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Analysis of the Lawsuit for Invalidation of the Condition Waiving the Principal's Right to Dismiss the Attorney within a Separate Binding Contract, Incorporated in Official Powers of Attorney Due to the Non-Realization of the Separate Binding Contract, with Emphasis on Judicial Practice

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One of the conditions that is included by default in the overwhelming majority of official powers of attorney is the following statement: "The principal, within a separate binding contract, waived his/her right to dismiss the attorney." Pursuant to Article 679 of the Civil Code, agency (wakālah) is a revocable contract, such that the attorney may terminate and dissolve it through resignation. Likewise, the principal may terminate the said contract and bring its legal existence to an end by dismissing the attorney. An exception exists where the agency or the non-dismissal of the attorney has been stipulated within a binding contract. In such a case, the revocable nature of the agency contract does not change, and the legal effects and rules governing its termination due to the death or legal incapacity of either party, in accordance with Article 954 of the Civil Code, remain fully applicable. However, the dismissal of the attorney is not possible so long as the aforementioned binding contract and the condition incorporated therein have neither become invalid nor been dissolved. Accordingly, the authors maintain that the primary prerequisite for the enforceability of a condition prohibiting the dismissal of an attorney, stipulated within a separate binding contract, is the proper establishment and proof of the existence of that binding contract. In other words, it must be demonstrated and verified that such a binding contract has genuinely and validly come into existence both in the legal sphere and in external reality, in compliance with the general requirements governing the validity of contracts and legal transactions. In cases of doubt, the presumption of non-existence applies. Therefore, the mere inclusion of this phrase in official powers of attorney, unless the concurrence of the contracting parties' intentions to conclude the separate binding contract is established through admissible evidentiary means, cannot be regarded as proof of the realization of such a contract. Consequently, where the principal brings an appropriate action seeking the invalidation of the aforementioned condition on the ground that the referenced contract was never realized, and the court is unable to ascertain the existence of such a contract, the condition incorporated therein becomes invalid due to the absence of the separate binding contract itself. As a result, the agency contract retains its revocable nature, and the principal remains entitled to dismiss the attorney. Given that judicial decisions addressing this issue are exceedingly rare in judicial practice, the present study constitutes a step toward strengthening both the theoretical and practical dimensions of this concept as an innovative approach within Iranian judicial practice and the legal system.

Keywords: *Lawsuit; Agency (Power of Attorney); Dismissal of Attorney; Separate Binding Contract; Judicial Practice.*

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1. Introduction

Pursuant to Article 656 of the Civil Code, "agency is a contract by virtue of which one of the parties appoints the other party as his/her representative for performing an act." This definition indicates that the essence of the agency contract is the granting of representation. On this basis, Advisory Opinion No. 3277/7, dated May 25, 1984, issued by the Legal Department of the Judiciary, provides that the irrevocability of an agency does not prevent the principal from personally performing the subject matter of the agency (Shahri, 2016). The same content was emphasized and reiterated in Advisory Opinion No. 3367/7, dated August 12, 1993 (Mirzaei, 2012). Accordingly, the scope of the attorney's powers is limited to the matters forming the subject of representation and does not extend beyond them. By virtue of the express wording of Article 657 of the same Code, "the realization of agency is contingent upon the attorney's acceptance." Therefore, it is evident and certain that agency is a contract, and the existence of the essential conditions for the validity of contracts and transactions under Article 190 of the Civil Code is necessary therein. Article 190 of the Civil Code provides that "the following conditions are essential for the validity of every transaction: 1. the intention and consent of the parties; 2. the capacity of the parties; 3. a definite subject matter forming the object of the transaction; 4. the legitimacy of the cause of the transaction" (Legal Deputy of the Presidency, 2015b). Under Article 679 of the Civil Code, agency is a revocable contract, such that the attorney may terminate and dissolve it through resignation. The principal, likewise, may terminate the contract and bring its legal existence to an end by dismissing the attorney, unless the agency of the attorney or the non-dismissal of the attorney has been stipulated within a binding contract. In view of the prevailing custom in transactions, one of the clauses that is often inserted by default in official powers of attorney is the condition waiving the principal's right to dismiss the attorney within a separate binding contract. In such a case, this clause does not alter the revocable nature of the agency contract, and the effects and rules concerning its automatic dissolution due to the death or legal incapacity of either party under Article 954 of the Civil Code remain applicable. Article 954 of the Civil Code provides that "all revocable contracts are dissolved by the death of either party, and also by prodigality in cases where maturity of judgment is legally required" (Legal Deputy of the Presidency, 2015b). However, so long as the binding contract in question and the condition incorporated therein have not become invalid or have not been dissolved, the dismissal of the attorney is not possible because such a right no longer exists and has, in fact, been waived by virtue of the inclusion of the said condition within the separate binding contract. The main question of the present study is whether an action for the invalidation of the condition waiving the principal's right to dismiss the attorney, incorporated in official powers of attorney within a separate binding contract, is admissible and capable of being accepted on the ground that the separate binding contract has not been realized. In the authors' view, considering Articles 2 and 3 of the Code of Civil Procedure of the Public and Revolutionary Courts in Civil Matters and Articles 34 and 167 of the Constitution of the Islamic Republic of Iran, such an action is both admissible and capable of being accepted if the claimant proves the asserted claim. Article 2 of the Code of Civil Procedure of the Public and Revolutionary Courts in Civil Matters provides that "no court may hear an action unless the interested person or persons, or their attorney, successor, or legal representative, has requested adjudication of the action in accordance with the law." Article 3 of the same Code provides that "judges of courts are obligated to adjudicate actions in accordance with the laws and to issue an appropriate judgment or resolve the dispute. Where enacted laws are incomplete, unclear, contradictory, or where there is no law at all concerning the matter raised, they shall issue the ruling of the case by relying on authoritative Islamic sources, valid fatwas, and legal principles that are not inconsistent with Sharia standards. They may not refuse to hear the action or issue judgment on the pretext of silence, deficiency, ambiguity, or contradiction in the enacted laws; otherwise, they shall be deemed to have refused to administer justice and shall be sentenced to the corresponding punishment" (Legal Deputy of the Presidency, 2015a). Article 34 of the Constitution of the Islamic Republic of Iran provides that "seeking justice is the indisputable right of every individual, and everyone may refer to competent courts for the purpose of seeking justice." Article 167 of the Constitution of the Islamic Republic of Iran provides that "the judge is obligated to endeavor to find the judgment of every case in codified

laws; if he does not find it, he shall issue the ruling of the case by relying on authoritative Islamic sources or valid fatwas, and he may not refuse to hear the action and issue judgment on the pretext of silence, deficiency, ambiguity, or contradiction in codified laws" (Shahri, 2016). It appears that the initial prerequisite for the enforceability of the condition of non-dismissal of the attorney within a separate binding contract is the ascertainment and proof of the valid realization of that binding contract. In other words, it must be proved and ascertained that such a binding contract has actually and validly come into existence both in the juridical realm and in external reality, in compliance with the general conditions governing the validity of contracts and transactions. In cases of doubt, the principle of non-existence applies, and the mere insertion of this phrase in official powers of attorney, so long as the realization of the separate binding contract has not been ascertained for the adjudicating authority through one of the evidentiary means, cannot constitute proof of the formation of such a contract. Therefore, in this situation, where the principal claims the invalidation of the condition waiving the right of dismissal on the ground that the separate binding contract was not concluded, and proves this claim by bringing a proper action, the condition incorporated therein also becomes invalid due to the non-occurrence of the separate binding contract, because, as a rule, the validity of a condition follows the principal contract (Karimi & Saadatmandi, 2024). Consequently, the nature of the agency contract in question remains revocable, and the principal's ability to dismiss the attorney, as one of the most important effects of the agency contract, remains intact. To date, no study has been conducted on this specific subject, although valuable related studies have been carried out by researchers, some of which have been used as sources in this article. The number of judgments issued on this matter in judicial practice is extremely rare (Shams, 2010). Therefore, with attention to the rules and laws governing official instruments and the economic and social effects of the matter, the present study constitutes an attempt to present the view that an action for the invalidation of the condition waiving the principal's right to dismiss the attorney within a separate binding contract in official powers of attorney is admissible and acceptable where the separate binding contract has not been realized. This constitutes a novel step in Iranian judicial practice and the Iranian legal system.

First Section: Terminology of the Subject

In this section, in order to identify the principal concepts of the subject of the present study, these concepts will be defined in two discussions.

2. The Condition Waiving the Right of Dismissal

As stated earlier, under Article 679 of the Civil Code, the principal has the right to dismiss the attorney unless the agency or the non-dismissal has been stipulated within another binding contract. Therefore, it is necessary first to become acquainted with the concept of the condition waiving the right of dismissal and then to examine its validity in terms of validity, non-effectiveness, enforceability, or nullity. This issue is addressed in the present discussion.

2.1. Concept

The condition waiving the right of dismissal is a composite concept consisting of three elements: condition, waiver, and right of dismissal. Examining the meaning and concept of each of these elements is beyond the scope of this article. In the authors' view, the concept of the condition waiving the right of dismissal may be expressed as follows: in official powers of attorney, the condition waiving the right of dismissal refers to a clause and wording by virtue of which the principal deprives himself/herself of the right to dismiss and remove the attorney from his/her position. It is commonly inserted in official powers of attorney through the phrase that the principal, within a separate binding contract, deprived and divested himself/herself of the right to dismiss the attorney. The meaning of this phrase is that, although the right to dismiss the attorney is one of the principal's certain and primary rights by virtue of the revocable nature of the agency contract, through the inclusion of this condition as described above, such a right is removed from the principal by the will of the principal himself/herself. The result is that such a right can no longer be conceived for him/her.

2.2. Validity Assessment

In the Iranian legal system, conditions are divided, under Articles 232, 233, and 234 of the Civil Code, into three categories in terms of validity: a. void conditions,

including impossible conditions, useless conditions, and unlawful conditions; b. void and contract-invalidating conditions, including conditions contrary to the essence of the contract and unknown conditions that render the two counter-performances unknown; and c. valid conditions, including conditions of attribute, result, and act. Article 232 of the Civil Code provides that "the following conditions are void but do not invalidate the contract: 1. a condition whose performance is impossible; 2. a condition in which there is no benefit or utility; 3. an unlawful condition." Article 233 of the Civil Code provides that "the following conditions are void and invalidate the contract: 1. a condition contrary to the essence of the contract; 2. an unknown condition whose uncertainty causes uncertainty as to the two counter-performances." Article 234 of the Civil Code provides that "a condition is of three types: 1. condition of attribute; 2. condition of result; 3. condition of act, whether affirmative or negative" (Legal Deputy of the Presidency, 2015b). Although a condition incorporated in a contract is embedded within another legal nature, the reality is that the condition itself is the product of the concurrence and agreement of the contracting parties' wills and is, in fact, an agreement.

In the process of evaluating and examining a legal nature, namely the condition waiving the attorney's right of dismissal in the present discussion, whenever the subject under consideration is an agreement, the first step in dealing with this agreement is to determine its nature. In the subsequent steps, one must examine its validity, in terms of validity, nullity, or non-effectiveness, which in legal terminology is called the validity assessment of a legal nature, and then examine its effects. The next stage is the dissolution of an agreement. With regard to determining the nature of an agreement, it must first be assessed whether the contract in question falls within the framework of nominate agreements. If the answer is affirmative, the matter is clear. If the answer is negative, the agreement must be deemed subject to Article 10 of the Civil Code, which is the manifestation of the principle of autonomy of will and the principle of freedom of contracts in the Iranian legal system, and it must be regarded as possessing its own specific effects and rules. In innominate agreements, the will of the parties governs the contract more than anything else. It should be noted that, under the aforementioned article, the parties' consent in private contracts is not valid where it is expressly contrary to law. Article 10 of the Civil Code provides that "private contracts are effective with respect to those who have concluded them, provided that they are not expressly contrary to law" (Legal Deputy of the Presidency, 2015b). It is also evident that, under Article 975 of the Civil Code and Article 6 of the Code of Civil Procedure of the Public and Revolutionary Courts in Civil Matters, an agreement contrary to good morals and public order is not valid. Article 975 of the Civil Code provides that "the court may not enforce foreign laws or private contracts that are contrary to good morals or are deemed contrary to public order because they offend the sentiments of society or for any other reason, even though the enforcement of such laws may generally be permissible" (Legal Deputy of the Presidency, 2015b). Article 6 of the Code of Civil Procedure of the Public and Revolutionary Courts in Civil Matters provides that "contracts and agreements that disturb public order or are contrary to good morals and inconsistent with Sharia standards shall not be given effect in court" (Legal Deputy of the Presidency, 2015a). According to the principles of validity and binding force of contracts, as reflected in Articles 219 and 223 of the Civil Code, so long as the invalidity or dissolution of a contract has not been proved, the presumption is the validity, binding force, and continuity of the legal life of the contract. Article 219 of the Civil Code provides that "contracts concluded in accordance with law are binding upon the contracting parties and their successors unless they are rescinded by mutual consent or terminated for a legal reason." Article 223 of the Civil Code provides that "every transaction that has been concluded is presumed valid unless its invalidity is established" (Legal Deputy of the Presidency, 2015b). The sanction for breach of the essential conditions for the validity of contracts and transactions is that what has occurred in external reality lacks legal effect and produces no consequence. Legally, this situation is called nullity. Nullity refers to a state in which the contract does not acquire legal existence and life, whether this results from the absence of consent between the contracting parties, the lack of subject matter, or a legal impediment concerning an unlawful agreement and consent, since what is prohibited by Sharia is like what is rationally impossible (Katouzian, 2009a). The effects of every contract, by virtue of the principle of relativity of contracts and transactions, are

attributed to the contracting parties and their legal successors. In other words, third parties are not affected by the effects of the contract and, as a result of the conclusion of a contract, neither become creditors nor debtors. Nevertheless, it must be noted that the contract and its effects may be invoked against third parties (Katouzian, 2010). In light of the foregoing, there are generally two views concerning the legal status of the condition under discussion. According to the first view, such a condition is void and invalidates the contract on two grounds: first, because it is contrary to the essence of the agency contract, namely the granting of representation in a revocable manner; and second, because this condition constitutes a general deprivation of rights and is contrary to Article 959 of the Civil Code. Article 959 of the Civil Code provides that "no person may generally deprive himself/herself of the right of enjoyment or of the right to exercise all or part of his/her civil rights" (Legal Deputy of the Presidency, 2015b). It appears, however, that the condition under discussion does not conflict with the essence of the agency contract. Moreover, Article 679 of the Civil Code, concerning the waiver of the power to dismiss the attorney, is not inconsistent with Article 959 of the Civil Code, and the claim of its implied abrogation is unfounded (Katouzian, 2009b). In the case of an agency granted for the performance of a specific act or for a limited period, the condition depriving the principal of the right is effective and valid. However, where the agency concerns the administration of and disposition over all affairs and has no fixed term, the condition waiving the right of dismissal conflicts with public order and morality (Katouzian, 2011). By contrast, according to the second view, in light of the principles of validity and binding force of contracts, and with regard to the principle of autonomy of will and the principle of freedom of contracts, such an agreement is valid and correct. The latter view is accepted by the authors.

3. The Separate Binding Contract

In the Iranian Civil Code, "transaction" is synonymous with the term "contract." Although it may be said that, in the Iranian Civil Code, contract is used for both financial and non-financial relations, whereas the term transaction indicates financial contractual relations and does not include non-financial relations, nevertheless, considering that the title "transaction" has been accepted by the Civil Code in its specific meaning, it appears that, when drafting this Code, the legislator intended the two titles of contract and transaction in one and the same meaning. The conjunction "and" between "contracts" and "transactions" is merely an explanatory conjunction used to clarify the title of contract (Ghasemi Hamed, 2010). This semantic synonymy between contract and transaction has also been accepted in the writings of well-known contemporary legal scholars. Dr. Seyed Hassan Emami, in defining transaction, states that transaction is an Arabic word and the verbal noun of the form mufa'ala and, in legal terminology, it does not differ from contract (Emami, 2011). Dr. Nasser Katouzian has also expressly stated that transaction is a word synonymous with contract (Katouzian, 2012). With this introduction, in the present discussion, the concept of the separate binding contract will first be explained, and then its validity in terms of validity, non-effectiveness, enforceability, or nullity will be examined.

3.1. Concept

Pursuant to Article 183 of the Civil Code, "a contract consists of one or more persons undertaking an obligation toward one or more other persons, and that obligation being accepted by them." In the authors' view, a contract may be defined as "the agreement of at least two sound declaratory wills for the purpose of creating legal effects." Under Article 185 of the said Code, "a binding contract is one in which neither party to the transaction has the right of termination except in specified cases." Pursuant to Article 186 of the same Code, "a revocable contract is one in which either party may terminate it whenever he/she wishes." With this introduction, in the authors' view, the meaning of a separate binding contract in official powers of attorney is a binding contract that the parties have concluded separately between themselves outside the framework of the agency contract, and this binding agreement is among the instances of innominate contracts governed by Article 10 of the Civil Code.

3.2. Validity Assessment

With respect to the validity of the separate binding contract, according to what was previously stated, this agreement is valid and binding, provided that it is not contrary to mandatory laws, good morals, and public

order, and provided that the essential conditions for the validity of contracts and transactions, as set forth in Article 190 of the Civil Code, have been observed therein.
Second Section: Feasibility of Accepting the Action for Invalidation of the Condition Waiving the Attorney's Right of Dismissal within a Separate Binding Contract
In this section, in response to the main question of the present study, the existing views concerning the admissibility of the action for invalidation of the condition waiving the attorney's right of dismissal within a separate binding contract will be explained in two discussions: first, the prohibition view, and then the permissibility view.

4. The Prohibition View

In this discussion, the content of the prohibition view will first be stated, and then the reasons supporting this view will be presented and examined.

4.1. Statement of the View

According to this view, considering the principles of validity and binding force of contracts, the rule of estoppel, the necessity of attributing validity to official instruments and recognizing their probative force, and the necessity and importance of preserving public order, the content of the parties' agreement concerning the condition waiving the right of dismissal in official powers of attorney must be recognized as valid. Consequently, an action for the invalidation of this condition is not admissible. This means that, because the principal inserted such a condition in the official power of attorney by his/her own will and volition, this condition is valid and binding, and therefore an action for its invalidation is bound to be dismissed.

4.2. Reasons and Authorities

In this clause, the reasons underlying the view prohibiting the acceptance of the action under discussion are stated and examined as follows:
A. The Principles of Contractual Freedom, Validity, and Binding Force of Contracts
As stated earlier, under the principle of autonomy of will and the principle of freedom of contracts, which are manifested in Article 10 of the Civil Code, individuals may conclude any agreement that is not expressly contrary to mandatory laws, good morals, and public order. According to the principles of validity and binding force of contracts, as reflected in Articles 219 and 223 of the Civil Code, so long as the invalidity or dissolution of a contract has not been proved, the presumption is the validity, binding force, and continuity of the legal life of the contract (Legal Deputy of the Presidency, 2015b). Consequently, the condition waiving the right of dismissal inserted in official powers of attorney by the principal's own will is valid, effective, and binding.
B. The Rule of Estoppel
In general, estoppel may be said to mean the prohibition of a person from denying or asserting something contradictory to what he/she has previously accepted or described as reality through acts, statements, and positions in different ways, whether written, oral, express, or implied. In Iranian law, given the substantive similarity between the jurisprudential rules of no-harm, deception, and the legal rule prohibiting denial after admission, on the one hand, and the rule of estoppel, on the other hand, which indicates the existence and acceptance of this rule, reliance on this rule is possible and contributes positively to the elevation of legal issues in the adjudicatory process (Mashayeghi & Adabi, 2019). Therefore, in light of the foregoing and the content of the rule of estoppel, as well as the rule prohibiting denial after admission as reflected in Article 1277 of the Civil Code, the condition waiving the right of dismissal inserted in official powers of attorney by the principal's own will is valid, effective, and binding. Article 1277 of the Civil Code provides that "denial after admission is not admissible" (Legal Deputy of the Presidency, 2015b). Accordingly, the principal has no right to assert a claim inconsistent with it, and if such an action is brought, the action must be rejected.
C. Validity and Probative Force of the Official Instrument
Pursuant to Article 1287 of the Civil Code, one type of official instrument is an instrument prepared in notarial offices, including the powers of attorney under discussion. Because these instruments are official, their issuance and preparation are, as a rule, established, and they therefore possess probative force and validity. They become invalid only if decisive evidence of their invalidity is presented in the adjudicatory process. On this basis, the condition waiving the right of dismissal inserted in official powers of attorney by the principal's own will is valid, effective, and binding. The principal has

no right to assert a claim inconsistent with it, and if such an action is brought, the action is bound to be dismissed.

D. The Necessity of Preserving Public Order

Public order consists of two terms: "order" and "public." Order means the balance of relations and the position of things in relation to one another, and a harmonious movement in accordance with a rule. The rule governing this order, in every society, provides morality, religion, the economic structure, the legal and political system, and national culture among every people, and the state guarantees it (Katouzian, 2004). No definition of public order has been provided in Iranian positive law.

In legal terminology, public order means "the totality of legal institutions and rules connected with the proper necessary functioning of affairs relating to the administration of the country or concerning the protection of security and morality in people's relations, against which the will of the members of society is ineffective" (Katouzian, 2004).

One of the dimensions of public order is economic public order. The necessity of preserving economic public order and maintaining and ensuring security in the contractual relations of persons in the sphere of transactions, through granting validity to the condition waiving the right of dismissal in official powers of attorney, requires that the said condition be regarded as valid and binding.

5. The Permissibility View

In this discussion, the content of the permissibility view will first be stated, and then the reasons supporting this view will be presented and examined.

5.1. Statement of the View

According to this view, because seeking justice is the indisputable right of every person under the Constitution of the Islamic Republic of Iran, and because the essence of the agency contract is the granting of representation, and because the principle is the non-existence of a valid agreement waiving the right of dismissal and the non-realization of the separate binding contract, this contract must therefore be ascertained. Otherwise, in light of the stated reasons, the condition waiving the right of dismissal in official powers of attorney is not valid, and consequently an action for the invalidation of this condition is admissible.

5.2. Reasons and Authorities

In this clause, the reasons supporting the permissibility of accepting the action under discussion are stated and examined as follows:

A. The Right to Seek Justice and Petition for Redress

Pursuant to Article 34 of the Constitution of the Islamic Republic of Iran, "seeking justice is the indisputable right of every individual, and everyone may refer to competent courts for the purpose of seeking justice." Therefore, the right to seek justice and petition for redress is one of the fundamental rights of every person. In fact, where any person has an action or claim, he/she may refer to the competent adjudicating authorities. Lexically, "action" means making a claim, demanding, claim, dispute, and seeking justice (Moein, 1981). Legal scholars have also provided definitions of action as follows: 1. "An action is an act performed for the establishment of a right, namely a right that has been denied or infringed" (Matin-Daftari, 1970). 2. "An action is a right by virtue of which persons may refer to a court and request that the official authority protect their rights against another person through the application of law. Recourse to the court and the exercise of this right are always carried out through a specific legal act called 'bringing an action'" (Katouzian, 1997). 3. In statutory provisions, action is used in three meanings: a. in the narrow sense, action means the legal capacity of the claimant of a denied or infringed right to refer to competent authorities in order to submit the validity or invalidity of his/her claim to adjudication and to trigger the relevant legal effects; b. in the broad sense, action refers to the dispute and controversy raised before adjudicating authorities and under examination; c. action in the sense of claim, in which the purpose of action is a claim that has not yet been raised before adjudicating authorities or is raised as an incidental matter during the hearing of another action (Shams, 2010).

Accordingly, in light of the foregoing, where the principal claims the invalidation of the condition waiving the attorney's right of dismissal on the ground that the separate binding contract has not been realized, this action is admissible and capable of being accepted. In this regard, attention to two provisions of the Code of Civil Procedure and their sequence is highly illuminating: Article 2 provides that "no court may hear an action

unless the interested person or persons, or their attorney, successor, or legal representative, has requested adjudication of the action in accordance with the law." Article 3 provides that "judges of courts are obligated to adjudicate actions in accordance with the laws and to issue an appropriate judgment or resolve the dispute. Where enacted laws are incomplete, unclear, contradictory, or where there is no law at all concerning the matter raised, they shall issue the ruling of the case by relying on authoritative Islamic sources, valid fatwas, and legal principles that are not inconsistent with Sharia standards. They may not refuse to hear the action or issue judgment on the pretext of silence, deficiency, ambiguity, or contradiction in the enacted laws; otherwise, they shall be deemed to have refused to administer justice and shall be sentenced to the corresponding punishment" (Legal Deputy of the Presidency, 2015a). This means that the condition for creating a duty for courts to hear actions brought before them is the necessity of bringing a proper action in accordance with and conforming to the provisions of the Code of Civil Procedure and other mandatory laws. This inference is consistent with Articles 2 and 3 of the Code of Civil Procedure.

B. The Representative Nature of Agency

Pursuant to Article 656 of the Civil Code, "agency is a contract by virtue of which one of the parties appoints the other party as his/her representative for performing an act." This definition indicates that the essence of the agency contract is the granting of representation. On this basis, the scope of the attorney's powers is limited to the matters forming the subject of representation and does not extend beyond them. By virtue of the express wording of Article 657 of the same Code, "the realization of agency is contingent upon the attorney's acceptance." Therefore, it is evident and certain that agency is a contract, and the existence of the essential conditions for the validity of contracts and transactions under Article 190 of the Civil Code is necessary therein. Under Article 679 of the Civil Code, agency is a revocable contract, such that the attorney may terminate and dissolve it through resignation. The principal, likewise, may terminate the contract and bring its legal existence to an end by dismissing the attorney (Legal Deputy of the Presidency, 2015b).

Therefore, in view of the essence of the agency contract, namely the granting of representation, the action under discussion in the present study is capable of being accepted, because the attorney derives the limits of his/her powers from the principal, and the principal must not be deprived of bringing such an action.

C. The Necessity of Ascertaining the Realization of the Separate Binding Contract

As stated earlier, the meaning of a separate binding contract in official powers of attorney is a binding contract that the parties have concluded separately between themselves outside the framework of the agency contract, and this binding agreement is among the instances of innominate contracts governed by Article 10 of the Civil Code.

A claimant is a person whose abandonment of the dispute, or action, would result in the termination of the proceeding. In other words, the claimant is a person who asserts something contrary to the presumption and the apparent state of affairs (Amini & Ayati, 2009). Depending on the case, this person may be the plaintiff or the defendant. For example, if the defendant accepts the plaintiff's original claim that he/she is indebted to the plaintiff, but claims payment, the issue of reversal of the burden of claim arises, and the defendant is regarded as the claimant and must prove his/her claim in accordance with the rules by relying on the evidence proving the action. Article 198 of the Code of Civil Procedure, enacted in 2000, provides that "where a right or debt is established against a person, the presumption is its continuation unless the contrary is proved" (Legal Deputy of the Presidency, 2015a).

With respect to the action under discussion, what is evident and certain is that the conclusion of such an agreement, namely the separate binding contract, must be proved by the claimant. In other words, the realization of such an agreement is contrary to the presumption and the apparent state of affairs and is among the instances of a claim. Therefore, where the principal relies on the non-realization of the separate binding contract in order to establish the invalidity of the condition waiving the right of dismissal, it is the attorney who must prove the conclusion of such a contract.

D. The Principle of Non-Existence

According to operative legal presumptions, the principle is the non-realization of a legal nature, including the separate binding contract. This means that the person alleging the occurrence and realization of the separate binding contract must prove this claim by relying on

evidentiary means; otherwise, in cases of doubt and uncertainty, the presumption is the non-realization of such a contract. Where the realization of the separate binding contract is negated, the condition waiving the right of dismissal within it is also negated due to the absence of subject matter.

In evaluating the two views mentioned above and stating the selected view, the authors believe that the second view, namely the view that an action for the invalidation of the condition waiving the attorney's right of dismissal incorporated in official powers of attorney on the ground of the non-realization of the separate binding contract is admissible, is correct and consistent with statutory provisions. The reasons are as follows: 1. The recognition of the right to seek justice as an indisputable right of persons in the Constitution of the Islamic Republic of Iran. 2. Pursuant to Article 656 of the Civil Code, "agency is a contract by virtue of which one of the parties appoints the other party as his/her representative for performing an act." This definition indicates that the essence of the agency contract is the granting of representation. On this basis, the scope of the attorney's powers is limited to the matters forming the subject of representation and does not extend beyond them. The principal has the right to dismiss the attorney whenever he/she wishes, unless agency or the right of non-dismissal has been stipulated within a separate binding contract; this matter must be ascertained, otherwise the principle of non-existence applies. 3. The admissibility of this action is not contrary to public order; rather, it is consistent with it. This is because public order requires that, in cases where the realization of the separate binding contract has not been proved, recourse be made to the principle and the agency be regarded as revocable and terminable by the principal. Moreover, it must be noted that rules relating to public order are not fixed and immutable; rather, they are subject to change depending on the type of interests for which they have been established and prescribed (Jafari Langroudi, 2008). 4. The principle of the duty of judicial authorities to resolve disputes under Article 167 of the Constitution and Article 3 of the Code of Civil Procedure of the Public and Revolutionary Courts in Civil Matters, enacted in 2000, requires that the action under discussion be accepted where it is proved. Advisory Opinions No. 4286/7, dated January 20, 2012, and No. 923/7, dated May 9, 2007, issued by the Legal Department of the Judiciary, also emphasize this duty of courts to resolve disputes (Legal Deputy of the Presidency, 2015a). 5. The existence and precedent of this view in judicial practice: one of the most important sources of law in every legal system is judicial practice. Judicial practice, in the broad sense, means the totality of judicial decisions, and in the narrow sense, it means the uniform method that judicial authorities adopt and apply in relation to the same subject matter when making decisions and rendering judgments (Katouzian, 2004). Examples of judicial practice supporting this view include the following: a. Judgment No. 140403390004446899, dated December 16, 2025, issued by Branch Three of the General Civil Court of Gonbad-e Kavus County: "Judgment of the Court: In this case, two actions have been brought, and the court has joined both files together and, in compliance with Article 103 of the Code of Civil Procedure, has heard both cases jointly and now renders judgment in a single decision. The description of the two actions is as follows: a. the principal action, namely the action of ..... against ..... seeking confirmation of termination of Power of Attorney No. ..... dated ..... at Notarial Office No. ..... of Gonbad on the ground of the invalidity of the separate binding contract stated in the power of attorney and the revocable nature of the said agency contract; declaration of nullity and invalidity of Official Deed of Acknowledgment No. ..... on the ground of nullity and invalidity of the source and cause of the acknowledgment; declaration of nullity of the separate binding contract stated in Power of Attorney No. .... dated ..... at Notarial Office No. ... of Gonbad between the plaintiff and the defendant .... on the ground of sham nature and absence of intention to conclude it; b. the related action, namely the action of .... against ..... seeking proof of the occurrence of sale and issuance of judgment establishing the transfer and right of exploitation and use of the land and improvements of Property No. ... from the lands of Gonbad Industrial Town, having cadastral parcel No. ... subsidiary to ... principal, between ..... and .....; compelling the defendants to appear at one of the notarial offices of Gonbad and transfer the official deed in the name of the client, ancillary to the above claim as stated in the text; declaration of nullity of the transfer contract between .... and ..... concerning the aforesaid cadastral parcel and cancellation of the transfer deed as stated in the text; proof of transfer and the right of exploitation and use of

Plot No. .... from the lands of Gonbad Industrial Town, having cadastral parcel No. ... subsidiary to .... principal, between ..... and ..... under Official Deed of Acknowledgment No. ..... dated ..... and Official Sales Power of Attorney No. .....; ... Having regard to the totality of the documents and contents of the file, the court generally finds the principal plaintiff's action (a) to be well-founded and proved, and does not find the related action (action b) to be well-founded and proved. The reasons are as follows: 1. ... 2. ..... 3. Pursuant to Article 656 of the Civil Code, agency is a contract by virtue of which one of the parties appoints the other party as his/her representative for performing an act. This definition indicates that the essence of the agency contract is representation, and the attorney has the same scope of powers as the principal, not beyond that. Pursuant to Article 657 of the same Code, the realization of agency is contingent upon the attorney's acceptance, and therefore it is evident and certain that agency is a contract and that the existence of the essential conditions for the validity of contracts and transactions under Article 190 of the Civil Code, as previously stated, is necessary therein. Pursuant to Article 678 of the aforementioned Code, one of the methods of dissolution of the agency contract is the dismissal of the attorney by the principal. Under Article 679 of the same Code, the principal may dismiss the attorney whenever he/she wishes unless the agency of the attorney or the non-dismissal of the attorney has been stipulated within a binding contract. In view of Article 679 of the said Code, agency is a revocable contract, such that both the attorney may terminate and dissolve it by resignation and the principal may terminate and dissolve the contract by dismissing the attorney. It should be noted that stipulating non-dismissal within a binding contract does not alter the revocable nature of the agency contract, and the rules concerning its automatic dissolution due to the death or legal incapacity of either party under Article 954 of the Civil Code remain in force. With this introduction, the initial prerequisite for the enforceability of the condition of non-dismissal of the attorney within a binding contract is the ascertainment and proof of the valid realization of that binding contract. In other words, it must be proved and ascertained that such a binding contract has actually and validly come into existence both in the juridical realm and in external reality, in compliance with the general conditions for the validity of contracts and transactions; and in cases of doubt, the principle of non-existence applies. Accordingly, in the present matter, where such a dispute exists between the parties, and having regard to the investigations carried out, the documents and evidence in the present file, and the examination of the parties' evidence and documents, the occurrence and realization of such a contract has not been ascertained by the court. Moreover, the principle of non-existence applies. That is, because the conclusion of the binding contract has not been ascertained, the nature of the agency contract under discussion remains revocable, and therefore the principal is capable of dismissing the attorney. Since dismissal and termination under Article 449 of the Civil Code may be effected by any word or act, and the clearest instance of this is the bringing of an action, the court believes that, first, no binding contract was realized between the parties, and the phrase inserted in the official power of attorney is contrary to reality and was not intended by the parties, and the mere insertion of this phrase does not constitute the realization of a binding contract; and second, the principal had the right to dismiss the attorney and terminate the agency, and the dismissal and termination in question have been established for the court .... 4. ... 5. ... Accordingly, in light of the foregoing, the court, having regard to the stated reasoning and relying on Articles 10, 30, 35, 190, 191, 195, 219, 220, 223, 338, 339, 362, 365, 656, 678, 679, and 954 of the Civil Code, the concept of Article 1257 and Article 1277 of the Civil Code, Articles 22, 46, 47, 48, and 70 of the Law on Registration of Deeds and Real Estate, Article 62 of the Law on Permanent Provisions of Development Programs, and Articles 2, 3, 197, 198, 241, 515, and 519 of the Code of Civil Procedure of the Public and Revolutionary Courts in Civil Matters, with respect to the principal action, namely action (a), issues and declares judgment confirming termination of Power of Attorney No. ..... of Notarial Office No. ... of Gonbad on the ground of the invalidity of the separate binding contract stated in the power of attorney and the revocable nature of the said agency contract; declaring the nullity and invalidity of Official Deed of Acknowledgment No. ..... on the ground of nullity and invalidity of the source and cause of the acknowledgment; declaring the nullity of the separate binding contract stated in Power of Attorney No. ..... at Notarial Office No. ... of Gonbad between the plaintiff and the defendant on the ground of sham nature

and absence of intention to conclude it as the principal claim; and ordering the defendant to pay attorney's fees in accordance with the regulations and the amount of .... for court costs and judicial service tariffs in favor of the principal plaintiff. With respect to the related action, namely action (b), the court issues and declares judgment dismissing the related plaintiff's action. The judgment issued in the first part is rendered in the presence of the parties and may be appealed before the Honorable Court of Appeal of Golestan Province within twenty days from the date of notification. The judgment issued in the second part may be appealed before the Honorable Court of Appeal of Golestan Province within twenty days from the date of notification." b. Judgment No. 921533, dated March 15, 2014, issued by Branch Two of the Civil Court of Qarchak County; c. Judgment No. 9309981511001097, dated July 6, 2015, issued by Branch 23 of the Supreme Court; d. Judgment No. 9209980010700414, dated May 6, 2015, issued by Branch 30 of the Court of Appeal of Tehran Province, available in the National Database of Judicial Decisions; e. the majority opinion of the members of the judicial meeting dated June 18, 2018, in Rasht; f. the majority opinion of the members of the judicial meeting dated October 26, 2009, in Kerman, available in the Judicial Meetings Database; and g. Advisory Opinion No. 6862/7, dated January 26, 2010, issued by the Legal Department of the Judiciary, which provides as follows: the mention of a separate binding contract in official powers of attorney, by virtue of which the right of dismissal has been removed from the principal, does not mean that, by this condition, the principal absolutely lacks the right to bring an action for the invalidation of the power of attorney on the ground of the non-existence of a binding contract. Rather, if such an action is brought, the action is admissible and subject to adjudication (Legal Deputy of the Presidency, 2015b).

6. Conclusion

Pursuant to Article 656 of the Civil Code, "agency is a contract by virtue of which one of the parties appoints the other party as his/her representative for performing an act." This definition indicates that the essence of the agency contract is the granting of representation. On this basis, the scope of the attorney's powers is limited to the matters forming the subject of representation and does not extend beyond them. By virtue of the express wording of Article 657 of the same Code, "the realization of agency is contingent upon the attorney's acceptance." Under Article 679 of the Civil Code, agency is a revocable contract, such that the attorney may terminate and dissolve it through resignation. The principal, likewise, may terminate the contract and bring its legal existence to an end by dismissing the attorney, unless the agency of the attorney or the non-dismissal of the attorney has been stipulated within a binding contract. In view of the prevailing custom in transactions, one of the clauses that is often inserted by default in official powers of attorney is the condition waiving the principal's right to dismiss the attorney within a separate binding contract. In such a case, the revocable nature of the agency contract does not change, and the effects and rules concerning its automatic dissolution due to the death or legal incapacity of either party under Article 954 of the Civil Code remain in force. However, so long as the binding contract in question and the condition incorporated therein have not become invalid or dissolved, the dismissal of the attorney is not possible because such a right no longer exists and has, in fact, been waived by virtue of the inclusion of the said condition within the separate binding contract. In response to the question whether an action for the invalidation of the condition waiving the principal's right to dismiss the attorney, incorporated in official powers of attorney within a separate binding contract, is admissible and capable of being accepted on the ground that the separate binding contract has not been realized, two general views exist. According to the prohibition view, considering the principles of validity and binding force of contracts, the rule of estoppel, the necessity of attributing validity to official instruments and recognizing their probative force, and the necessity and importance of preserving public order, the content of the parties' agreement concerning the condition waiving the right of dismissal in official powers of attorney must be recognized as valid. Consequently, an action for invalidation of this condition is not admissible. This means that, because the principal inserted such a condition in the official power of attorney by his/her own will and volition, this condition is valid and binding, and therefore an action for its invalidation is bound to be dismissed. According to the permissibility view, because seeking justice is the indisputable right of every person under the Constitution of the Islamic Republic of Iran, and because the essence of the agency contract is the

granting of representation, and because the principle is the non-existence of a valid agreement waiving the right of dismissal and the non-existence of a separate binding contract, this contract must therefore be ascertained. Otherwise, in light of the stated reasons, the condition waiving the right of dismissal in official powers of attorney is not valid, and consequently an action for the invalidation of this condition is admissible. In the authors' view, considering Articles 2 and 3 of the Code of Civil Procedure and Articles 34 and 167 of the Constitution of the Islamic Republic of Iran, such an action is both admissible and capable of being accepted if the claimant proves the asserted claim. The reasons are as follows: 1. the recognition of the right to seek justice as an indisputable right of persons in the Constitution of the Islamic Republic of Iran; 2. pursuant to Article 656 of the Civil Code, "agency is a contract by virtue of which one of the parties appoints the other party as his/her representative for performing an act." This definition indicates that the essence of the agency contract is the granting of representation. On this basis, the scope of the attorney's powers is limited to the matters forming the subject of representation and does not extend beyond them. The principal has the right to dismiss the attorney whenever he/she wishes, unless agency or the right of non-dismissal has been stipulated within a separate binding contract; this matter must be ascertained, otherwise the principle of non-existence applies; 3. the admissibility of this action is not contrary to public order; rather, it is consistent with it. This is because public order requires that, in cases where the realization of the separate binding contract has not been proved, recourse be made to the principle and the agency be regarded as revocable and terminable by the principal; 4. the principle of the duty of judicial authorities to resolve disputes under Article 167 of the Constitution and Article 3 of the Code of Civil Procedure of the Public and Revolutionary Courts in Civil Matters requires that the action under discussion be accepted where it is proved; 5. the existence and precedent of this view in judicial practice, including: a. Judgment No. 140403390004446899, dated December 16, 2025, issued by Branch Three of the General Civil Court of Gonbad-e Kavus County; b. Judgment No. 921533, dated March 15, 2014, issued by Branch Two of the Civil Court of Qarchak County; c. Judgment No. 9309981511001097, dated July 6, 2015, issued by Branch 23 of the Supreme Court; d. Judgment No. 9209980010700414, dated May 6, 2015, issued by Branch 30 of the Court of Appeal of Tehran Province, available in the National Database of Judicial Decisions; e. the majority opinion of the members of the judicial meeting dated June 18, 2018, in Rasht; f. the majority opinion of the members of the judicial meeting dated October 26, 2009, in Kerman, available in the Judicial Meetings Database; and g. Advisory Opinion No. 6862/7, dated January 26, 2010, issued by the Legal Department of the Judiciary, which provides that the mention of a separate binding contract in official powers of attorney, by virtue of which the right of dismissal has been removed from the principal, does not mean that, by this condition, the principal absolutely lacks the right to bring an action for the invalidation of the power of attorney on the ground of the non-existence of a binding contract. Rather, if such an action is brought, the action is admissible and subject to adjudication. This supports the correctness of this view. It is recommended that the legislator add a note to Article 679 of the Civil Code with the following content: "The presumption is the non-realization of a separate binding contract, and the mere insertion of the phrase waiving the right of dismissal within a separate binding contract in official powers of attorney shall not be deemed equivalent to the occurrence of such a contract. The person alleging the conclusion of this contract must prove its realization."

Authors' Contributions

Authors contributed equally to this article.

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In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

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