19_The Fate of a Sale Contract in the Case of Eviction_August_14_GI_eng

A granted ownership right with regard to a person who has acquired the object under a sale contract has direct impact on the relationships between the parties to the sale. The seller is in breach of his obligation to transfer the ownership of the object in exchange of the selling price paid to him. How is the sale contract influenced by the fact that the buyer has been adjudicated to transfer the possession of the acquired object to a third party? The answer to this question can be found in the provisions of the Obligations and Contracts Act and the definition of the term “eviction” (judicial alienation of the buyer from the object) therein.

The essence of eviction is that it implies rights of third parties to the object which the buyer has acquired. Depending on whether the rights have been claimed or exercised, eviction may be possible or realized, whereas depending on the volume of rights, i.e. whether they affect the whole object or a part thereof, eviction may be complete or partial.

The material effect of a granted ownership claim against the buyer is the adjudication to transfer the possession to a third party, which not only affects his legal sphere but also actually deprives him of the object. The same result is in place when the third party claims ownerships to undivided parts of the object rather than the item as a whole (typically in real property disputes). The case law in this respect builds on the understanding that while claiming ownership to undivided parts of the real property, the co-owner intends to preserve the ownership right in its entirety. Thus the rights of the other co-owners are not affected because the judgment in this case is not binding on them.

However, the fact that the buyer is adjudicated to transfer the whole property upon a claim to the ownership of undivided parts does not lead to the conclusion that the seller is in a condition of complete non-performance of the obligation to transfer the ownership. It is from this perspective that it should be assessed whether the buyer acquires the right to cancel the sale contract under which the buyer has fulfilled his obligation to pay the price but has been deprived of the right to use the acquired property.

The prerequisites which generate the buyer’s right to cancel the sale contract vary, depending on whether the eviction is complete or partial:

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- In the former case, it is sufficient to have enforceable rights of third parties to the acquired object, regardless of the fact whether they are claimed or proven, i.e. the buyer is not under the obligation to wait for adjudication on the transfer of possession;
- In the latter case (where third parties claim rights to parts of the acquired object), the buyer may cancel the contract only if he would not have concluded it if he had been aware of the third parties' rights. Given the existence of a system in Bulgaria, which allows access to real property transfer deeds, where transfers of the property have been recorded or rights in rem to the property are generated as of the date of the acquisition by the buyer, the latter cannot claim liability for eviction because he has been in a position to become aware of the rights of third parties enforceable on him.

In closing, it should be noted that in the case of adjudication for the buyer to transfer the possession of real property upon a claim of ownership to undivided parts thereof, eviction is only partial. The fact that the buyer has transferred the property to the third party yields no impact on the effect of the sale contract. The contract retains its validity and it continues to be binding on the parties until the buyer exercises his right to cancel it and the buyer will have this right only if he has acted in good faith.

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