

Communication concerning the decision of the Curia of Hungary  
in civil case n° Pfv.V.22.048/2014

In the event that the debtor's real estate can be expropriated, the liquidator shall take into account the real estate's expropriation value in the determination of its sales price on the occasion of the issuance of his invitation to tender for its purchase and he shall advertise and dispose of the real estate at a sales price near or equal to the expropriation value. In addition, section 49, subsection (1) of Act no. XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings (hereinafter referred to as the Bankruptcy Act) does not exclude the possibility that the liquidator may conclude a sales agreement in respect of the real estate instead of its expropriation if the former would be more consistent with the interests of the creditors.

Within the framework of the "Further Development of the Vásárhelyi Project" programme, the debtor company's real estate had been re-qualified as a flood storage reservoir. In the light of the above, the debtor initiated, on 28 September 2010, the expropriation or purchase of his real estate in exchange for a due compensation. A subsequently submitted expert opinion held that the value of compensation for the real estate's eventual sale would be equal to an amount of 37 480 000,- HUF.

During that period, the debtor was put into liquidation as of 5 January 2012. In the liquidation proceedings, the plaintiff as a pledge holder having a pledge on the debtor's real estate registered a creditor's claim of 102 878 591,- HUF with the liquidator and requested from this claim the payment of 50 000 000,- HUF capital and 9 568 130,- HUF interest in accordance with the provisions of section 49/D of the Bankruptcy Act.

On 24 May 2012, the defendant as the appointed liquidator in the present case launched an invitation to tender for the real estate's purchase at a sales price of 5 000 000,- HUF, specifying that the real estate included a guesthouse under construction with a 440 m<sup>2</sup> floor area and with a completion rate of 60 percent, but the property's re-qualification as a flood storage reservoir constituted an obstacle to the completion of the construction works. On 21 August 2012, the successful tenderer who is not party to the proceedings purchased the real estate for a sales price of 5 000 000,- HUF and subsequently, on 28 January 2013, he initiated its expropriation. On 6 August 2013, the Hungarian State concluded an in-lieu-of-expropriation sales agreement with the new owner in exchange for the payment of a sales price of 37 480 000,- HUF.

From the 5 000 000,- HUF sales price realised on the real estate's sale, the defendant wished to pay an amount of 3 479 380,- HUF to the plaintiff in order to partially satisfy his creditor's claim.

In his amended legal action, the plaintiff requested the court to oblige the defendant to pay him

the sum of 31 316 640,- HUF by way of damages as well as some additional costs. The plaintiff argued that the defendant had failed to show reasonable diligence in relation to the real estate's sale. According to the plaintiff's claim, the defendant was aware that the real estate had been re-qualified as a flood storage reservoir and therefore it could have been expropriated. Given that the defendant could have generated much more income by letting the property be expropriated or by concluding an in-lieu-of-expropriation sales agreement, his unreasonable conduct caused damage to the plaintiff, which, in the plaintiff's view, should be compensated. In his counterclaim, the defendant requested the court to reject the plaintiff's legal action.

In its final judgement, the court acceded to the plaintiff's claim to order the defendant to pay damages.

The defendant submitted a petition for judicial review against the final judgement and argued that he had complied fully with the applicable legal provisions and had not engaged in unlawful practices that could have established fault on his part during the sale of the debtor's real estate. According to the defendant's position, the property of a debtor in liquidation can be sold only through public sales, by way of tender or auction, and the expropriation of such property cannot be initiated by the appointed liquidator. The amount of the sales price that can be obtained by way of tender or auction depends on the value of the debtor's property and on the content of the invitation to tender for its purchase.

Proceeding upon the petition for judicial review, the Curia pointed out that it is an essential legal requirement that the liquidator shall dispose of the debtor's assets through public sales at the highest sales price that can be obtained on the market. Hence, in the event that the debtor's real estate can be expropriated, the liquidator shall refer to the possibility of expropriation and shall take into account the real estate's expropriation value in the determination of its sales price on the occasion of the issuance of his invitation to tender for its purchase, moreover, he shall advertise and dispose of the real estate at a sales price near or equal to the expropriation value. If the debtor's property cannot be sold by way of tender at a sales price near or equal to the expropriation value, the applicable legal provisions do not exclude the possibility that the liquidator may conclude a sales agreement in respect of the real estate instead of its expropriation if the former would be more consistent with the interests of the creditors. Since the defendant as the appointed liquidator did not show due diligence in the present case and sold the real estate for only a small fraction of its expropriation value, he shall be liable to pay damages for his breach of duty. With regard to the above, the Curia upheld the final judgement.

Budapest, the 29<sup>th</sup> of May 2015

Civil Department of the Curia of Hungary