

Research on the Buyer's Rule of Normal Operation in Civil Code Based on the Perspective of Understanding of Applicable Conditions

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ABSTRACT

Article 404 of China's Civil Code stipulates the buyer's rule of normal operation. However, there are considerable disputes about the applicable conditions of this rule in both academic and judicial fields. Starting from the perspective of legal provisions, combined with academic viewpoints and overseas judicial experience, this paper analyzes the three applicable conditions of "normal business activities", "reasonable price has been paid" and "achieving mortgaged property" stipulated in the law and Whether the buyer should have subjective goodwill by means of case analysis and comparative study, in order to obtain a more comprehensive and accurate understanding of the applicable conditions of the buyer's rule of normal operation.

INTRODUCTION

Article 404 of China's Civil Code stipulates the rule of normal operation buyer, it bulids a standard that if movables is mortgaged, it couldn't be used to confront the buyer who has paid a reasonable price and obtained the mortgaged movables in normal business activities." This rule is revised from Article 189, paragraph 2 of the Property Law, which is It is an exception to the application of Article 403 of the Civil Code, preventing the mortgagee from pursuing the mortgaged movable property, protects the legitimate interests of the buyer in normal operation, and plays an essential role in realizing the connection of financing channels, protecting the faith interests of the buyer in normal operation, improving transaction efficiency and ensuring transaction security. At present, however, there is a huge controversy in the academic circles about the rare of normal operation buyer stipulated in Article 404 of the Chins's Civil Code, especially about the three applicable conditions of "normal business activities", " reasonable price has been paid" and "acquired mortgaged property" stipulated in this rule, and there have many different points on the buyer should be subjective well-meaning. Based on this, this paper will be based on the analysis of the rule of normal operation buyer in Article 404 of China's Civil Code and analyze and understand the applicable conditions of the

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rule of normal operation buyer, so as to get a clearer and more accurate understanding of the applicable conditions of the rule of normal business operation buye.

ORGANIZATION OF THE TEXT

Understanding of "Normal Business Activities"

According to Article 56 of the Supreme People's Court's interpretation on the application of the relevant guaranteed system of the China's Civil Code, we can draw a conclusion that the two restrictions on "normal business operation" are the restrictions on the transaction subject and the restrictions on the business scope.

RESTRICTIONS ON TRANSACTION SUBJECT

The so-called transaction subject of normal business activities refers to the seller, or the mortgagor, rather than the buyer or mortgagee. From the perspective of the legislative purpose of this rule, on the one hand, the buyer's transaction with the mortgagor in its normal business activities is largely due to the belief that the goods purchased by the mortgagor in its normal business activities do not have a guaranteed burden. The establishment of these rules is intended to protect the faith interests of the buyer arising therefrom. Faith is the bridge of free trade between strangers [1]. Only by protecting the buyer's trust interests in consumption activities can we establish a stable behavioral expectation and a sense of transaction security, which is one of the most fundamental requirements of legal order. [2] At the same time, in order to maintain trade order, better protect the buyer in normal business, There should have a strong system to increase the certainty of trading results.[3] On the other hand, the establishment of this rule also needs to improve the transaction efficiency. The normal business protected by this rule are the normal business of the seller, which enable the normal business activities of the seller to proceed smoothly. The operator can continue to sell the movable property after setting a floating mortgage on its movable property, and the proceeds can be used to realize the repayment of the mortgagee's debts, so as to complete the transaction, withdraw funds, and pay off debts, as Wang Liming said, "Under the guarantee of the rule of the buyer's normal operation, the businessmen can obtain necessary funds in normal financing and operation, the buyer can obtain the unencumbered goods by purchasing the subject matter, and the mortgagee will not lose the mortgage right by choosing floating mortgage and strengthening supervision, so as to achieve the purpose of effectively increasing the business efficiency", [4] Finally, the mortgagee will be realized, The goal of tripartite win-win between the mortgagor and the buyer. The drafters of the Reference Draft of the European Common Framework also emphasized the important role of the buyer rule in normal operation in ensuring business efficiency. "If the parties can no longer trust the possession of the goods by the assignor, and must also investigate whether there are registered security rights and retention of title transactions on these properties, this will inevitably constitute a huge obstacle to normal commerce."

[5] The UNCITRAL Legislative Guide on Secured Transactions also refers to the consideration of pursuing transaction efficiency when explaining the purpose of establishing the rule of normal operation buyer.[6] Based on the above two reasons, the restriction of the transaction subject of this rule to the seller is in line with the legislative purpose, which is conducive to protecting the buyer's reasonable faith interests and increasing the transaction efficiency. We should pay attention to this when we understand the application conditions of this rule.

RESTRICTIONS ON BUSINESS SCOPE

The second paragraph of Article 56 of the Interpretation of the Supreme People's Court on the Application of China's Civil Code Concerning the Guarantee System restricts the business scope of the buyer to that of the seller, which shall be included in the operation field clearly specified in its business license, and the salesman shall continue to sell the goods of the same type. This restriction on the seller's business scope is actually a guarantee for the normal operation of the buyer's rules to play the role of protecting the buyer's trust interests and ensuring the safety of transactions. On the one hand, the business scope registered by an enterprise is the most convenient way to judge its normal business activities; On the other hand, the requirement that the seller should continue to sell similar goods is from the perspective of rationality to ensure transaction security. The American law stipulates that the seller must engage in the business of the same kind of goods, so as to distinguish it from the seller who sells other kinds of goods or other operators who do not sell such goods as a profession.[4] Just imagine that if a buyer buys a large amount of drugs from a food company, the transaction itself cannot be called a normal transaction or a normal business activity. If at this time the rules of normal business buyers guarantee their transaction safety, then the rationality of this guarantee is difficult to meet the cognition of ordinary rational people. Thus, the authority of the law is greatly reduced.

Understanding of "Reasonable Price has been Paid"

According to the rule of normal operation buyer noted in the Civil Code, the buyer must pay a reasonable price to apply this rule. How should we understand the condition of "the reasonable definition" and "the price has been paid"?

THE REASONABLE DEFINITION

Article 404 of China's Civil Code does not clearly indicate the reasonable amount of reasonable price. For this reason, the author believes that we can use the definition of reasonable price stipulated in the bona fide acquisition system to analogically apply Article 404, that is, judge whether the price paid is reasonable by whether the amount of price is roughly equal to the value of the subject matter. On the one hand, the buyer rule of normal operation can be understood as a special form of bona fide acquisition;[8] On the other hand, "bona fide acquisition" of the Civil Code has stipulated the "reasonable

price", which should be based on the nature, quantity, payment method and other specific conditions of the transferred subject matter, and the reasonable price can be determined comprehensively by local market price and local buying and selling habits at the time of transaction. If the reasonable price in the rule of normal operation buyer could be also explained in this way, the reasonable price can be consistent with the market price, thus linking with the "normal business activities" defined in Article 411 of the Civil Code, making the legislation of Article 411 more rigorous.

UNDERSTANDING OF "PAID"

There is a dispute in the academic circle as to whether the application of this rule requires that the price should be "already" paid. Some scholars believe that the price should not be required to have been paid. As long as a reasonable price has been agreed between the seller and the buyer, the normal operation buyer rule can be applied.[9] Other scholars believe that the buyer must pay a reasonable price in strict accordance with the provision which is set in the Civil Law Code to apply the rule of normal operation buyer.[7] With regard to this dispute, the author advocates that the rule of normal operation buyer should be applied only when the buyer has paid a reasonable price. There are two reasons. One is that if the seller only needs to have a negotiation with the buyer to find out a reasonable price applying the rule, its essence is to use the seller's right to claim the buyer's price as the guarantee for the seller to pay off the mortgagee's debt, but the realization of this right to claim the price depends on the performance of the buyer's obligations. If the buyer later has capital turnover problems or other special circumstances that make the transaction impossible, the seller can not guarantee the repayment of the mortgagee's debt, and the security of its guarantee is far lower than the actual price itself. Secondly, from the perspective of comparative law, extraterritorial justice has already regulated this, and the Draft European Model Civil Code clearly requires the assignee to pay consideration for acquiring movable property.[10] This also serves as a reference for our understanding of the application of the rule.

Understanding of "Obtaining Mortgaged Property"

The condition will talk next refers to the buyer's acquisition of the ownership of the chattel mortgage based on the rules of the transfer of the ownership of the chattel.[9] There are also controversies on whether the applicable conditions of this rule requires buyers to actually possess the collateral. In my opinion, due to the consideration of the legislative purpose of Article, the establishment of the rule is intended to guarantee the faith interests of the normal operation buyer and ensure the transaction safety. Once the buyer has obtained the ownership of the collateral, there has been a reason to prevent the realization of the mortgage, which can be used as a request to the mortgagee. [8] Based on this, the legislative purpose of the rule can be achieved only if the buyer obtains the ownership of the collateral, without requiring the buyer to actually possess the collateral.

Whether the Buyer Should have Subjective Goodwill

Whether the application of the rule of normal operation buyer needs the buyer's kind subjective faith as a requirement, the academic community and the judicial practice field have different opinions on this. Some scholars believe that the rule does not stipulate that the buyer's kind subjective faith is the prerequisite for the application of the rule, and that good faith is not an essential element for the requirement of the rule.[10] In addition, the court has also stipulated that the buyer's kind subjective faith is a condition for the application of the rule in the judicial practice at the time of Article 189 of the Property Law. For example, the Zhejiang Jinhua Intermediate People's Court once stated in the judgment: "The mortgaged property in this case has been obtained by the buyer who paid a reasonable price, and the appellant has not provided evidence to prove that the buyer obtained it maliciously, so the appellant's claim is not supported because of insufficient basis." The author advocates not to expand the interpretation of Article 404 of the Civil Code, there are two reasons why the subjectivity of the buyer should not be restricted.

First, starting from the legislative purpose of the rule of normal operation buyer in the Civil Code, as previously stated, establishing the rule is to guarantee the buyer's faith interests, ensure transaction safety and improve transaction efficiency. Since China does not require the mortgage of movable property to be publicized, if the buyer is required to conduct substantive review on whether a mortgage has been set up on the collateral, it will waste transaction costs to a large extent, reduce transaction efficiency, and also be detrimental to the mortgagor's ability to obtain payment by selling inventory, thus affecting the realization of the original creditor's rights of the mortgagee.[11] This obviously runs counter to the original intention of the rule of normal operation buyer. On the other hand, from the perspective of comparative law, the Uniform Commercial Code of the United States, the UNCITRAL Model Law on Secured Transactions and the draft European Model Civil Code do not regard the buyer's kind subjective faith as a requirement for applying the "rule of normal operation buyer", and even make it clear that even if the buyer knows that there is a mortgage on the movable property acquired by his transfer, the rule of normal operation buyer can still be effective.[12] These extraterritorial judicial experiences can also serve as a reference for our interpretation of the application of the rule of normal operation buyer.

Although the normal buyer rule does not take the buyer's kind subjective faith as the essential item of application, it is not a *laissez faire* attitude. The Uniform Commercial Code of the United States requires that the buyer in normal business activities does not know that his purchase has infringed the rights of others. For this reason, American scholars believe that the rule in normal business also has the problem of protecting bona fide transferees when there is a burden on things. Therefore, the rule of normal operation buyer should be regarded as a special kind of bona fide acquisition. It is also based on the goodwill of the buyer. [13] The principle of good faith is the imperial clause of the civil law. The rule of normal operation buyer protects the buyer's faith interest in "normal business activities". If the buyer knows that it will infringe the interests of the mortgagee, if it is protected again, the original intention of the rule will be violated, the consequences will be as Zhizhi Liu said: "It is not only unable to achieve the goal of

balancing the benefit of the buyer and the mortgagee, but also violates the principle of good trust order of the civil law." [11] Therefore, although Article 404 of the Civil Code does not take the buyer's kind subjective faith as the premise for the application of the rule of normal business buyer, it does not mean that it will protect malicious buyers, that is, "the basic principles of civil law, as the requirements of fairness and justice, must be observed." [14] In addition, the judgment made by the Jinhua Intermediate People's Court of Zhejiang Province mentioned above also confirms this view in the field of judicial practice.

SUMMARY

The establishment of the rule of normal operation buyer has played a very positive role in protecting the buyer's faith interests in normal business operations, promoting transaction efficiency and ensuring transaction safety. When we apply this rule, we also need to firmly grasp its application conditions, based on the understanding of provisions of the Civil Code, and grasp the legislative purpose of the establishment of articles of law. The author analyzes and explains the three applicable conditions of "normal business activities", "reasonable price has been paid" and "achieving mortgaged property" as well as the subjectivity of the buyer, in order to obtain a more comprehensive and accurate understanding and experience of the application of the normal business buyer rule.

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