

SUMMARY

Key Words: collateral, collateral, types of collateral, replacement of collateral, foreclosure

Subject matter: Pledge under civil law: problems of law enforcement

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The relevance of the research topic. In a market economy for the successful work of business participants of particular importance are ways to ensure the fulfillment of obligations.

Pledge is one of the oldest ways to secure obligations, actively used in Ancient Rome. To date, it has not lost its relevance and is used to ensure the performance of obligations in the conclusion of various contracts – credit, sale, transportation and others.

The contract itself does not provide the creditor with full and timely performance of obligations by the debtor. In order to provide the parties to the contract with additional guarantees of performance of its terms, the legislation provides for the possibility of concluding by the parties an additional agreement on the security of the principal obligation.

Modern legal regulation of collateral contains many gaps and unrealized opportunities that need to be taken into account in law enforcement and law-making practice. In connection with these circumstances, it is relevant to study various aspects of collateral.

National civil legislation, having received in its basic provisions on the pledge of the Roman legal structure of the essence of the collateral relationship, however, in different historical periods of its development revealed differences in the legal and doctrinal approaches to its consolidation and interpretation. The design of the pledge as the right of the creditor-pledgee to foreclose on the subject of pledge and to obtain satisfaction of their property interests violated by the failure of the secured obligation has been developed for centuries. It is designed to reflect a fair balance of interests of the parties in the collateral-legal relationship. However, domestic practice shows the unjustifiability of the strict application of this design in commercial activities, its inconsistency with the principle of differentiated legal regulation of business and other relations. The subjects of commercial activity have serious difficulties in collecting and selling the pledged item from public auction, as required by the civil code of the Russian Federation.

Collateral is most in demand during the formation of market relations, which is the case in modern Russia, but its effectiveness is currently clearly small. This leads to a reduction in the volume of Bank lending, the desire of banks to engage in other, more reliable types of financial transactions. The difficulty of obtaining loans has a very negative impact on the development of domestic production, trade and the banking system itself.

To raise funds necessary to provide appropriate security, which will give banks a complete source of refund and allow you to make loans; and to make the loan affordable. It is a properly functioning pledge that could become one of the important tools to help solve the most difficult economic situation in the field of business lending.

The purpose of the work: the study is based on a comprehensive analysis of normative and literary sources to identify and study the nature, role and importance of collateral in the system of civil relations, to make proposals to improve legislation in this area.

Objective: - explore the history of the formation of collateral as an institution of civil law;

- define the concept of collateral under Russian law;
- identify the features of legal regulation of various types of collateral;
- determine the procedure for the replacement of collateral;
- make proposals to improve the legislation.

The theoretical and practical significance of the research is to the results of the study can be used when studying civil rights, but also aimed at enhancement of civil legislation.

Results of the study:

1. Pledge is a way of securing obligations. It ensures the fulfillment of obligations by means of two functions: stimulates the debtor to proper behavior, performance of his duties, because otherwise there are adverse consequences for him – foreclosure on the subject of collateral

(incentive function); in case of default by the debtor after the sale of the pledged property from its value, the creditor receives satisfaction (compensation function).

2. The main feature of the pledge in comparison with other ways of ensuring the performance of obligations is that it is of a proprietary (property-obligation) nature.

3. The basic rules of civil law regulation of mortgage relations in Russia are contained in the civil code, the Federal law "on mortgage". Legal regulation of collateral relations depends on the subject of the pledge, the subject composition of the legal relationship, its legal structure.

4. The following are the most important features of collateral, with some exceptions, most of its types:

- the rights of the pledgee have rights to someone else's property;
- the right of pledge follows the thing (the transfer of ownership or the right of economic management from the pledger to another person does not stop the pledge relations);
- the pledge is derived from the principal obligation. The derivative of the pledge from the obligation it secures is manifested in the fact that the pledge arises to the extent that there is a principal obligation. There can be no collateral relation if there is no principal obligation;
- the pledge is dependent on the principal obligation. The dependence of the pledge is manifested in the fact that the pledge can be secured only by a valid claim: if the principal obligation is invalid, then the pledge agreement is also invalid. If the contract giving rise to the principal obligation is to be concluded in a notarial form, the pledge agreement should be in the same (notarial) form. Upon termination of the principal obligation, the right to pledge, etc., shall also be terminated.

5. On the basis of origin there are: - a contractual mortgage; - the legal Deposit. Depending on the registration requirements, pledge agreements can be divided into transactions: with title registration (mortgage); with information registration (registration of pledge of vehicles, securities and other movable objects that require registration); not requiring registration.

6. Besides, from comparison of item 2 of Art. 349 of the civil code of the Russian Federation with item 1 of this article the absolutely reasonable conclusion is drawn that at pledge of movable property the agreement on application by the parties other, than the judicial method of the address of collecting on the mortgaged property, can be signed already directly at the conclusion

At the same time, the law does not define this other procedure of foreclosure on the pledged movable property. This procedure, according to the letter of the law, must be established by the agreement of the parties. However, as a rule, the parties to the contract of pledge of movable property are limited to only one indication, to "non-judicial procedure of foreclosure", without establishing actually any order of such procedure.

7. Because of this, firstly, there is a General question of whether it is possible to consider agreed by the parties the condition of non-judicial order of foreclosure, and whether the pledgee to resort to this order, and, secondly, there are grounds for the application of the pledger to the court of certain requirements to the pledgee related to his objections: the absence of grounds for foreclosure on the pledged movable property (paragraph 1 article. 348 of the civil code); the size of the requirements of the pledgee secured by the pledge of this property.; about the grounds for refusal of enforcement of pledged property (paragraph 2 of article 348 of the civil code).

8. One of the most common types of pledge of movable property in the Russian Federation is a pledge with the abandonment of the pledged movable property from the pledger, within the framework of such pledge the interests of any of the parties to the pledge, as well as third parties, are most easily infringed.

9. The lack of reliable and accessible information about the pledge for the participants of civil turnover allows not only to alienate the pledged property to third parties as free from encumbrance, but also allows to create "collateral" retroactively in order to provide such pledgees with advantages over other creditors of the pledgor.

Recommendations:

Currently, there is a need to create a system of accounting (disclosure) of pledge of movable property at least in respect of the most common objects of pledge - road transport. Such a system can only be introduced by Federal law. Accordingly, the provisions of Art. 339 of the civil code should be supplemented by paragraph 5, providing that "the law may provide for the accounting of contracts of pledge and liens by virtue of the law of certain objects of movable property."

The system of accounting of pledge of real estate:

(a) must be informative and not only of a legal nature, on the one hand, not binding in the relations between the pledgor and the pledgee, on the other, must protect the rights of third parties.

If the law provides for the registration of pledges arising under a pledge agreement or by operation of law, the pledgee may refer to the right to the pledged property belonging to him in relations with third parties only from the moment of registration of the pledge. The recording of the pledge of movable property is not retroactive. The absence of a record of the pledge of movable property does not affect the relationship between the pledgor and the pledgee.

The recording of the pledge shall not in itself be considered as evidence of the existence of the pledge or the validity of the basis for its occurrence. In the event of a dispute, the issues of whether the pledgee has the right to pledge, whether the pledge agreement is valid, shall be considered by the court in the General procedure on the basis of the assessment of the documents of title.

The relevant General rules on the accounting of pledges of movable property and its legal significance should be fixed in the civil code;

(b) must contain all information necessary for third parties about the pledge (the terms of which must be defined), and be open to all interested parties to obtain this information.

The range of information can be approximately determined on the basis of paragraph 1 of article 339 of the civil code-essential terms of the pledge agreement:

subject of pledge;

his assessment;

the nature, size and period of performance of the principal obligation;

in some parties (the mortgagor or mortgagee) the pledged property is located.

In addition, the system must contain information about the parties to the pledge relationship(the pledger and the pledgee), and if the pledger is a third party, then about the debtor under the main obligation: their name, location(place of residence), passport data (for citizens) and registration data (for legal entities);

(C) should be as quick as possible and not burdensome to the parties or to the persons (bodies) to whom it will be assigned, and at the same time, to the extent possible, the possibility of entering false information into the system should be excluded. With regard to the required "speed" of accounting, the question of the limits of verification by the authority of documents other than documents of title and the question of its possible liability for certain actions (inaction) in the accounting of pledges should be resolved.