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Fate of Pledge (Lien) in Bankruptcy Cases

This article discusses the features of foreclosure on the subject of a pledge. The author focuses attention on the fate of a pledge, as an encumbrance on the subject, which was a guarantee of the fulfillment of the Debtor's obligations to the creditor. The conflict between the norms of the Civil Code and the Federal Law "On Insolvency (Bankruptcy)" is considered, supported by relevant examples from judicial practice. In addition, the author draws attention to the fact that the order of foreclosure on the subject of the lien, its implementation and the distribution of funds received do not apply to the requirements on the foreclosure of the subject of a pledge, which ensures the fulfillment of debtor's liabilities to creditors under current obligations.

Keywords (tags): pledge, bankruptcy, secured creditors, subject of a pledge, repossession of pledged items, register of creditors' claims, mortgagor, mortgagee, satisfaction of creditors' claims.

The Civil Code of the Russian Federation (hereinafter referred to as the Civil Code of the Russian Federation) defines the concept of a lien - this is a way of ensuring the fulfillment of an obligation, by virtue of which the creditor (pledgee) has the right, in case of default or improper performance by the debtor of this obligation, to get reimbursed through the value of the pledged property (pledged item) mainly before other creditors of the person who owns the mortgaged property (mortgagor). To meet their claims the secured creditor exercises their rights through the foreclosure of the subject of a lien. In the event when one of the bankruptcy procedures has been introduced in respect of the pledger, foreclosure is possible exclusively in court.

Submission by the pledgee of a claim for repayment of the debt in the insolvency procedure can be considered as an analogue of filing a claim to the court for foreclosure of the collateral, since the pledgee, being the debtor's creditor, has no right to make its claims to the debtor in a different way other than provided by the Federal Insolvency Law (bankruptcy) "(hereinafter - the Bankruptcy Law), if he is his bankruptcy creditor.

Thus, the presentation by the pledgee of a claim against the debtor in the process of bankruptcy proceedings means only the judicial procedure for enforcing the pledged property, an extrajudicial procedure in this case on the basis of an agreement or by virtue of the law are excluded.

The foreclosure of the pledged item is aimed at meeting the creditor's claims, and as a consequence it provides for a change in the ownership of the pledged item, since it is either sold at an auction in the manner prescribed by law, and the third person who agreed to pay the price announced in the notice of tender becomes the buyer, or the Pledgee himself, who, subject to the combination of the conditions stipulated by the norms of the law on insolvency, kept the subject of the pledge and thereby satisfied their claim against the debtor.

However, it is important to question the fate of the pledge, as an encumbrance, on the subject, which was guarantee of the performance of the Debtor's obligations to the creditor.

According to the general rule established by Clause 4 Part 1 of Art. 352 of the Civil Code of the Russian Federation, the Pledge is terminated if the pledged property is sold in order to satisfy the pledgee's requirements in the manner prescribed by law, including when the pledgee keeps the pledged property for himself, and in the case when he has not exercised this right (Clause 5 of Article 350.2).

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