

# Problems of law enforcement practice in registration of movable property pledge and the role of the notary in solving these problems

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**Abstract**—The article shows the main problems of the movable property pledge registration. Pledge of the movable property is subject to registration and public accounting from July 1, 2014. The article concludes that it is necessary to amend the existing legal acts that determine the procedure for working with the register of movable things and oblige the notary to request primary documents of title in terms of the emergence of the right of pledge; it will reduce the risks in this area.

**Keywords**—pledge, pledger, registration, movable property.

## I. INTRODUCTION

Since July 1, 2014, quite important changes to the current Civil code of the Russian Federation have entered into, which made significant changes to the regulation of relations in the field of collateral, the current Law of the Russian Federation of 29.05.1992 No. 2872-1 "About pledge" has lost its force. The issue of voluntary accounting of pledged movable property is quite acute. Pledge of real estate since July 1, 2014 is a subject to registration and public accounting. The voluntary procedure of registration of movable property pledge causes criticism from lawyers, because buyers can get things with encumbrance on ignorance or owing to the fact that voluntary pledge of movable property wasn't registered. The point 4 of the Art. 339.1 the civil code [1] establishes a provision on the basis of which notaries have the right to register the establishment of a pledge on the movable property of individuals, A notice at the end of registration is sent directly to the register, such notice may be sent by the mortgagor, the pledgee, or other people in cases that are established by the law of the Russian Federation.

## II. MOVABLE PROPERTY PLEDGE REGISTRATION AS THE MODERN PROBLEM OF NOTARIES

The procedure of registration of notifications about pledge of movable property is sufficiently detailed in the Russian legislation, while according to Art. 103.4 of the Russian Federation law basics about notary [3] statement about pledge of movable property can be obtained by everybody. In this case, the notary does not verify the accuracy of the information about the pledge, since his / her authority is only to verify the compliance of the information that is directly entered in the register and, accordingly, the content of the notification sent to him / her about the pledge of movable property. In addition, the notary is responsible for the timely placement of information about the pledge of movable property.

Creating of the register information of the pledge of movable things, its openness and accessibility can affect the judicial practice in the recognition of diligent purchaser who got the thing with encumbrance. Now buyers should be more cautious, as in the case of a court dispute, judges may have an argument that unknowing does not exempt from liability. Of course, if the information about the pledge was available and placed in the list, the court will not be able to consider the buyer diligent. It will be necessary to return the property to the pledgee. A buyer who has been negligent will have to bring its claims against the pledger.

It should be accepted that with the voluntary registration of movable property pledge, it is impossible to achieve the same goals as with the mandatory registration of immovable property pledge, since the voluntary procedure allows registration of movable collateral things selectively [4, art. 92].

Notaries put a mark on a document about the property and making the information in the registry list, but they do not check the base of the pledge, the will of the people who entered into collateral relationship, and many other necessary facts, so any individual or legal entity not possessing legal documents of the emergence of the right of pledge can write information to the registry list of movable property.

In the proposed version of the registration of the movable things pledge, the register will be simply informational, so it is necessary to amend the existing legal acts that determine the procedure for working with the register of movable things and oblige the notary to request primary documents of title in terms of the emergence of the pledge right, this measure will reduce the risks in this area.

Making a record of the movable things pledge is optional, it can contribute to abuse by unscrupulous participants in the turnover, while the creation of a complete register of pledged movable property could protect both pledgers and pledgees and especially diligent purchasers, finally, this measure would have a positive impact on the stability of civil turnover.

## III. THE PROBLEM OF PROTECTION OF INTERESTS OF PLEDGE LEGAL RELATIONS SUBJECTS

In the process of development of the current system of Bank lending secured by vehicles there is a problem of protecting the interests of subjects of collateral relations. The number of contracts of pledge of vehicles is growing quite rapidly. So, for example, in one large city in Russia the

number of contracts concluded about the pledge of vehicles has increased over the past 2 years by 4 times.

It is possible to present statistical data provided by the Volgograd regional authorities, on the basis of which in 2015 1982 contracts on the pledge of vehicles were drawn up, and in 2016 this amount was 4321 contracts, respectively in 2017 the number was more than 7.5 thousand contracts on the pledge of vehicles [4, p. 95].

Increasing of amount of concluded contracts for the pledge of vehicles entails increasing amount of litigation, which often arise as a result of the implementation of collateral relations. It should be noted that the security institution considered in the framework of this study has firmly taken a leading position in banking practice; however, the voluntary procedure of registration of collateral directly leads to quite negative consequences. Moreover, as was mentioned, buyers can buy a vehicle, not knowing about the encumbrance, because the mortgagor has not registered the pledge, and there are a lot of such precedents in the court practice. That is why it seems true to restore the previously existing legal norms, which regulated the procedure for registration of contracts of vehicles pledge, established by the Rules of registration of motor vehicles and trailers directly to the State traffic safety Inspectorate, approved by the order of the Ministry of internal Affairs of the Russian Federation and, accordingly, to introduce state registration of pledge of vehicles in the traffic police. For this purpose, paragraph 2 of art. 130 civil code of the Russian Federation is to be added by the provision about the necessity to register the vehicle in the traffic police and set out in the following wording: "Things not related to real estate, including money and securities are recognized as movable property. Registration of rights to movable things is not required, except in cases specified in the law. State registration of vehicles is carried out by the state traffic Inspectorate of the Ministry of internal Affairs of Russia" [5, Art. 198].

In addition, one of the essential features of the current situation on the Bank lending market is the maximum reduction of risks in the share of active operations that are directly related to the placement of own and attracted funds. There is a tightening of existing methods of assessing the financial condition of the borrower, besides, approaches to the consideration and study of the loan application are changing. Currently, the overwhelming number of small - sized banking assets uses the mandatory requirement in the field of collateral directly as the fulfillment of obligations under the loan agreement, so implement one of the basic principles of credit relations. The principle of security of credit means that the creditor may still require a guarantee of performance of the assumed obligations. Moreover, the primary security is the continuous circulation of funds of the company-borrower, which is expressed in the receipt of revenue directly to the account. A secondary security is a special type of operations, the implementation of which will enable the creditor to repay all amounts of debt, as well as to pay the loan interest. Moreover, one of these methods is considered to be the registration of collateral obligations under the loan agreement of collateral.

Previously, the right of pledge to the pledged object by the pledger was indicated by the signing of a pledge agreement by both participants. In addition, the limit of rights

to non-movable property was made through the registration of special rights thanks to the submission of documents directly to the Office of the Federal service for state registration and cartography. At the same time, for objects of movable property there was no such procedure, due to which various situations that prevented the mechanism of recovery of mortgaged property from debtors arose [6, p. 70].

So, it can be noted that there was a problem in the field of reliability of data on the primary right of collecting the mortgaged property by the creditor. The mortgagor had the unconditional opportunity to directly provide for the purpose of securing obligations is its own property under loan agreements in several banks, while creditors did not have any technical ability to check the restrictions directly on the collateral. The problem under consideration was solved at the legislative level, through the formation of a single register list of movable property, the Federal law of 21.12.2013 № 379 [2].

#### IV. THE REGISTRY SYSTEM OF RECORDING OF MOVABLE PROPERTY PLEDGES

The feature of a modern unified system of recording, was the possibility of obtaining information about the availability of encumbrance free, and also about the subject of movable property, having information describing individual characteristics, which gave the opportunity to resolve numerous legal disputes that are directly related to the primacy of the encumbrances on the property.

Practically, the imposition of encumbrance, as well as the recording directly into the register list of pledges is carried out by sending a notice from the pledgee notary selected at its own discretion, respectively, in electronic form or on paper. In addition, notary does not check the competence of making this recording, exactly as the documents that confirm the emergence of the right of pledge directly to the object, as evidenced by the Article 103.1.

This procedure has led to the emergence of potential legal and judicial proceedings, which correspondingly relate to pledges. In fact, absolutely any person can make a record directly into the register of pledges, not having the necessary documents in terms of the pledge right [7, p. 235].

Many Russian banks and notaries are working together to improve the procedure of registration of notifications of movable property pledge, in addition, develop contractual forms of interaction, which are designed to become a certain basis for long-term cooperation of the participants.

On the basis of the rules of sub point. 2 p. 1 article. 352 of the civil code, the pledge is terminated if the pledged property on a reimbursable basis is acquired by a person who did not know and should not have known that the property is considered to be the subject of collateral. The introduction of this rule helps to solve the problem of acquisition of ownership directly from the alienator of the property bound by the pledge.

It is known that a diligent acquirer is "a person who has acquired property from another person for a cost, who has no right to alienate it, about which the acquirer did not know and could not know". At the same time, the criteria for determining a diligence used in judicial practice are multiple. In any case, the jurisdictional body should take into account

the state of the company's information system, including the existence of databases, registers, register lists and other information systems that can be open sources of information for potential counterparties. The content of the registers should be taken into account only as affecting the assessment of the counterparty's diligence, if it is important for the qualification of public relations, including to determine the possibility of returning the property alienated under compensated transactions [5,art . 200].

If a diligent buyer gets the pledged property, the interest of the pledgee may still be infringed, and the lack of information in the Registry list can say about the buyer's diligence. Similar conclusions can be found in acts of arbitration courts. However, the absence of the pledge notification can not be accepted as a sufficient basis for ascertaining the diligence of the acquisition: the Courts must assess the circumstances of the acquisition of the mortgaged property, on the direct basis of which the buyer still had to assume that he was acquiring the mortgaged property. Namely, the courts must establish whether the original copy of the document, which indicates the seller's right to the sold property (for example, the vehicle passport), or its duplicate was handed to the purchaser; and also whether there were on the pledged property directly at the time of its transfer to the buyer signs about pledge. In other words, the range of judicial discretion is wide enough, and judicial practice is based directly on the act of official interpretation of the right [7, art. 236].

It is the acquirer who should check the availability of information about the pledge in the registry list. However, in the case when the pledge notification has been registered directly with the registry list, the illegal purchaser (or owner) of the property cannot be diligent on the basis of a paid contract. Thus, the citizen was recognized as an unscrupulous purchaser, because he was not enough careful in the transaction of purchase and sale of the car, namely, did not check the availability of relevant information about the property acquired by him in the Registry list before the transaction.

The law enforcement officer has difficulties in identifying the object of pledge of the movable property. This happens for a number of reasons: due to the properties of the goods, carelessness of the pledgee, imperfection of the legislation, improper accounting. It seems that in case of insufficient specificity of the notification of the movable property pledge, the court cannot proceed from the fact that the acquirer had to assume that the alienated property is the object of pledge only with an amendment to the content of the registry list.

If the property has the exact number of characteristics and in the absence of guidance on them in the notification of the deposit, the purchaser can reasonably expect that the mortgaged property doesn't have the numbers.

## V. CONCLUSION

The shown constraints and problems, it can be concluded that the necessity for integrated research for classification of the mortgaged property directly to the search system of Registry list and make the necessary recommendations (methodology description) for potential drafters of the notification, including linguistic rules and filling out the appropriate form notification of determination algorithm to

sort the displayed search engine results. In solving these issues, it is necessary to attract specialists in the fields related to law, especially in the field of Informatics and commodity science [6, p. 71].

Thus, we see the necessity to make certain changes to the current regulatory framework, which determines the order of work in this direction, namely the obligation of the notary to directly request the primary documents of title in the field of the pledge by the pledgee, which will make it possible to reduce the potential legal risks in the matter under consideration.

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