THE STIPULATION FOR ANOTHER IN THE ROMANIAN CIVIL CODE

Tudor Vlad RĂDULESCU*

Abstract

The article focuses on the stipulation for another in the context of the Romanian Civil code. Its purpose is to answer a few questions, such as: is the stipulation for another still a true exception from the relativity effect of the contract; what are the circomstances that render a stipulation for another void. Also, a comparative approach of this institution is to be made taking into account, on one hand, the old and the actual civil code, and on the other hand, the romanian approach of the stipulation for another in opposition with other european (and not only) legislations. At last, the article will try to express a point of view regarding the effects of the stipulation for another, as the Romanian doctrine has not yet expressed a firm opinion on this matter.

Keywords: *civil code, stipulation for another, effects of the contract, inter partes effects*.

1. Introduction

The issue of stipulation for another problem was and continues to be, by the fact that it is, according to some authors, the only real exception to the principle of relativity of the effects of the contract, a rather sensitive issue, especially in the context of Romanian Civil Code[1] in force from October 1, 2011.

Thus, if the legal regime of the stipulation for another was under the influence of the Romanian Civil Code of 1864, an eminently doctrinal creation, the Civil Code in force has changed this situation, offering to the institution of the stipulation for another a comprehensive settlement, but raising also a number of issues that have not yet received answers.

Therefore, compared to the place occupied by the articles devoted to the stipulation for another in the context of the Romanian Civil Code, we note that they are situated in subsection 2 of section 6 of the book V, dedicated to the effects of contracts, and more specifically, to the effects that the contract produces to third parties.

Thus, the contract validly concluded does not give rise but to rights and obligations in favor, respectively on the parties, without being able to take advantage or harm, in principle, third parties. Regarding the latter, the contract gives rise to a new factual situation that didn't exist until the conclusion of the act, which must be followed by those who did not participate in the conclusion of the contract and that are totally foreign to it. This is the principle of enforceability, the true effect that a contract produces to third parties.

In these circumstances, we can say that the Romanian legislator understood to share the doctrine and jurisprudence previous to the entry into force of the new Civil Code and to continue to look at the stipulation for another as to an exception to the principle of relativity of the effects of the contract, meaning that a third party could acquire rights, but not obligations under a contract in which it did not take part. However, from the analysis of the rules governing nowadays the institution, we may ask ourselves if it is to constitute an exception to the relativity of the effects of the contract, given the crucial role played by the will of the third-party beneficiary in the effectiveness of the stipulation for another.

Another controversial issue in this area, in which this article aims to provide a solution, is that of the effect that death of the beneficiary of the effect has on the effectiveness of the stipulation, death that occurs prior to the acceptance by him of the right stipulated in the contract concluded between the promisor and the stipulator.

Finally, we propose that we pay also attention to the action that the third-party beneficiary has against the promisor, if it does not perform the obligation in its task, particularly on the classification of this action as a direct action, in the conception given by law and doctrine to this notion, or is a self-contained action, specific only to the stipulation for another.

2. Stipulation for another. Concept and applications

Stipulation for another may be defined as that contract by which one party, called the promisor commits to another, called stipulator, to give, to do or not to do something in favor of a third party, called third-party beneficiary.

The stipulation source is the contract concluded between the promisor and the stipulator, by which the first one commits to the second that it will directly provide a proprietary benefit to a third party, called

* PhD Candidate, Faculty of Law, "Nicolae Titulescu" University of Bucharest – Faculty of law (e-mail: **tradulescu@yahoo.com**).

[1] Law no.287/2009 on the Civil Code, republished in the Official Gazzette of Romania, Part I, no. 409 of 10.06.2011.

beneficiary. So, the stipulation is a legal operation of bilateral and trilateral efficiency[2].

Although there is no controversy regarding the definition of this institution, the Romanian legislature of 2009 did not understand to define by itsself this legal operation, but chose to show that anyone can stipulate on its own behalf, but in the benefit of a third party (art. 1284 civ. code).

From this point of view, one cannot say that has been adopted a less courageous solution than that adopted in the legislation of other states. For example, the Civil Code of Quebec, art. 1444, paragraph 1 states that "In a contract, it may stipulate in favor of a third party" so that the second paragraph recognize the right of the third-party beneficiary to ask for the performance of the obligation directly from the promisor[3]. Neither the French Civil Code does provide a definition of this operation, confining itself to rule in art. 1121 that "It may provide in favor of a third party when this is the condition of a stipulation that we do for ourselves or of a donation that we make to another one. The one who stated it, cannot revoke it if the third party declared it wanted "to take advantage" [4].

However, a more direct approach is found in the Civil Code of the Republic of Moldova, which, under the name *Contract on behalf of a third party*, shows that „*The parties to a contract may agree that the debtor (promisor) make the benefit not to the creditor (stipulator), but to the third party (beneficiary), shown or not shown in the contract, who directly obtains the right to claim the benefit in its own interest."* Far from being a real definition, however, the approach of art. 721 of the Civil Code of the Republic of Moldova seems to us a more direct one, which establishes even from the beginning what the difference is in this operation, what its effects are and what legal relations result thereunder.

We can find applications of the stipulation in the matter of the specific purpose donation agreement in favor of a third party in the matter of the contract of carriage of goods, where their recipient is someone other than the sender, in the matter of the insurance contract, in the matter of the annuity and maintenance contract etc.

Conditions for the validity of the stipulation for another

Stipulation for another may take the form of a genuine agreement, but most often, it is nothing more than a clause inserted in an agreement. Whatever the aspect in which it is found, being an agreement of wills between two parties – the stipulator and the promisor - it shall comply with the general validity of any civil legal act: the ability of the parties, the expressed valid consent, moral and lawful object and the valid cause.

In terms of form, stipulation for another is not an exception to the rules established in this matter. As a rule, being an accessory clause of a contract, the stipulation will have to take the form required for the validity of that contract.

Thus, if is concluded a specific purpose donation agreement in favor of a third party, the clause by which was established the obligation of the gratuity receiver should take the same form, authentic, ad validitatem, as the donation agreement itself, according to the formal requirement imposed by art 1011 para.1 of Civil Code. However, if it is desired to introduce in an insurance contract a clause by which the sum insured be paid to a relative, the agreement is concluded according to the formal requirements of art. 2200 Civil Code, in writing, but not *ad validitatem*, *but ad probationem*, despite the fact that this clause is nothing but a donation[5].

An express provision we have in the matter of the annuity contract, in the sense that, according to art. 2243 paragraph 2 of the Civil Code "When life annuity is stipulated in favor of a third party, even if it receives free of charge, the contract is not subject to the form provided for donation".

Nevertheless, as regards the maintenance contract, a mention shall be made. Under Article 2255 of the Civil Code, the maintenance contract shall be concluded in authentic form, under the penalty of nullity. Thus, this contract falls always in the category of solemn acts for which valid conclusion is necessary to fulfill certain formalities, namely that of the authetnic form. According to art. 2256 Civil Code, the rules established for the annuity contract matters, relating, inter alia, to the form of the contract when the annuity is established in favor of a third party (art. 2243 paragraph 2 of the Civil Code.) shall apply accordingly to the maintenance contract, also.

However, we consider that in this situation, related to the imperative and public order nature of the policy on the *ad validitatem* authentic form of the maintenance contract, the provisions of art. 2243 paragraph 2 of the Civil Code are not applicable. In other words, the maintenance contract shall always take the authentic form, even when by its means is stipulated in favor of a third party.

We emphasize at this point that if the stipulator raises the question of revocation by the extent permitted by law, the unilateral revocation deed shall have to take the form required by law for the validity of the stipulation itself for another. This condition is not expressly provided, however, it derives from the general principles governing the form of civil legal

[2] P. Vasilescu, *Drept civil. Obligaţii* (Editura Hamangiu, Bucureşti, 2012), 476.

[3] Art. 1444 Civil Code Quebec has the following content*: „(1) A person may, in a contract, stipulate for the benefit of a third person.(2) The stipulation gives the third person beneficiary the right to exact performance of the promised obligation directly from the promisor."*

[4] *On peut pareillement stipuler au profit d'un tiers lorsque telle est la condition d'une stipulation que l'on fait pour soi-même ou d'une donation que l'on fait à un autre. Celui qui a fait cette stipulation ne peut plus la révoquer si le tiers a déclaré vouloir en profiter.*

[5] C. Firică, *Excepţii de la principiul relativităţii efectelor contractului* (Editura C.H.Beck, Bucureşti, 2013), 166.

deed, having as a starting point the principle of symmetry of form.

In addition to the general conditions of substance and form shown above, the stipulation for another must meet a number of special conditions of validity.

On this aspect, already in the doctrine in our country have been expressed several points of view.

Thus, according to an opinion[6], the special conditions of validity of the stipulation for another are: *a) the third party beneficiary be determined or at least determinable when at the time of conclusion of the contract; b) the third party beneficiary of the stipulation exist at the date on which the promisor must perform its benefit and c) the stipulation be beyond doubt.*

In a second opinion[7], it is stated that, along with these two conditions, is also necessary the acceptance *by the third party beneficiary of stipulation*, the Civil Code recognizing a much greater importance for the consent of the beneficiary, its rejection having repercussions regarding the raising of the right in its heritage.

In our case, we understand to adhere to the first opinion expressed, including to the condition according to which stipulation must be express as this legal operation, as an exception to the rule, the intenstion to stipulate in favor of a third party must undoubtedly emerge from the content of the instrument by which it was established.

In terms of acceptance by the third party beneficiary of stipulation, we believe that this is not a true condition of validity of the contract for the benefit of another person, but a condition of effectiveness, a real condition subsequent, as we shall show further in our study.

In what follows, we make a brief analysis of the special conditions of validity, focusing on issues that we believe require a more rigorous interpretation of the text.

A. The first condition concerns the third party beneficiary who, according to art. 1285 para. 1 sentence I *must be determined or at least determinable* at the date of conclusion of the stipulation. The fulfillment of this condition requires either that the third party beneficiary be determined even from the time of conclusion of the document between the stipulator and the promisor, or that exist all those elements enough so that at the time of the execution of the benefit, can be identified the person in whose favor it will be executed.

With regard to this condition, in the French literature it was stated also that the determination of the thrid party may be left event to the discretion of a stranger on the relation between the promisor and the stipulator, as long as in the contract in favor of a third party were given all the necessary directives to be followed by the person designated to determine the beneficiary[8]. Moreover, it is considered that this condition is fulfilled even when the third party is determined on the day the obligation must be performed, not being important the fact that by that point its identity could not be known[9].

To conclude on this condition, we can say that the third party, the beneficiary of the stipulation must be known at the time of conclusion of the contract between the promisor and the stipulator, or, at least, be known by inserting in that agreement elements that make possible its identification at the time the promisor's obligation shall be executed.

B. The second condition required by the Romanian legislator in art. 1285, second sentence, still concerns the third party beneficiary, *and refers to its existence at the time the benefit will be executed by the promisor.* From this, we can conclude on the validity of the stipulation regarding future persons, ie those persons that did not exist at the time of the arising of the legal relationship derived from the stipulation. The third party beneficiary shall not have capacity of use, and therefore, capacity of execution, at the time of conclusion of the agreement of wills between the stipulator and the promisor. It must, however, have the capacity of use at the time the benefit shall be executed by the promisor. We believe that when it comes to rights and not to obligations, full capacity of execution is not required to the third-party at the time of the benefit execution, nor at the time of acceptance of the stipulation that, at least theoretically, as time precedes the time of execution. So in this case of the lack of full capacity of the beneficiary at the time of acceptance of the stipulation, there is no need for legal representation or that the minor custodian approve this deed.

C. Finally, the last special condition of validity of the stipulation for another *is that stipulation be unambiguous.* No matter if it is expressly provided or is apparent undoubtedly from the interpretation of the contractual terms, what is relevant is that the intention to stipulate in favor of a third party be beyond any doubt. In this respect, we recall the decision of the Supreme Court of Justice, still current, which held that, in the judgment of an application for the granting of moral damages, the defendant cannot be compelled to execution to a third party beneficiary of compensations due to the claimant, as it would mean to establish the effects of a stipulation for another, without there being any agreement of wills between the stipulator claimant and the promisor-defendant[10].

The willingness to stipulate to another is a question of fact, which, unless expressly stated in the

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[6] L. Pop, I.F.Popa, I.S.Vidu, *Obligații,* 209-210.

[7] C. Zamşa, în F.A. Baias, E. Chelaru, I. Macovei, R. Constantinovici (coord.), *Noul Cod civil. Comentariu pe articole,* ediţia I (Editura C.H.Beck, Bucureşti, 2012), 1346-1347.

[8] P.Malaurie, L.Aynes, P.Stoffel-Munck, *Les Obligations* (Edition Defrenois, Paris, 2007), 429.

[9] Code Civil francais (Edition Dalloz, 2008, Paris), 1168.

[10] C.S.J., secţia civilă, dec. nr. 613/26.01.2001, in C. Stătescu, C. Bîrsan, *Obligații*, 72, footnote no. 1.

contract, will be proven by any means permitted by law[11].

D. Although we do not consider it a genuine condition for the existence of the contract in favor of a third party[12], we believe that this is the place, in this study, to investigate the role fulfilled, in the stipulation mechanism, by the will of the third-party beneficiary[13]

Thus, according to art. 1286 para. 1 Civil Code, *if the third-party beneficiary does not accept the stipulation, its right is deemed to have never existed.*

With regard to this provision, the doctrine has shown that the acceptance by the beneficiary works as a condition of effectiveness of the stipulation, and not as one of validity. This means that the arising of the subjective civil right, directly and permanently, in the heritage of the third-party beneficiary is subject to its acceptance by the latter, having the character of a condition subsequent[14]. For this reason, we argue that the acceptance of the third party is a unilateral act, which produces declaratory effects, *ex tunc*, which makes its right, arisen of the agreement of wills between the promisor and the stipulator reinforce for the future.

If we refer to the classification of unilateral legal acts provided by art. 1326 Civil Code, we believe that the acceptance of the third party is an act subject to communication and that takes effect when the communication reaches the addressee (stipulator or promisor).

Acceptance may be tacit or express, but necessarily it must be beyond doubt. It can be made either prior to or concurrently with the time at which the third party requests to execute the obligation in its task. We believe that a simple request for summons by which the third party, as claimant seeks the obligation of the promisor-defendant to the execution of its obligation constitutes an unequivocal acceptance.

Regarding the form that should take theacceptance, we believe that, if the contract out of which has arisen the stipulation is a solemn act, which must meet a certain shape for its validity, the same should also be the acceptance form.

Finally, one last issue requires special attention in this matter, namely that the time to which the acceptance of the acceptance of the beneficiary may intervene.

In light of previous civil code, the doctrine stated that although the third-party beneficiary is not a party to the contract, it acquires directly and immediately the right created for its own benefit and that regardless of any acceptance on its part (s.n. – T.V.R)[15]. This means, among other things, that despite the fact that the third-party beneficiary died before being accepted the right provided for in the contract concluded between the stipulator and the promisor, both the right and the accompanying actions shall be trasmitted to its own successors, so as will be transmitted the other property elements belongint to it at the time of its death[16].

This view appears to be shared in the current context, following the entry into force of the 2009 Civil Code[17].

However, as noted above, it cannot be argued anymore, based on the provisions of art. 1286 paragraph 1 of the Civil Code that the right shall enter the heritage of the beneficiary, irrespective of any acceptance on its part. As shown with other occasion[18] too, we believe that the acceptance cannot be done only by the third-party beneficiary, in person or via a representative, so while it is alive, the possibility to accept not being transmissible to successors. This solution is inferred from the interpretation *per a contrario* of the second paragraph of article 1286 of the Civil Code, which provides expressly that the acceptance can occur even after *death of the stipulator or promisor*, thereby being excluded the acceptance after the death of the third-party beneficiary. Moreover, the same effect has Article 1285 of the Civil Code, which, speaking of the conditions relating to the third-party beneficiary, establishes that it must exist (s.n. – T.V.R) at the time the debtor must perform its obligation; so, all the more, it must **exist when it accepts**, acceptance that is previous, at the most concomitant to the execution.

Finally, after analyzing the conditions of validity of the stipulation for another, arises the issue of the sanctions itervening in case of their non-compliance.

In a first case, we speak of the nullity, penalty, absolute or relative, if are not complied with the general conditions of validity of civil legal act: capacity, consent, object, cause.

But if what is not complied with is a special condition, the situation is not the same[19] anymore.

Thus according to art. 1285 Civil Code, final sentence, if not complied with the requirements relating to the third-party beneficiary (it is determined or at least determinable, namely to exist at the time of execution of the obligation by the promisor), "*the stipulation will benefit the stipulator, but without*

[11] For the view according to which, this is not a true conditions of validity of the stipulation for another, see C. Firică, *Excepții,* 171.

[12] Despite a previous opinion expressed by us in the work C.S.Ricu (ș.a.), *Noul Cod civil. Comentarii, doctrină și jurisprudență*, (Editura Hamangiu , București, 2012), 617, pct. 5.

[13] In the sense that acceptance is not a condition for the validity of the stipulation for another can be also found in the French case law; See in this respect *Cass., s. civ., dec. din 19 dec. 2000*, in Code civil, Ed. Dalloz, 2008, p. 1168.

[14] G. Boroi, C. A. Anghelescu, *Drept civil*, 229.

[15] C. Stătescu, C. Bîrsan, *Obligații*, 73.

[16] C. Stătescu, C. Bîrsan, *Obligații*, 73-74.

[17] See in this regard C.Firică, *Excepții,* 178, L.Pop, I.F.Popa, S.I. Vidu, *Obligații,* 213.

[18] T.V. Rădulescu, in C.S.Ricu (ș.a.), *Noul Cod civil. Comentarii, doctrină și jurisprudență* (Editura Hamangiu , București, 2012), 617, pts. 2 and 3.

[19] For the opinions expressed before the entry into force of the 2009 Civil Code on applicable penalties, see C. Firică, *Excepții.,* p. 172; A.Circa, *Relativitatea efectelor convențiilor (*Editura Universul Juridic, București, 2009), 206.

aggravating the task of the promisor". Nevertheless, this provision of the Code is not applicable *de plano* in all situations, but it must be circumstantiated to the contract containing the stipulation. Thus, for a contract of carriage of goods, in which the consignee is other than the sender, for a specific purpose consisting in the provision of an annuity to a third party (where there is no interest for the donor to be the recipient of the stipulation), the provision of Article 1285 Civil Code, final sentence cannot be applied[20].

An exception to the rule of art. 1285 Civil Code, final sentence, we find in the field of personal insurance contract, in which, according to art. 2230 Civil Code, "*in case of the death of the insured, if was not designated a beneficiary* (s.n. – T.V.R.) the *insurance indemnity shall enter into the succession, belinging to the heirs of the insured*".

Finally, if not complied with the condition for the existence of an unequivocal intent on the stipulation in favor of a third person, the penalty will be absolute nullity, lacking the intention itself to contract.

Effects of the stipulation for another

Similarly to the the previous legislation, under the conditions of the current Civil Code, it can be stated that the effects of the stipulation for another can be analyzed in terms of three distinct legal relations: i. the relation between the promisor and the stipulator; ii. the relation between the promisor and the third-party beneficiary and iii. the relation between the stipulator and the third-party beneficiary.

i. between promisor and stipulator are produced the effects of the contract by which was introduced the stipulationin favor of a third party. In addition, by the unequivocal agreement on the stipulation, the promisor is bound to the stipulator to execute accurately and timely its obligation to the third-party beneficiary. Given that this obligation incumbent to the promisor arises out a contract, which most often is sinalagmatic, the debtor of the obligation may refuse its fulfillment, under the conditions of the exception of non-performance of the contract (Art. 1556 Civil Code) if, without any justification, the stipulator does not execute its obligation arising from the same contract and that is interdependent with that of the promisor. At the same time, the promisor can also obtain the rescission or, where appropriate, the termination of the contract in which is inserted stipulation for another, if are fulfilled the conditions required by law to implement this measure. Finally, in all cases, the promisor may require the stipulator to pay damages for failure to perform its obligations arising from the contract concluded.

Then, the stipulator the only one[21] entitled to revoke the stipulation made as long as the acceptance of the beneficiary has not reached the stipulator or the promisor (art. 1286, para. 2 of the Civil Code, first sentence) and only with the consent of the promisor if the latter has an interest in executing the obligation (Art. 1287 Civil Code, para. 1, final sentence).

Therefore, revocation of the stipulation may be unilateral (when the promisor has no interest in carrying out the stipulation) and bilateral (mutual).

Regarding the time by which stipulation may be revoked, it appears that it may lay even after the beneficiary has accepted the stipulation, as long as the acceptance has not reached one of the persons indicated in the legal text. Thus, we can say that the right of the third-party beneficiary is fully consolidated only after the time its acceptance has reached the promisor or the stipulator and only if there hasn't taken place the revocation (unilateral or bilateral, as appropriate) of the stipulation.

Revocation of the stipulation, which takes effect when it reached the promisor will benefit the stipulator or its heirs, if hasn't been designated another beneficiary.

ii. Stipulation for another gives rise to a direct and immediate right in the heritage of the third-party beneficiary, which, if accepted, will also provide a right of action against the promisor in order to satisfy this right[22]. Nevertheless, as a third party to the contract between promisor and stipulator, it will not have the right or the interest to ask for the recission of termination of the deed concluded between the two.

Direct action[23] that the third-party beneficiary has against the promisor is most often an action derived from a contract, personal and prescriptive in general limitation period of three years, term that shall run from the time the acceptance of the beneficiary reached the promisor. However, we cannot exclude de plano also the possibility that the third party has to bring an action for recovery, imprescripitibile, invoking its right of ownership of the property that is the subject of the promisor's obligation, acquired from the very moment of the conclusion of the stipulation.

In its defense, the promisor may oppose the beneficiary only the defenses based on the contract including the stipulation - art. 1288 of the Civil Code. So, the promisor may invoke any exception that is entitled to oppose to the stipulator too, such as: nullity of the contract, non-compliance of the standstill period of execution, exception of inexecution of the

[20] P. Vasilescu, *Obligații.,* p. 477.

[21] According to art. 1287 paragraph 1 of the Civil Code, heirs of the stipulator cannot revoke the stipulation, or its creditors, in an actio Pauliana.

[22] I.C.C.J., s.com., dec. no. 1396/31.03.2011, on www.scj.ro.

[23] Do not confuse direct action that the third-party beneficiary has available against the promisor with direct action, recognized for certain categories of creditors, considering the special situation in which they are (direct action of workers in matters of contracts for work, art. 1856 Civil Code, direct action of the lessor against the sub-tenants, art. 1807 of the Civil Code, the principal action against sub-agent, art. 2026 paragraph 6 of the Civil Code).

obligations undertaken by the stipulator to the promisor, etc[24].

iii. Finally, stipulation for another may also raise the question of certain relations between stipulator and third-party beneficiary. But these are not the essence of the stipulation, them showing interest when, through this legal operation, the stipulator tends to extinguish certain legal relations existing between it and the third- party beneficiary. Thus, if the stipulator is debtor to the third-party beneficiary, the performance of the stipulator by the promisor, will have the value of a payment that extinguishes two obligations: the obligation of the stipulator and the obligation of the promisor to the third-party beneficiary, obligations with different sources[25]. If between the stipulator and the third-party beneficiary there are no previous legal relationships on which stipulation for another may cause direct or indirect consequences, we find, most often in the presence of indirect donations, whose advantage is that it will be subject neither to any relation or excessive liberalities nor to restriction[26].

Conclusions

Far from being an exhaustive article, this paper has tried to express a range of views on the controversial issues that have already appeared in the literature after the entry into force of the 2009 Civil Code.

A final aspect that may be subject to our analysis is that regarding the place of the stipulation for another in the assembly of the effects of the contract, namely what is the relation of this operation with the relativity of the effects of the contract.

Until the entry into force of the Civil Code, on October 1, 2011, the literature of our country had been unanimous in finding that the stipulation for another represented the only real exception to the principle of relativity of the effects of the contract.

Nowadays, the doctrine, or at least part of it, seems to have departed from this view, questioning the inclusion of the stipulation for another into the category of genuine exceptions to the principle of relativity. This opinion is supported by the argument that if a real exception to the principle of relativity can exist only by the will of the parties then the stipulation for another is not such an exception, as it needs the acceptance of the third-party beneficiary, otherwise its right being considered to have not ever existed[27].

Without excluding from the beginning the correctness of this view, however, we must remember that the right of the third-party beneficiary arises directly and immediately from the agreement concluded between the stipulator and the promisor. Its greement acts, as mentioned above, only to strengthen its right, its absence having the effect of a condition subsequent. But still, there is no need for the manifestation of its will at the conclusion of the deed between the promisor and the stipulator. The contract for the benefit of a third person is, in our view, still an exception to the principle of relativity of the effects of contracts. What remains to be discussed, but will not be the subject of the present analysis, is, on the one hand, to what extent continues to exist under the conditions of the Romanian Civil Code in force, the discussion regarding the classification of exceptions to the principle of relativity as apparent and true and more importantly, if, stipulation for another continues to be the only real exception hereto.

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[24] L. Pop, I.F.Popa, S.I.Vidu, *Obligaţii,* 214.
[25] *Ibidem.*
[26] C. Firică, *Excepţii*, 193.
[27] C. T. Ungureanu, *Drept civil*, 191.