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HARMONIZATION OF CIVIL LEGISLATION IN THE FIELD OF PROTECTION OF OWNERSHIP RIGHTS TO REAL ESTATE OBJECTS IN CONTRACTUAL OBLIGATIONS THROUGH THE TRANSFER OF THE BUYER'S RIGHTS AND OBLIGATIONS IN THE CASE OF THE SALE OF A SHARE IN A JOINT PARTIAL OWNERSHIP WITH THE LAW OF THE EUROPEAN UNION

The article investigates the protection of property rights to real estate objects in contractual obligations by transferring the rights and obligations of the buyer in the event of the sale of a share in a joint partial ownership through the lens of European legislation. Proposals and innovations concerning improvement of property rights protection for real estate objects are submitted by transferring the rights and obligations of the buyer in the event of the sale of a share in joint ownership in contractual obligations.

Keywords: *protection, property, real estate objects, contractual obligations, joint partial ownership.*

Гнатів О.

Гармонізація цивільного законодавства у сфері захисту права власності на об'єкти нерухомого майна в договірних зобов'язаннях шляхом передачі прав та обов'язків покупця у разі продажу частки в спільній власності з правом/

У статті крізь призму європейського законодавства досліджено захист права власності на об'єкти нерухомого майна в договірних зобов'язаннях шляхом передачі прав та обов'язків покупця у разі продажу частки у спільній частковій власності. Пропозиції та нововведення щодо вдосконалення захисту права власності на об'єкти нерухомого майна вносяться шляхом передачі прав та обов'язків покупця у разі продажу частки у спільній власності у договірних зобов'язаннях.

У підсумку варто зазначити, що українська правова система має низку своїх переваг і сильних сторін, проте в контексті гармонізації законодавства з правом Європейського Союзу є кілька ключових моментів, які слід вирішити. Наприклад, при адаптації законодавства України необхідно забезпечити не лише його відповідність acquis communautaire, а й механізм його реалізації. Тут виникає питання, що часто навіть найдосконаліший нормативний акт досить складно реалізувати на практиці. Тому важливо говорити про два аспекти адаптації законодавства: формальний, який передбачає приведення національного законодавства у відповідність до acquis communautaire, та практичний, який полягає у створенні умов, необхідних для застосування адаптованого законодавства. Попри все, Україні все ж варто виробити власні підходи до вирішення проблеми гармонізації законодавства з правом ЄС. Насамперед ідеться про транспозицію директив ЄС у внутрішнє законодавство України і пряме застосування окремих положень права ЄС на національному рівні.

Ключові слова: *охорона, власність, об'єкти нерухомості, договірні зобов'язання, спільна часткова власність.*

Formulation of the problem. The issue of harmonization of Ukrainian legislation with European rights was one of the most significant conditions for increasing cooperation with EU member states. However, taking into consideration russia's major aggression, this question, apparently, became the most important one for getting guarantees of protection and potential European integration. In a bid to approach domestic legislation to the European one, it is necessary to take a hard look at a series of questions. It should be noted that Ukraine began this path in the early 90s by signing the Partnership And Cooperation Agreement (PCA) in 1994, after its entry into force, the above-mentioned process of harmonization acquired not only a theoretical character, but also clear legal foundations and various forms.

For example, contractual obligation-legal protection of ownership of real estate occurs when the terms of contracts are violated. These forms of protection are applied in case of failure or improper fulfillment of contractual obligations. We would like to consider such a contractual obligation-legal method of protection, which successfully corresponds to the protection of ownership rights to real estate objects, such as the transfer of the rights and obligations of the buyer in the case of the sale of a share in a joint ownership.

Nowadays the attention of Ukrainian scientists is mainly focused on the general problems of property rights protection. However it is not enough. Today, the need to develop new scientific recommendations for further improvement of the current property legislation regarding specific property and its protection, as well as improvement of the practice of its application, is urgent.

Consideration and resolution in courts of civil cases regarding the protection of ownership rights to real estate objects is complicated by the presence of certain contradictions in the civil legislation of Ukraine, associated with constant changes to the legislation on the protection of ownership rights to real estate objects, with the absence of clear criteria for differentiating methods of protection ownership rights to real estate objects and their confirmation in the Civil Code of Ukraine. This circumstance does not contribute to proper law enforcement practice. Therefore, the solution of theoretical and practical problems of civil legal protection of property rights to real estate is important for the improvement of relations in the researched area, which led to the author's choice of the presented research topic. We would like to draw attention to the fact that not only the presence of conflicts somewhat complicates the task, but also the widespread problem of granting authorities excessive powers. For example, the authority of the National Commission for Securities and the Stock Market is to agree on the respective candidacies of heads of stock exchanges, depositories, the status of the stock exchange and the depository. In the EU countries, in turn, self-regulatory organizations in the securities market are endowed with such powers.

Analysis of recent research and publications. Some issues of this problem were considered in the works of individual authors, in particular: Yu.M. Andreev, V.V. Butnyov, I.V. Bolokan, S.M. Bratus, M.I. Gavrilyuk, O.V. Dzery, I.O. Dzery, S.E. Dontsova, V.V. June, S.E. Demsky, I.P. Dombrovskyi, G.V. Eremenko, O.S. Joffe, I.S. Kanzafarova, O.M. Klymenko, O.S. Krasilnikov, T.S. Kivalov, V.M. Kossak, N.S. Kuznetsov, V.V. Luts, R.A. Maidanyk, S.M. Romanovych Y.M. Romanyuk, Z.V. Romovska, E.A. Sukhanov, I.V. -Spasybo-Fateeva, E.O. Kharitonov, R.B. Shishka, Y.M. Shevchenko, O.S. Yavorska G.B., Yanovitska and other scientists, at the same time, sufficient attention was not paid to this problem in the literature.

The aim of the research. In our case, it is most appropriate and correct to consider obligations in the traditional perspective of a purely civil construction as a relative civil legal relationship that mediates the dynamics of property relations in the sphere of private law.

Main results of the research. As for the analytical method of protection, Article 358 of the Civil Code of Ukraine, which defines the procedure for implementing joint partial ownership, states that co-owners can agree on the procedure for possession and use of property that is their joint partial ownership. Each of the co-owners has the right to provide him with the possession and use of that part of the joint real estate object in kind, which corresponds to his share in the right of joint partial ownership. And if this is not possible, he has the right to demand from the other co-owners who own and use the joint real estate object, appropriate material compensation (paragraph 3 of article 358 of the Civil Code of Ukraine). The specificity of the joint real estate object leads to such type of violations as the violation of the preferential right to purchase a share in the joint real estate object.

However, under the influence of social and economic reforms and the implementation of the norms of Art. 358 of the Civil Code of Ukraine, which made it possible to conclude an agreement on the order of ownership and use of property that is in joint partial ownership, in relation to all types of property and between all subjects of civil law, all restrictions were canceled [5, p.64-67]. Moreover, we believe that in order for the rights of the co-owner to be better protected in the event of a violation of his right to ownership of real estate objects, it would be worthwhile for the legislator of the conclusion of this contract to set out, as an obligation, and not as the right of co-owners and to paraphrase Part 2 of Art. 358 of the Civil Code of Ukraine as follows: «Co-owners must agree on the order of ownership and use of property that is their joint partial ownership».

The agreement on the procedure for ownership and use of property in joint partial ownership allows each of the co-owners, in accordance with their needs, to optimally realize the right of ownership of the joint property, therefore, its importance in the study of the claim for the transfer of the rights and obligations of the buyer in the case of the sale of a share in joint ownership, it is difficult to overestimate how mandatory – the legal method of protecting the ownership of real estate objects.

We draw your attention to the fact that the agreement on the order of ownership and use of common property can be concluded between all participants of joint partial ownership or between several of them. In the latter

case, the written consent of all participants of joint partial ownership is required to establish the order of ownership and use of the property or its specific parts. In the presence of an agreement between the participants of joint partial ownership on the order of ownership and use of the property or with their written consent or in the presence of a court decision on the order of ownership and use of the property (specific parts of it), the order of ownership and use of specific parts of it (property) in accordance with the size of the share of each of the co-owners, at the request of the parties, can be established in the agreement on the alienation of the property share by the owner [2, c. 303].

As for joint property, European countries have a well-developed regulation of this issue, especially when the issue concerns the property of spouses. First of all, there are several types of joint ownership:

The legal regime of universal property community of spouses is the regime of absolute community of property, which provides for the unification of all property and all debts of each spouse, including premarital assets, into a single property mass by virtue of marriage registration. Also, property and debts acquired by each of the spouses during the period of marriage, which includes inheritance and gifts, are included in the specified property mass. Let's take the example of the Netherlands, where, although the legal regulation of property relations of spouses has undergone a number of significant changes, the applied legal regime of property of spouses has preserved the main features of universal property community. And although the legal regime under study no longer applies by default in other European jurisdictions, it can nevertheless be applied at the choice of the spouses in a number of European states (for example, France (p.1526 Civ.Code), Germany (Civ.Code §1416), Belgium (p.1454 Civ. Code), Luxemburg (p.1526 Civ.Code), Romania (pp.336-367 Civ.Code).

The legal regime of limited property community of spouses provides for the existence of three separate property masses, in particular, private or separate property of each spouse and community property belonging to both spouses («community property»).

This division reduces the number of possible disputes and well regulates all possible issues that may arise in the marriage. However, they can exercise their right to alienate their share in the joint property only by notifying the other participants in writing.

According to Art. 362 of the Civil Code of Ukraine, in the case of the sale of a share in the right of joint partial ownership, the co-owner has a priority right over other persons to purchase it at the price announced for sale and on other equal terms, except in the case of sale through public auctions. That is, a participant who intends to sell his share in joint property must, first of all, offer it to other co-owners. Such a situation may arise when several co-owners have expressed the desire to purchase a share in the right of joint partial ownership, in which case the seller has the right to choose the buyer. And only if all co-owners refuse to exercise the pre-emptive right of purchase or do not exercise this right in relation to real estate within one month, and with regard to movable property - within ten days from the date of receipt of the notice, the seller has the right to sell his share to another person. Failure to fulfill this condition is a violation of the preemptive right to purchase a share. In this case, another member of the joint property, according to Clause 4 of Art. 362 of the Civil Code of Ukraine, within one year may apply to the court with a claim to transfer to him the rights and obligations of the buyer under the contract of sale, concluded by a participant in joint partial ownership regarding his share in violation of the preemptive right of another participant in this joint ownership to purchase this share. But, giving co-owners a privileged right to purchase a share, the legislator did not take into account that the seller has the right to independently set such a price that will be unattainable for the co-owners, and they will refuse to buy, and he can sell to an outsider at a lower price [3, c.50].

Co-owners of joint partial property when carrying out transactions with this property are not «third» persons, since the owners dispose of joint property here. In essence, we are talking about the execution by one of the participants of a deed for the disposal of joint property on behalf of all co-owners who are subjects of a joint obligation on the part of the alienator of the property.

The lack of consent of all participants in joint partial ownership means that the participant performing the transaction does not have the necessary authority to perform it on behalf of the remaining participants. Since all co-owners have the right to the object of joint partial ownership, the participation of each of the co-owners is necessary to carry out the transaction with it. When executing a contract by one of the participants, he needs the consent (authorization) of each co-owner. Therefore, transactions made without the consent of all participants of joint partial ownership are prima facie invalid. However, if we do not take into account the entire complex of relations between the remaining co-owners, the co-owner who performs the transaction, and the counterparty of the person who performs the transaction, it turns out that for the purpose of considering the issue of objection, it is necessary to trace only the transaction performed between two of its participants (sub' objects of opposing wills), the co-owner alienating the property, and his counterparty - the buyer under the contract. Since the third party

(other co-owner) is not directly involved in the transaction (expression of will), its expression of will has no constitutive value for the transaction and it is recognized as the third person in relation to the parties to the transaction. In addition, the other party to the contract (the buyer) may not even know that the property is in joint ownership, or that the other co-owners object to the alienation. Therefore, we believe that it is impossible to invalidate the relevant transaction if the other party was in good faith. This feature should be preserved in order to protect the interests of the owners. In our opinion, leaving the deed in legal force is admissible in those cases when, despite the lack of consent of the remaining co-owners of the joint partial property, it will be established that the executed deed was in the interests of all without excluding the co-owners. However, when applying this criterion, you need to be especially careful, because the implementation of such a transaction violates the right of the remaining owners to dispose of their property at their discretion. Therefore, in order to leave the deed in legal force, very strong evidence is required that, despite the objections of the remaining co-owners, the deed corresponds to their interests.

An important feature of the application of this method of protection of ownership rights to real estate objects is the presence of ownership rights to real estate objects to the disputed item in the possession of the buyer, because together with the transfer of the thing, the seller is obliged to transfer to the buyer the right of ownership of the thing in full, so that the buyer can exercise all the powers of the owner without any restrictions and obstacles.

The transfer of the rights and obligations of the buyer in the case of the sale of a share under a contract in joint shared ownership is a contractual obligation - a legal way of protecting the right of ownership of real estate objects, because there are no absolute legal relationships between co-owners. The procedure for ownership and use of property that is joint partial ownership is established by the co-owners in the contract. However, such a contract was not investigated in terms of the protection of property rights to real estate, so there was some uncertainty with the above method of protection of property rights to real estate.

Conclusions. In general, when considering the above-mentioned category of cases, the courts generally resolve cases correctly, therefore, we believe that the transfer of the rights and obligations of the buyer in the case of the sale of a share under a contract in joint partial ownership may well be considered a separate way of protecting the right to ownership of real estate objects, that is violated, because there is no exhaustive list of ways to protect the right of ownership of real estate objects and in order for this method to be an effective way of protecting the right of ownership of real estate objects in civil law and the right of ownership of each person can be protected, the courts need to facilitate the uniform application and compliance with the requirements of the current legislation, the elimination of deficiencies through various procedural methods, taking into account the explanations of the Supreme Court.

Summarizing all of the above, we can conclude that the Ukrainian legal system has a number of its advantages and strengths, however, in the context of the harmonization of legislation with the law of the European Union, there are several key points that should be resolved. For example, when adapting the legislation of Ukraine, it is necessary to ensure not only its compliance with the acquis communautaire, but also the mechanism of its implementation. At this point, the question arises that often even the most perfect regulatory act is quite difficult to implement in practice. That is why, it is important to talk about two aspects of the adaptation of legislation: formal, which involves bringing national legislation into compliance with the acquis communautaire, and practical, which consists in creating the conditions necessary for the application of adapted legislation. Despite everything Ukraine should still develop its own approaches to solving the problem of harmonizing legislation with EU law, first of all, we are talking about the transposition of EU directives into the domestic legislation of Ukraine and the direct application of certain provisions of EU law at the national level.

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