditor (DA holder means case plaintiff.

2. Proof of sub-debtor against middle debtor.

The plaintiff must insurer's liability prove to insure the damages had been done to the plaintiff. In this regard, the question cross to mind that how the injured party can prove the insurer liability. Is it enough that plaintiff prove a simple commitment? Or should their commitment basis prove? The answer: Firstly, the injured party in the DA must prove insured's liability, then prove insurer's obligation for the insurance producer. Here don't need to prove the rout and origin of (insurer) obligation. One thing is certain, in DA takes place aggregate litigation. In fact, the two fights arise in a claim, thus the success of this claim requires that DA's plaintiff prove two debts or two obligations. Certainly in proofing obligation arising out of contract or enforcement liability that plaintiff is a party to a relationship or legal something, she/he is faced with fewer problems. But in order to prove a contractual obligation sub-debtor against middle debtor, partly due to the lack of positive evidence would be faced with a problem because the contractual relationship between the sub-debtor and middle debtor which is considered to be third.

Also, how may be the plaintiff has informed about her/ his contractual relationship and amount of the parties' commitment and obtain evidence to prove it. In such circumstances, the judicial approach can be effective in providing the necessary documentation. As in DA, the injured party liability insurance, the judge can rule the insured party to provide insurance contract. For example, in one of the decisions in France, judge ruled (insured party) to submit and present the insurance contract [5].

However, in this decision, it is necessary in case the injured party, the insurer is also listed as one of the defendant's dispute and be joinder as third party to be obliged to provide supporting document and proof of insurance to the court. Otherwise, there is no the possibility of issuing such orders in proceeding, and the injured party is responsible to proof the nature and definitive of the insurer's liability. A change occurred in 1963 in the French judicial procedure and that it is not necessary the injured party prove the obligation (of insurer) and it is a breach and the insurer is the responsible to prove the commitment's collapse and insurance's reduction which is cited against her/him [5].

This is a significant change in the field of insurance. In English law in accordance with Article 153 Road Traffic Acts, the insurer is required to offer all documents and information that are appropriate to the injured party's claim. As a general rule of law as stated in Article 209 the ICPC, plaintiff can request of expression and presentation of the documents by enforcing by the court of the defendant. If the defendant admits the existence of the document itself and not presenting it, the court can consider it as supporting and circumstantial evidence.

But in a particular case, it seems that based on the responsibility of sub-debtor, the legislator has provided better conditions for DA's plaintiff. Based on the necessity, the legislator to amend the civil liability insurance of owners of motor vehicles against the third party Act of 1378, try to facilitate the payment of damages to the injured party. According to Article 1 of the law, all owners of motor vehicles on road and rail are required to insure their liability to the insurance companies. Based on this assignment, the law presume insurance company's obligations. The judicial approach in France requested of the insurance company in the case of denial contract or extinguished of obligation or substitute of obligation, all subjects must be proven. In case of adopting such a procedure, the legislative purpose of providing and facilitating payment will be achieved.

Other cases of ICL that can be inferred of admission the DA is Articles 235 and 236 of "Will and Trust Act", whereby assets is not enough to pay deceased debt, the debt can be paid by owed to the decease or she/he can bring an action for financing of indebted deceased. In this regard, Branch 21 of the Supreme Court pursuant to vote No. 4930/21 dated 18/08/73 (moments, 1381, vol. 1, p. 257), according to the above-mentioned subject, it affirmed that implies on the deceased condemning. According to Decree No. 914 dated confirms 31/264 issued by the Supreme Court Branch 8, Article 236 of the imprisonment matters Act to apply for defendants except of the heirs of deceased. In case defendants are heirs, the creditor isn't required to lawsuit against for all the heirs and prove deceased's debt and then some of the heirs that they are deceased's debtor consider on behalf of claim [6].

b. Condition of claim about right and demand in WDA

In this case, the being granted and charged aren't of the required conditions for the lawsuit against. Only the buyer knows that former dealer or manufacturer is responsible for guaranteeing of hidden defects of the goods against middle seller. But here is a contingent middle debt or debts, because the amount of debt is not established and the former seller's responsibility is determined by the court.

Here, the question that arises is: whether the creditor's demand in DA is a derivative debt of middle debtor's or is considered an independent right. That can be said, the problem depends upon to be derivative or independent of DA. In the PDA has been accepted that the holder of a DA should be a specified and certain debt's creditor. This type of demand is derivative of debt and with the extinguishing of obligation to pay, DA will be extinguished too. Whether a ruling can be found in French law that independence of this demand shows from the contract that DA holder link with direct and non-derivative debtor [7].

In a lease contract, formerly France precedent was of the notion that in the case of fire, a landlord would waive the tenant's liability, she/he can be brought to the DA against sub-tenant same as (a creditor) in insurance

claim against insurer. Also, in the PDA and PDA, DA holder could claim, although her/his debt is extinguished because of lapse against middle debtor due to lack of demand out of due time [8].

CONDITIONS OF CLAIM ON THE SECONDARY DEBTOR

Terms of secondary debtor with two constraints for the insolvency condition and joinder of middle debtor were examined until it determine that whether joinder of middle debtor is necessary or not? And if necessary, how it was viewed.

a. Conditions of claim about middle debtor with insolvency condition

A question should cross to mind is that whether is necessary that plaintiff of DA prove secondary debtor's insolvency or not? In response, scholars have expressed different views on the response. Some scholars believe that the plaintiff must prove secondary debtor's insolvency [9, 10]. Especially in the landlord tenant relationship, some scholar believe that landlord should prove the original tenant's insolvency so that he is recognized as DA. In order to prove this theory are added that since in IDA, proof of insolvency is required, so in the DA proof of insolvency needs to be proved. Precedent in France, also the insolvency of a first tenant in the landlord's DA against the sub-tenant is a necessary [7].

Other scholars believe that in DA's claim landlord does not need to prove the first tenant's insolvency because DA is similar to seize the debtor's property in the possession of third parties. As this type of seizure, insolvency condition is unknown [3].

In Law of some of the countries, in contractual agreement, DA's claim against Subcontractor, in the case of the main contractor is experiencing insolvency and she/he is unable to pay workers' wages whom are employed in the construction [11]. In some of the Arabic countries, scholars believe that hereof should differentiate between a "Complete DA" with "Incomplete DA". In "Incomplete DA" that demand is blocked in the sub-debtor's assets at the time of creation said right, the creditor can claim DA, whether the middle debtor is insolvent or solvent. But in the incomplete DA block the exercising right at the time of creation of said right. It is one of the elements of the middle debtor's assets and she/he can take any position. If we allow the creditor to demand this right from sub-debtor, although the middle debtor is solvent, it creates a hardship for such a debtor, as she/ he postpones the main tenant's right to claim her/ his rights and this is unjust [12].

This is an acceptable consideration that being insolvent of middle debtor, isn't the essence of DA that it be accordingly brought litigious. In the second, the debtor's insolvency is contrary to the objectives of this type of claim. That is a specific guarantee for the creditor and support her/him against the nuisance of other creditors. Thirdly, DA is based on the creditor's interest, which creates a liability partnership, so that creditor's discretion of DA is on it. Here the creditor is free that try for the middle debtor with a personal dispute or by using the DA refer to the sub-debtor. It would of course have to keep in mind if the creditor abuse of her/his legal right he would be responsible. Because the legal permit does not make surety ship actual liability and precedents for contractor agreements lawsuits and liability insurance, it is also that main debtor's insolvency isn't a condition [7].

b. Conditions of claim in the middle debtor with condition joinder

The vast majority of French scholars and judicial precedent believe presenting of middle debtor isn't condition of the following reasons:

1. DA isn't a derivative claim and no need to attend and joining the middle debtor. As in IDA that bring an action in the name of the debtor does not need to attend the middle debtor at the hearing, by the same token isn't a condition of attending of the middle debtor in the DA.
2. In the DA, the creditor can bring an action in the name and on his account, then it does not have to join the middle debtor.
3. In French law and liability arising from the wrongdoing of a third person, the injured party can place a person who is tedious without the person who caused the accident (superior or vicarious liability) [13].

In France precedent, attending and joining middle debtor is not necessary in WDA [14]. In some Arab countries, in a Landlord Tenant relationship, the landlord can bring a DA against the secondary tenant, despite the claim against the main tenant is preserved, but the main tenant can still enter in the lawsuit (Article 588 of the Lebanese law and contracts).

It is a general principle that in the DA presence and joining middle debtor is not required. But in liability insurance, the issue is somewhat different. By French law in the DA against the insured, presence of the insurer is required and the judgment issued by the Court of France state necessary to represent the insurer. The Court of France, December 13, 1938 to announce its ruling that injured party could bring a DA without joining the responsible person by the injured party, is in contradiction with the principle of correspondence. In addition, when there has been no conviction against the insurer, for DA the presence of the insurer and her/his participation in the discussions, is required, because the proof of tortious act and the obligation of the insurer to pay damages in some cases, requires to be present [7].

In other words, presence of the insurer in clarifying of established right and righteous claim for the DA's holder is necessary. Because, as previously stated, the conditions of a claim is being established and righteous. Hence, the DA, is considered an enforcement action. So before ruling against the insurer, the injured party's claim is not well established and not righteous, two conditions are missing of conditions of the DA.

But the insurer, in injured party DA, is not absolute and judicial procedure in some scenarios of DA was allowed. In some cases that presence of the insured wasn't possible in the suit, this situation was material or legal. When the insured was unknown or had escaped from the scene of an accident or had died and her/his heirs were rejected his assets، Also, when the insured (tortious act) was given an unknown from specific group, it was said which presence the insured isn't materially possible at the hearing. Thus injured party immediately can claim against the insurer in DA. In cases that court for ruling against the insured's liability has no jurisdiction or when the insured has diplomatic immunity or parliamentary, will be legally impossible. .

In this kind of DA suits without presence of the insured was permitted. But in some cases, presence of the insured was useless. For example when the insurer liability had been proved by the court or with the consent of the insured or in the assumption that the insured was insolvent and thus may not bring an action by all and every creditors against her/him. In such cases, the DA is permitted without presence of the insured. But with all circumstances, finally, the first branch of the French Civil Court pursuant to ruling in November 2000, DA without presence of the insured allowed in all cases [7].

In ICL, court procedure was different during Insurance Act in 1347. In some courts, presence the insured is required. Some others are not required. Tehran Court decision dated 11.11.82 issued by the branch of the ninth classifieds in 82/926 cases, in case of the lack of claim against on behalf injured party and the necessity of it wasn't know rejected and didn't hear it. .

Also, the verdict No. 45-34 / 9/83 in the case of 101 Classifieds 378-83 issued by the General Court of Criminal Kashan, Iran, despite the lack of lawsuit against the insured, insurance company was enforced to pay compensation to the injured party [15].

These decisions and other rulings have indicated the lack of unit procedure in this regard and in the time of the rule of law is mentioned. However, pursuant to Article 5 of the Insurance Act of 1387, the insurer is obliged to compensate damages to the third parties based on the insurance policy of policy holder. It is concluded that it is not required to claim against the insured party.

DISCUSSION

From what above described, it can be concluded that the creditor if her/his debtor's assets isn't enough to compensate the creditor and the debtor is neglected to claim his right. And somehow this carelessness leads to insolvency or increasing insolvency, she/ he can comply according to the DA which should be plan, particular circumstances of the claim considered the right and demand and the middle debtor, contrary to the principles and general rules in particular govern, in private contracts and the equality of creditors.

PDA is the necessary to have certain conditions. The creditor who requires to DA should have a right for being granted and demand to bail the debtor. Because this type of lawsuit which is seeking of payment claims, creditor whose credit is conditional or not due, cannot claim the debt of owed to the debtor by DA. It is obviously if there are not such conditions, DA won't have the ability to be heard. In fact, the holder of this right, due to the lack of complying of these requirements, is denied itself of a specific alternative privilege. The legislature for its holder provided with the specific terms of the claim. A having such a right don't require obligation to use it and she/he can use of this privilege to obtain her/his right or to withdraw from it. He can claim her/his demand by bringing a lawsuit against debtor.

This right in the law of most countries is recognized. Our state legislature (Iran) also on several occasions is recognized this right. Could say, our legislature's conditions, frequently are accordance with the terms of this kind of claims in other countries including France.

Therefore, in this paper, with investigate the subject, the circumstances of DA analyzed frequently between different countries and the results were the same. Also, in this paper noted the necessary conditions to enjoy the privileges. Thus, the absence of this condition extracted which lead to lack of hearing to the controversy.

CONCLUSION

This study proved that DA is an independent legal entity. It has provisions and conditions of its own. The legal entity listed on the laws of our country. Also base of DA is according to the needs of the industrial, social and economic developments to meet justice. DA, in addition to the general conditions, has other special requirements such as certain and demands of cash as well.

The effects of this action is the direct benefit of the creditor. So that the creditor despite the lack of a legal relationship with a sub-debtor, may accrue himself/ herself demand sub-debtor. He/ she may inter the collected demand into itself asset. Other creditors cannot share into the collected demand. The feature of this action is since the exercise of DA, sub-debtor's demand block for him/ her and if the debtor pay the debt to sub-debtor,

despite the exercise of the right of the creditor, sub-debtor's action is an apparent fulfillment of the inadmissible obligation. In this case sub-debtor may repay paid demand. After the exercise of this right of the creditor, the minor criticism that sub-debtor could cause against the DA owner haven't able to cite.

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