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Research on the Issue of Buyer Rules in Normal Business Operations

Yating Liu

School of Marine Law and Humanities, Dalian Ocean University, Dalian 116023, China

Abstract

The normal operation buyer rule originally only applied to floating mortgages of movable property, but Article 404 of the Civil Code elevated it to the general field of movable property mortgages, which is an expanded application that conforms to the original intention of the mortgage system and the coordination requirements of the property rights code. The normal operation buyer rules contain various value concepts such as transaction value, efficiency value, fairness value, and trust value, which are the institutional arrangements that should be made for the development of commercial transactions. This rule can be understood as a special form of acquisition in good faith, where the buyer trusts the mortgagor in good faith, allowing the mortgagor to sell the collateral freely and without burden in normal business activities, and the law allows the transferee to acquire ownership of the collateral without burden. This article takes the normal operation buyer rule as the research object. Firstly, it elaborates on its basic concepts and constituent elements, then analyzes the main problems of this rule in judicial practice, and finally proposes specific suggestions for improving the normal operation buyer rule.

Keywords

Normal operation buyer rules, Constituent elements, Applicable.

1. Introduction

All mOverview of Normal Operation Buyer Rules

The normal operation buyer rule is the chattel mortgage system established in Article 404 of the Civil Code, aimed at protecting the rights of a bona fide third party who acquires chattel through normal operation channels for reasonable consideration from being pursued by the original rights holder. This rule originates from the "good faith acquisition" system of Roman law, breaking through the limitations of traditional property law, granting the buyer complete property rights, reflecting the balance between transaction security and efficiency, and maintaining market order and commercial ethics.

2. Analysis of the Constituent Elements of The Normal Operation Buyer Rule

2.1. Normal business activities

Normal business activities are the core of the rules for the effectiveness of chattel mortgage rights, and their definition is of great significance for balancing the interests of the mortgagee, mortgagor, and buyer, directly affecting transaction safety and efficiency. If the scope of normal business activities is defined too broadly, it may lead to the erosion of general consumer behavior by secured transactions and damage to the interests of mortgagees; If the scope is too narrow, it may limit trading freedom and hinder the circulation of movable property. Therefore, a balance needs to be sought between the two. The judgment of normal business activities

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should comprehensively consider the scope of the mortgagor's business, the nature of the transaction subject matter, the transaction method, and the buyer's reasonable duty of care. For example, the movable property sold by the mortgagor should be inventory within its business scope, and the transaction method should comply with industry practices [1]. In addition, the buyer can determine whether the transaction is normal by checking the registration book, reviewing transaction habits, and other methods. The statement of moderately limiting the normal scope of business not only prevents debtors from abusing rules, but also avoids excessive protection of buyers' expectations, thereby achieving a balance between mortgage rights and transaction security.

2.2. Reasonable price has been paid

On the premise of ensuring the safety of third parties and transactions in good faith, sacrificing the static security of real rights holders and property will make it difficult to achieve legal balance. When the buyer acquires the collateral for a reasonable consideration, whether in monetary form or not, it shall be deemed as the performance of the mortgage right. If payment is made through non monetary means, such as mutual exchange, the exchanged items should have an equivalent market value and ownership should be in a "clean" state, otherwise it cannot be considered that the consideration obligation has been fulfilled. If the mortgagor uses the mortgaged property to offset the debt, it is essentially a performance of the debt rather than a transaction, and cannot be regarded as a performance of the consideration, thereby damaging the mortgagee's priority right to compensation. Therefore, in chattel mortgage transactions, the buyer should ensure the nature of the consideration in the transaction to safeguard the legitimate rights and interests of the mortgagee.

2.3. Obtain chattel collateral

The delivery method should not be limited to a specific form, and it should be recognized that the buyer "acquires the asset" means acquiring ownership of the property, and possession is not a necessary condition [2]. The reason is that although possession modification does not involve actual delivery, its essence still belongs to a common delivery method in transactions and should not be excluded from the normal operation of buyer rules. Under the rule of possession modification, the buyer and the original owner have similar possession status of movable property, both of which are indirect possession and difficult to distinguish between high and low rights. Therefore, excluding them from the scope of application of the rule violates the principle of trust in transactions. In addition, the use of possession modification simplifies the transaction process, which is beneficial for the mortgagor to fulfill payment obligations, while safeguarding the rights and interests of the buyer based on normal transaction trust. Therefore, possession modification should be included in the scope of delivery methods to achieve a balance between transaction security and efficiency.

2.4. Buyer's goodwill

In normal business activities, even if the buyer is aware of the existence of a mortgage on the movable property, as long as they have paid a reasonable price and acquired the movable property, they can obtain "clean" ownership without any burden [3]. Both the Property Law and the Civil Code do not explicitly require the buyer to be subjectively in good faith, so there are different views in the academic community on this. Some scholars believe that when China draws on the Uniform Commercial Code of the United States, it should retain its "good faith" element to ensure that buyers do not obtain undue benefits due to malicious behavior. In addition, if the buyer knowingly engages in the transaction despite knowing that the collateral cannot be transferred, it can be considered malicious, and their acquisition of ownership will be accompanied by a mortgage burden. However, some argue that the standard of good faith in Chinese rules should be more lenient than in the United States, as long as the buyer is not aware

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of the existence of the mortgage right due to gross negligence, it can be applied. This difference reflects the balanced consideration of transaction security and efficiency in different legal systems.

3. Main Issues in The Application of Buyer Rules in Normal Business Operations

3.1. The definition of normal business activities is not precise enough

The definition of normal business activities in Article 56 of the Judicial Interpretation on the Guarantee System of the Civil Code is too narrow, only based on the business scope recorded in the business license as the judgment standard, ignoring the actual business situation and market changes of the enterprise, and difficult to adapt to the problem of outdated business license information in the current administrative system reform. Meanwhile, this provision does not take into account the customs of civil and commercial transactions, while the Uniform Commercial Code of the United States defines the scope of business by expanding the customs of transactions. Therefore, it is necessary to re-examine the legal meaning of the term "belonging" and clarify whether it is an independent judgment or a subordinate attachment, in order to achieve a reasonable definition and application of normal business activities.

3.2. Neglecting the consideration of subjective factors of the buyer

Because neither the Property Law nor the Civil Code provides for the subjective factors of the buyer in the normal operation buyer rules, in judicial practice, courts often do not use the buyer's subjective elements as a review standard to examine whether the buyer has intentionally harmed the rights of the mortgagee when handling such cases. However, this contradicts the legislative purpose of the normal operation buyer rule, as the rule aims to safeguard the reasonable reliance of buyers based on the express or implied sales authorization of the mortgagee. When the buyer has malicious intent to harm the rights and interests of the mortgagor, their trust loses the basis for legal protection, and this rule should not be applied at this time.

3.3. The provisions on the relief mechanism for the risk borne by the mortgagee are unclear

The normal operation of the buyer's rules, while protecting transaction security, objectively creates an imbalance in the protection of the rights and interests of mortgagees. Under the current institutional framework, the mortgagee mainly faces three risks: firstly, the risk of loss of the right of recourse after the collateral is disposed of. According to Article 404 of the Civil Code, a buyer engaged in normal business operations may acquire mortgaged movable property without any burden, resulting in the substantial "cutting off" of the mortgagee's security interest. Secondly, there is a risk of value depreciation. The mortgagor may indirectly harm the interests of the mortgagee by disposing of assets at a low price, and the current rules have relatively relaxed standards for reviewing the reasonableness of transaction prices. Thirdly, there is a risk of information asymmetry. The mortgagee finds it difficult to timely grasp the circulation of the collateral and lacks an effective risk warning mechanism.

4. Suggestions for Improving The Buyer's Rules for Normal Business Operations

4.1. The definition of normal business activities is broad and generalized

Firstly, "normal business activities" should be defined as the ongoing commercial transactions of the seller, rather than being limited to the business scope explicitly stated in the business license. Secondly, the criteria for judging transaction habits should be introduced, combined with the reasonable trust of the buyer in the transaction, to comprehensively determine whether the transaction belongs to normal business activities. Finally, the legal nature of the term 'belonging' should be clarified, and if it is an independent judgment, its scope of application should be expanded; If it is a subordinate attachment, restrictions should be imposed in conjunction with other requirements. Through the above adjustments, it is possible to better balance transaction security and efficiency, and achieve the reasonable application of legal rules.

4.2. Introducing a review mechanism based on the subjective state of the buyer

To address the issue of neglecting the subjective elements of buyers in the "normal operation buyer rules", it is recommended to introduce a review mechanism for the subjective state of buyers in judicial practice. Specifically, it should be clarified whether the buyer has good faith, that is, whether they were unaware of the existence of the mortgage due to gross negligence, or whether their purchase behavior violated the special agreement between the mortgagor and the mortgagee [4]. At the same time, judicial interpretations or legislative revisions can be made to include the criteria for the buyer's good faith judgment in the scope of the rules, in order to prevent malicious buyers from abusing the rules. In addition, in accordance with Article 406 of the Civil Code regarding the transfer of collateral, if the buyer knowingly engages in the transaction despite knowing that the collateral cannot be transferred, it can be determined that they have subjective malice, thereby denying their acquisition of ownership without burden. Through the above measures, a balance can be struck between ensuring transaction security and maintaining the reasonable trust of buyers, achieving the reasonable application of legal rules.

4.3. Improve the relief mechanism for mortgagees

Although the normal operation of the buyer's rules can help promote transaction security, their application may lead to risks such as loss of pursuit rights, devaluation of value, and information asymmetry for the mortgagee. To balance the interests of all parties, it is suggested to expand the interpretation of Article 390 of the Civil Code to grant the mortgagee the priority right to receive compensation for the transfer proceeds, in order to compensate for the reduction of security interests [5]. At the same time, the standards for reviewing the reasonableness of transaction prices should be refined, the obligation of mortgagors to notify should be strengthened, and a risk warning mechanism for mortgagees should be established to ensure that their legitimate rights and interests are fully protected in the application of rules.

5. Summarize

As an important guarantee for the safety of commercial transactions, the normal operation of buyer rules plays an irreplaceable role in maintaining market order and promoting commercial circulation through their reasonable application. However, there are still issues such as vague definitions and incomplete relief mechanisms in its application. In the future, the balance of interests among all parties should be achieved by refining rules, strengthening the subjective review of buyers, and improving the relief mechanism for mortgagees, in order to promote the scientific and legal development of the chattel guarantee system.

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