

Communication concerning the decision of the Curia of Hungary in  
civil case number Pfv.V.21.992/2017

If the authority hands over the ownership certificate card of a vehicle to the creditor being the beneficiary of a prohibition on sale and charges and a purchase option in respect of the vehicle and as a result of a statutory limitation on the property rights thereon, the beneficiary may – unless expressly provided otherwise in the relevant contract – hold possession of the ownership certificate card until the expiry of his purchase option.

The plaintiff as a debtor and the predecessor of the defendant concluded a foreign currency based loan contract in order to finance the purchase of a vehicle. The business rules and regulations of the predecessor of the defendant stipulated as follows: for the purpose of securing repayment of the loan to be granted by him, the creditor shall be given a right of pledge or a purchase option on the vehicle to be purchased and/or the creditor shall be involved as a buyer in the purchase agreement. If the debtor fully complies with all of his obligations arising from the loan contract, then the creditor shall hand over the vehicle's ownership certificate card to the debtor and shall make all the statements necessary for the deletion of the restrictive entries from the relevant public register. The debtor shall be obliged to register – in line with the provisions of the loan contract – the creditor's purchase option or right of pledge and a prohibition on sale and charges related thereto in the relevant public register and in the vehicle's ownership certificate card and registration certificate, in addition, he shall request the competent authority to send the ownership certificate card to the creditor as the beneficiary of the aforementioned prohibition. In order to secure repayment of the loan, the parties established a purchase option in favour of the creditor in respect of the purchased vehicle through the conclusion of a contract on 29 July 2009. The latter contract provided that the parties had stipulated a prohibition on sale and charges to secure the creditor's option to purchase the vehicle in question.

In his legal action, the plaintiff requested the court to oblige the defendant to hand over the vehicle's ownership certificate card to him. He argued that the defendant's purchase option had ceased to exist on 27 July 2014, hence, the defendant had been no longer entitled to hold possession thereof.

The defendant requested the court to reject the plaintiff's action. The defendant reasoned that the vehicle's ownership certificate card had served as an independent and atypical guarantee for the plaintiff's compliance with the loan contract. According to the parties' agreement, the handing over of the ownership certificate card was conditional upon performance of the loan contract and not that of the purchase option contract. Since the plaintiff did not fully comply with his payment obligation, he was not entitled to claim the certificate card.

The court of first instance obliged the defendant to hand over the ownership certificate card to the plaintiff.

The court of second instance reversed the first instance judgement and rejected the plaintiff's action. The appellate court reasoned that, based on the relevant provisions of the aforementioned business rules and regulations, the act of holding the vehicle's ownership certificate card in the creditor's possession had served as an atypical, supplementary security in addition to the guarantees contained in the purchase option contract and the purchase agreement.

The Curia of Hungary quashed the final judgement and upheld the judgement of the court of first instance. The Curia argued that it had clearly followed from the parties' contract that the creditor, being the beneficiary of a prohibition on sale and charges and a purchase option in respect of the vehicle, had entered into possession of the ownership certificate card. By virtue of the first sentence of section 114, subsection (2) of the former Civil Code, the right to alienate or encumber property may be restricted or excluded by contract only in the event of the transfer of ownership and only for the purpose of securing the right of the transferor or another person in respect of the asset. In the present case, the prohibition on sale and charges guaranteed the creditor's option to purchase. Pursuant to section 74, subsection (4) of Minister of Interior Decree number 35/2000 (of 30 November 2000) on the detailed rules on vehicles' ownership certificate cards, in case of a restriction on the ownership of a vehicle (prohibition on sale and charges, *et cetera*), the latter's ownership certificate card may be handed over only to the beneficiary of such a restriction or prohibition.

On the basis of the parties' contract and the legal provisions referred to above, it could be stated that the handing over of the ownership certificate card to the defendant had not been based on the parties' contract, but had resulted from the statutory requirements related to a restriction on the ownership of the vehicle in question. The defendant could hold possession of the ownership certificate card until the expiry of his status as beneficiary of the prohibition on sale and charges in respect of the vehicle. Since the purchase option and consequently the prohibition on sale and charges ceased to exist, the defendant was no longer entitled to hold possession of the ownership certificate card.

The parties' contract did not include any provision that referred to the ownership certificate card as a guarantee. The contractual term which set a deadline for the defendant to hand over the ownership certificate card and make a statement necessary for the deletion of the restrictive entry from the relevant public register could not be regarded as such a provision either.

Budapest, the 18<sup>th</sup> of April 2019

Civil Department of the Curia of Hungary