

Study on the Buyer Rules of Normal Operation

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ABSTRACT

Article 404 of the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code) contains the "normal Business buyer Rules" is of great significance. Its purpose is to protect the security of transactions, optimize the business environment, improve the efficiency of transactions, and promote the circulation of goods. In terms of theoretical disputes, some scholars deny the reform of its expansion from floating mortgage to chattel mortgage, and believe that the rule shocks the foundation of the chattel mortgage system, while others explain the rationality of the restricted chattel which is not subject to mortgage pursuit and the rules. The legal basis is the consent of the legal presumption when the mortgagee is silent. The constituent elements include chattel mortgage, normal business activities, payment of reasonable price, acquisition of mortgaged property and good faith of the buyer. In terms of legal effect, excluding the effect of the mortgage right, the mortgagee may request the mortgagor to pay off in advance or deposit the transfer price, and may claim the liability for breach of contract when it is prohibited. In terms of the burden of proof, the buyer shall bear the normal business activities, the payment of reasonable price and the acquisition of the mortgaged property, and the rule of presumption of good faith shall apply to the good faith judgment, and the person who is not in good faith shall provide evidence.

INTRODUCTION

The promulgation of the Civil Code is a major milestone in the process of the rule of law in China. In the scope of the real rights section of the Civil Code, there are a number of newly revised provisions, among which Article 404 of the Civil Code is one of the typical representatives. Article 404 of the Civil Code is as follows: "If the chattel is mortgaged, it shall not fight against the buyer who has paid the reasonable price and obtained the mortgaged property in the normal business activities", which is called the "buyer rule for normal business activities". From the historical point of view, the normal operation buyer rules are reflected in the original "Property Law of the People's Republic of China" (hereinafter referred to as "the Property Law"), according to the "property Law" article 189, the normal operation buyer rules are applicable to floating mortgage. At that time, the legislators believed that the floating mortgage used the mortgagor as all or part of the movable property, if the mortgagor could not dispose of the mortgaged property; in addition, the mortgaged property before the mortgage period of the mortgaged property, so the

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floating mortgagor was allowed to dispose of the mortgaged property freely. Article 404 of the Civil Code extends the scope of the normal business buyer rules from floating mortgage to chattel mortgage, and there are many complex and profound considerations behind this change. Therefore, in the context of the Civil Code, the following will discuss the purpose of the establishment of the normal business buyer rules, the jurisprudence involved behind it, the constitutive elements and the legal effect.

I. Set up the purpose

1. Protect transaction security and optimize the business environment

In normal business activities, the buyer usually has the burden of the purchased things, that is, subconsciously determined that there is no potential obstacle affecting its use, disposal and income. However, the normal operation buyer rules cut off the recourse of the mortgagee to guarantee such trust. At this time, the buyer can trade at ease without having to worry about the damage of subsequent rights and

interests, so as to focus on transaction planning and execution. This state is conducive to stabilizing the transaction order, ensuring the security of transactions, thus promoting the optimization of the business environment, attracting more market players to participate, promoting the healthy and orderly development of the economy and building a good business ecology.

2. Improve the transaction efficiency and promote the circulation of goods

If there is no normal operation of the buyer rules, the buyer to prevent the purchase of the mortgage burden, it needs to inquire whether the purchase of the mortgage registration before the transaction. The buyer in general business activity, force its to inquire guarantee register before each transaction, not only violates trade convention, also increased transaction cost. Therefore, one of the purposes of establishing this rule is to exempt the obligation of inquiry and registration of the normal business buyer. No matter whether the mortgage right is registered or not, the mortgagee is not allowed to fight against the buyer in the normal business activities. Thus, it not only improves the transaction efficiency, but also promotes the circulation of things.

II. Theoretical dispute and legal basis

1. Theoretical disputes

Article 404 of the Civil Code expands the normal operation rules from floating mortgage to chattel mortgage, and some scholars hold a negative attitude towards it. When the mortgagee does not agree that the mortgagor has no burden to transfer the mortgaged property, the mortgagee can not fight against the buyer who has paid the reasonable price and obtained the mortgaged property in the normal business activities, which cuts off the mortgagee's pursuit and the effect of the mortgagee, and actually weakens the protection of the mortgagee. It was pointed out that "we are more willing to believe that the 'chattel mortgage' stipulated in Article 195 of the draft is limited to the chattel mortgage stipulated in Article 187 (floating mortgage), rather than the so-called institutional innovation. In the system logic of mortgage right, article 195 of the draft, if not based on floating mortgage, will constitute the system violation of the mortgage pursuit and effectiveness system established in Article 197 of the draft." The core of the floating mortgage system lies in the uncertainty and circulation of the mortgaged property, which is guaranteed by the existing property in the future. Due to floating mortgage, the mortgaged property itself will change, the mortgagee and the mortgagor initial decided to set up a floating mortgage should foresee not realize mortgage, or only

part of the mortgage, so the mortgage transfer the mortgage property, make the risk of the mortgage, the mortgagee will not trust protection problems, and floating mortgage in the mortgage is not chase and in the transfer of individual property, plus to the buyer also have "reasonable price" "normal business activities" limit, the original "property law" the normal operating rules of property law and the whole system logic consistent, systematic. However, the Civil Code extends the scope of application from floating mortgage to chattel mortgage, which will impact the foundation of the existence of chattel mortgage system. In the specific application of this system, the mortgagor will sell the mortgaged property without hesitation, and the pursuit and effect of the mortgage right will be blocked, the interests of the mortgagee will be frequently damaged, and the chattel mortgage system will not be able to reach its original purpose. In the long run, the chattel mortgage system will become abandoned and no one will apply it.

In contrast, there are many scholars to apply from floating mortgage to chattel mortgage rationality explanation, such as professor Zou hailin proposed article 404 of the civil code established is only a restricted chattel not by mortgage chase and rules, and paragraph 1 of article 406 is "exception and principle" relationship rather than conflict. At the same time, based on the traditional principle of guarantee law, another core function is mortgage media financing, compared to the auction collateral and makes the claims, creditors are more hope to increase the debtor's capital and directly, because through the way of security claims than direct settlement costs, and the value of the mortgaged property is floating. Therefore, after the transfer of the mortgaged property, the mortgagor's capital increases, which improves the mortgagor's solvency. It is also a kind of guarantee and can achieve the effect of promoting the realization of creditor's rights.

2. Legal basis

Some scholars point out that the legal basis behind the rules of normal operation is the consent assumed by the law when the mortgagee is silent. If the mortgagee does not say whether he agrees to the mortgagor to transfer the ownership of the mortgaged property without the burden, the law presumes when the specific conditions meet that the mortgagee agrees to the mortgagor to sell and transfer the collateral without the burden. First, the security holder knows that the guarantor continues to sell a certain commodity, but chooses the commodity as the collateral; second, the security holder does not choose to control the pledge method of the collateral, but

chooses the mortgage method of puts the security in the hand of the guarantor. The law relies on this inference that the mortgagee allows the mortgagor to sell and transfer the collateral without the burden in his normal business activities.

In fact, this presumption of law in the vast majority of cases also meets the expectations of the parties. For the mortgagee, If a mortgagor in the sale of such goods shall not sell such goods without burden, Then the mortgagor (usually the debtor) will be selling, Can't get the cash flow, Then the mortgagor is unable to pay off his debts to the mortgagee; For the buyer, Purchase from a seller who continuously sells a certain commodity, The buyer can trust that even if there is a mortgage on such goods, The mortgagee will also authorize or at least not object to the sale and transfer of such goods without the burden; For the mortgagor to sell and transfer the collateral without burden is its operation and even survival needs.

III. component

1. Chattel Mortgage

Article 404 of the Civil Code limits the scope of collateral to chattel mortgage. The first reason is that the value of chattel mortgage is generally less than that of real estate mortgage, and the system of blocking the pursuit of chattel mortgage is less influence than that of blocking the pursuit of real estate mortgage. Secondly, the chattel mortgage transaction is more frequent than the real estate mortgage transaction. In order to maintain the transaction security and realize the transaction convenience, the cause of the chattel mortgage pursuit and effect blocking should be more than the real estate mortgage right.

2. Normal business activities

The rules of normal business activities start from the floating mortgage rules (Article 189 of the original Property Law), and trace back to the source. This system is developed from the British Equity law and the American Uniform Commercial Code. Some scholars combined with the American unified commercial code to the interpretation, think normal business activities refers to have qualified in some business activities, under the premise of following normal trading rules and maintain consistency, with the usual sales of chattel for transaction mark, with reasonable consideration for trading, reciprocity and debt settlement does not damage the mortgage activities.

A. Normal business activities of the seller rather than the buyer

Article 56 of the Judicial Interpretation of the Guarantee System makes it clear that the "normal

business activities" stipulated in Article 404 of the Civil Code are the normal business activities of the seller rather than the normal business activities of the buyer. At the same time, because the scope of application has expanded from the original floating mortgage to the whole chattel mortgage, the main body is naturally no longer limited to the enterprises, agricultural producers and operators, and individual industrial and commercial households in the floating mortgage. That is, the seller of normal business activities is the civil subject that points out that selling a certain kind of movable property is a business and has the business qualification.

B. The subject matter belongs to the same kind of goods continuously sold by the seller

As far as the transaction target is concerned, it should be the specific goods often sold by the seller, and the seller should comply with business practices, such as the enterprise sells production equipment does not comply with business practices. In addition, the mortgagor's sale behavior, must conform to my usual practices and habits, industry and commercial practices, can be regarded as normal business activities.

3. Paying a reasonable price

For the rationality of the price, the Supreme People's Court on applicable <civil code of the People's Republic of China> real right interpretation (a) "(hereinafter referred to as: "real rights interpretation (a) ") article 18 in article 311 of the civil code of goodwill system" reasonable price ", " based on the nature of the transfer of the subject matter, quantity and payment methods of specific circumstances, refer to the transfer of market prices and factors such as trading habits comprehensive that ". This "comprehensive identification" has reference significance for determining the rationality of the price under this article.

Is the price limited to the payment of money, or does the rule also apply when the vendee provides something of considerable value? As noted earlier, the law presumes that the mortgagee allows the mortgagor to transfer the collateral without the burden because the unencumbered transfer of the collateral is also in the interest of the mortgagee, at least usually not to prejudice his interests. If the transfer of the collateral cannot exchange for the direct value of money, the mortgagor cannot obtain the cash flow to repay the debt. At this time, the mortgagee's pursuit of the collateral is also cut off, which will cause further degraded protection to the mortgagee. Therefore, the price in this article shall be limited to monetary payment only.

4. acquiring the mortgaged property

In the normal operation rule of buyer, the buyer acquires chattel and obtains the ownership of chattel collateral based on the rule of the transfer of ownership of chattel. The change of possession does not have the effect of publicity and lacks certain right appearance. Therefore, the change of possession is not applicable to good faith acquisition, so can the delivery mode of the change of possession be applied in these rules? Article 404 of the Civil Code only points out that "acquiring the mortgaged property" and does not restrict the way of delivery. Therefore, judging from the point of view, the change of possession as a legal way of delivery is not excluded. In addition, some scholars point out that in the case of normal business buyer, if the mortgagee leaves the mortgagee in the mortgagee continuously selling certain goods, the mortgagee shall be deemed to allow the mortgagor to sell the mortgagee, the mortgagee shall bear the risk of the sale of "obtaining the mortgaged property". However, the change of possession is a very special way of delivery, and whether it can indeed fight against the mortgagee who has completed the registration needs to be further discussed.

A. The modification of possession is not enough to counter the publicity effect of registration.

Under the perspective of German civil law theory, delivery and registration are the two publicity elements of the transfer of real right, and there is no difference in the level of hierarchical effectiveness. However, in terms of the specific types of delivery, its publicity effectiveness has strong and weak differences. Ownership change is different from direct delivery, and it is difficult to provide sufficient public notice efficiency. As an indirect form of delivery, the effect of possession is relatively weak (not even the effect of publicity), so only other delivery is equivalent to the effect of registration, and the change of possession is not listed in it. This is also the reason why the possession change is not applicable in the good faith acquisition system. — The publicity effect of the possession change is not enough to support the antigen owner, and the good faith owner needs to rely on enough strong publicity means to win the ownership of the original owner. Similarly, the possession in the delivery mode is changed, and its public notice effect is very low, insufficient to make it compete with the mortgage right with the effect of registration and publicity. According to the basic principle of the effect of real right publicity, in the opinion of the author, if the delivery method of possession change is adopted, it cannot form an effective confrontation with the registered mortgagee.

B. No change in the appearance of the rights.

From a more profound level, the root of the publicity principle of real right is that the real right is the right to directly control the property, which has absolute effect, which is easy to have an impact on the third party. Therefore, it is necessary to establish the principle of publicity and present rights externally, so that people can judge the ownership of rights and the state of real right directly from the outside according to the external representation of rights. However, people only need to expect their own trading activities according to the appearance of rights shown by the publicity method, so as to ensure the security of trading in the frequent market transactions.

From the perspective of the appearance of rights, the registered mortgage achieves the purpose of publicity with the help of registration, and people can realize the right burden on the things from the outside. Through normal delivery and obtain the mortgaged property buyer, to delivery possession as right appearance, people can deduce from the ownership, and can detect the owner from the outside and the original owner of the mortgage register is not consistent, and infer the possibility of property change, and also can deduce in this case the mortgage chase and effectiveness may also be affected. For other external subjects, they will expect it based on this situation, so as to decide their own subsequent trading activities. In this process, related issues such as damage to trust are not involved.

However, if the buyer obtains the mortgaged property in the way of possession, from the perspective of the appearance of the right, there is no change, and the mortgagor still occupies the property. Other external subjects are not aware of the possibility of ownership change, nor are they able to realize the possibility of mortgage being excluded. This will have a serious impact on their transaction security and activity expectations. Therefore, the fundamental reason for obtaining the mortgaged property through the change of possession lies in the protection of the interests of other external subjects, which is consistent with the system logic of the principle of publicity.

To sum up, the delivery of the way can not make the normal business buyer to obtain the mortgaged property.

5. the good faith of the buyer

In the good faith acquisition system, the meaning of "good will" is "unaware existence", that is, the third person knowing means malice. Article 404 of the Civil Code does not distinguish between the good and evil intentions of the buyer. Even if the buyer knows that there is a mortgage on the property, it can still fight against the registered mortgagee, so what is the

goodwill contained in this article? Some scholars distinguish the application of 404 "malice". ① believes that when the buyer only knows the mortgage on the collateral (knowing the malice), the effect can be blocked by the normal business rules; ② But if the buyer still obtains the collateral (knowingly damaging the mortgage, including malicious collusion and hypocrisy), it believes that the mortgage can be pursued at this time.

9 — 320 (a), the Uniform Commercial Code, provides that even if the buyer has knowledge of a security right on substance, it is not bound by that security interest. This is similar to article 404 of the Civil Code of China. In addition, section 1-201 of the United States Uniform Commercial Code stipulates that the buyer is "the buyer of normal business activities" by not knowing that his purchase will infringe another person's security right. Therefore, for the malice that knowingly will damage the real right of security, the normal business activity rules cannot be applied, and the mortgage right still has the pursuit and effect. To sum up, using the rules of the American Commercial Code, "knowing that the existence of mortgage" is the exclusion of pursuit and effect, and "knowing that it will damage the mortgage" cannot exclude pursuit and effect.

So how to define the "knowing will damage the mortgage" situation? In the author's opinion, this is a fact-determination problem, which should be determined with the help of evidence in the specific litigation process. However, there is a situation can be presumed for the buyer knowing will damage the mortgage, namely if the buyer knows the agreement between the mortgagor and the mortgagee of the mortgaged property prohibit or limit the disposition, should be regarded as its knowing their buy behavior will damage the mortgage, in this case it cannot apply normal business activities rules. Investigate its reason, the agreement of prohibiting the disposal of mortgaged property, the original intention is the mortgagee to protect his own mortgage and avoid damage to the mortgage. When the buyer has already known the agreement and the purpose of the mortgagee, but still insists on the purchase behavior, it should be determined that he knows that his purchase behavior will cause damage to the mortgage, or there is a suspicion of malicious collusion, so it should not be given legal protection.

To sum up, the "goodwill" should be further defined in Article 404 of the Civil Code. As far as the buyer knows the existence of the mortgage (knowing the agreement that the mortgagor and the mortgagee have the mortgagee prohibit and restrict the disposition of the mortgage), it should not be protected, and the

pursuit and effect of the mortgage should not be excluded.

IV. Legal effect

First of all, as far as the mortgagee is concerned, Article 404 of the Civil Code clearly excludes the pursuit and effect of the mortgage right. Whether the mortgagee and the mortgagor had reached a prohibition agreement on mortgage property transfer (if there is any agreement to the buyer not knowing), also no matter whether the agreement has been registered, as long as the mortgagor implement the transfer of the mortgaged property, and the buyer fit the requirements stipulated in article 404 of the civil code, then the mortgage cannot be against the buyer. In this case, although the mortgage right still exists, but its pursuit and effect has been cut off, that is, when the debt cannot be repaid, the mortgagee shall not claim the exercise of the mortgage right to the buyer to realize its creditor's right.

At the same time, the legal effect of the mortgagee should be analyzed in combination with Article 406 of the Civil Code. Although the mortgagee cannot fight against the buyer in the normal business activities, but the mortgage right itself is not extinguished. In view of the circumstances stipulated in Article 404 of the Civil Code has actually caused damage to the mortgage, which is in line with the provisions of paragraph 2 of Article 406 of the Civil Code that "the transfer of mortgaged property may damage the mortgage", so the mortgagee has the right to request the mortgagor to pay off debts from the transfer proceeds in advance or deposit them in advance. In addition, if there is a prohibition agreement between the mortgagee and the mortgagor on the transfer of the mortgaged property, no matter whether the agreement is completed or not, the mortgagee can claim liability for breach of contract against the mortgagor under the circumstances involved in Article 404 of the Civil Code.

V. Burden of proof

The legislative purpose of Article 404 of the Civil Code is to effectively safeguard the security of the transaction. However, the buyer has been given very favorable treatment, and even his rights and interests can be treated against the registered mortgagee. In the distribution of the burden of proof, three key dimensions of proof, namely, in normal business activities, the payment of reasonable price and the burden of proof of obtaining the mortgaged property, shall be borne by the buyer. The purpose of this arrangement is to effectively balance the favorable rights and interests of the buyer and his obligations, so as to achieve the balance of his rights and obligations.

Moreover, in view of the fact that the buyer is deeply involved in the transaction process of the mortgaged property, and as the subject of the payment party, the burden of proof has obvious convenience and rationality. At the same time, in terms of the judgment of good faith, in the author's opinion, the rule of presumption of good faith (also adopted in the German Civil Code). That is, the possessor is presumed to perform the act in good faith, so the possessor is not in good faith and should bear the burden of proof. Specifically, the buyer claims to good faith and provides preliminary prima facie evidence, which should at least cover the specific facts and course of the act of good faith. Subsequently, at the presumption of good faith, the buyer shall not be deemed as malicious unless the mortgagee can present evidence to the contrary to prove that the buyer is not in good faith, or that the buyer knows that the purchase will cause damage to the mortgage. Good presumption rules effectively reduce the proof difficulty of the buyer, with the aid of surface evidence rules moderately weakened proof obligations, this and article 404 of the civil code to protect the buyer of legislative purpose highly fit, fully reveal the scientific nature and rationality of the legislation, also provide clear and reasonable guidelines for trading practice.

Conclusion

The normal operation rule of the buyer in Article 404 of the Civil Code is of great significance in the real right section, and its scope of application is expanded to chattel mortgage, highlighting the depth of consideration of balancing multiple interests in China. For the purpose of the establishment, this rule will ensure the security of transactions, optimize the business environment, improve the transaction efficiency, promote the circulation of goods, and build a solid foundation of the market economic system. As to whether this rule should be established, the collision of all parties in theoretical disputes promotes a deep understanding of its influence on the chattel mortgage system. The legal basis behind this rule is the legal presumption that the mortgagee agrees to the normal operation of the mortgagor to transfer the mortgaged property, and this presumption meets the expected interests of all parties. In the aspect of constituent elements, chattel mortgage, normal business activities, reasonable price payment, mortgaged property acquisition and buyer goodwill are interwoven to define the scope of the rules and reflect the legal balance and the interests of all parties; in the aspect of legal effect, although the mortgagee is limited, it can request the mortgagor to repay the debt or deposit the price and claim the liability for breach of contract to protect their

legitimate rights and interests. The burden of proof shall be reasonably distributed, and the relevant burden of proof shall lie on the buyer and the rule of good faith presumption shall be applied, which shall fit the reality of the transaction and highlight the protection of the transaction safety and the rights and interests of the buyer. With the development of the market economy and the construction of the rule of law, the rule will play a more and more important role in economic transactions. The life of law lies in practice. In the future, judicial and legal research still needs to deeply analyze this rule, clarify the boundary of applicable standards, make it more suitable for the social and economic environment, and contribute to the modernization of the rule of law.

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