

Communication concerning the decision of the Curia of Hungary
in civil case n° Gfv.VII.30.332/2012

The plaintiff and the fourth defendant concluded a limited security lien contract with a value of 20 million HUF via creating a lien on the plaintiff's real estate in order to ensure the repayment of loans provided by the fourth defendant to a limited liability company which was not party to the proceedings. Upon the commencement of the limited liability company's liquidation, the fourth defendant notified the liquidator of his claims, but he did not terminate the loan agreements that were intended to be secured by the lien contract. During the liquidation proceedings, the fourth defendant ceded his claims and the limited security lien to a third party, and the claims notified under the liquidation proceedings were partially met. At the time of lodging of the plaintiff's legal action, the second and third defendants were registered as parties entitled to the remainder of the claims and as lien holders in respect of the plaintiff's real estate in the land registry. After the assignment of the claims, no further financial commitment has been taken.

In his primary legal action, the plaintiff asked the court to establish that the fourth defendant remained the limited security lien holder in respect of the plaintiff's real estate, because the fourth defendant had not terminated the loan agreements intended to be secured by the lien contract, consequently the assignment of the claims, in the absence of termination, had not resulted in a change to the identity of the contracting parties. Given that the fourth defendant's claim against the principal obligor has in the meanwhile ceased, the security lien on the plaintiff's real estate should be deleted from the land registry.

In his secondary legal action, the plaintiff requested the court to delete the limited security lien registered in favour of the second and third defendants in respect of his real estate. The plaintiff argued that, based on its correctly interpreted content, the limited security lien contract concluded between him and the fourth defendant had no legal effect on claims emanating from the loan agreements concluded between the principal obligor and the fourth defendant after the conclusion of the lien contract. The claims emanating from loan agreements that had been concluded prior to the conclusion of the lien contract were, however, met during the liquidation proceedings, thus, the limited security lien as regards the above claims also ceased to exist.

The first instance court rejected the plaintiff's legal action, the second instance court upheld the first instance judgement.

The Curia also upheld the final court decision. In its view, the limited security lien regulated in Article 263 of the Civil Code differs from mortgages because of the following characteristics: the registration of the limited security lien constitutes no evidence as to the existence of the claims, since this type of lien is created by the parties to secure claims, up to a predetermined amount, that have originated or will originate from a given legal relationship or legal title, or are newly emerged after the termination of claims originating from the legal relationship; the parties to the limited security lien contract agree on the largest amount within which the lien holder may seek satisfaction from the pledged property; mortgages entitle mortgage holders to request not only the repayment of loans, but also the payment of interests, additional costs and costs necessary for

maintaining the pledged property; in principle, mortgages and the claims secured by them can be transferred only jointly to other persons (accessory nature); the limited security lien has an accessory characteristic in respect of a particular legal relationship, i.e. it is attached not to specific claims, but to a legal relationship on which specific claims can be based.

However, the latter characteristic of the limited security lien contract does not prevent the limited security lien holder to be given the right to cede his claims arising from a legal relationship that had been secured by the limited security lien contract to a third party even if the lien holder is still in a legal relationship with the obligor.

The lien holder is entitled to cede only his claims, without securing them by the limited security lien contract, since the lien contract is attached not to specific claims, but to a legal relationship on which specific claims can be based.

The lien holder is also entitled to cede his claims together with his rights originating from the limited security lien contract via a declaration made to this effect. In that case, the original lien holder shares his rights with an additional lien holder who enters into the legal relationship in respect of the claims assigned and up to the limit secured by the limited security lien contract. The new lien holder may seek satisfaction from the pledged property only within the value of the claims ceded to him. As only the secured claims – and not the legal relationship – were assigned to the new lien holder, the latter is not entitled to secure his newly emerging claims by the original lien contract. Thus, the new lien holder has the right to enforce the acquired claims as the ones secured by the lien contract up to the predetermined value only in respect of the assigned claims secured by the lien contract and originating from the legal relationship.

In conclusion, the assignment of claims secured by a limited security lien contract does not result in a loss of the limited security characteristic in the sense that the assignee as a new lien holder becomes entitled to seek satisfaction from the pledged property, but only within the value of the claims ceded to him and up to the limit secured by the limited security lien contract, however, the limited security characteristic disappears in the sense that the new lien holder is not entitled to secure his newly emerging claims by the original lien contract.

With regard to the plaintiff's secondary legal action, the Curia pointed out that limited security lien contracts essentially aim at securing future claims originating from a legal relationship within an amount determined by the contracting parties.

Budapest, the 10th of January 2014

Civil Department of the Curia of Hungary