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### **Creditor Mortgagee**

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#### **Abstract**

In the current study, the researcher investigates the right of tracking as a legal means to pursue the pledged money in the event of the end of ownership. Moreover, the mortgagee creditor cannot use his right of retaliation except when the debt term is realized, and the debtor cannot pay. The current study also demonstrates what happens to the mortgagee's rights after the owner's title is withdrawn from the mortgage. The owner's title might be lost voluntarily by the sale of mortgaged funds or his gift or involuntarily through inheritance. As a result, the purpose of this study was to clarify the fate of the mortgagee creditor's rights in the case of the transfer of ownership of the mortgaged money. finally, the is limited to addressing the creditor's right to follow up only in the security mortgage.

#### **Keywords**

Not given

**JEL Classifications:** J11, F43

#### **1. Introduction**

The various legislations, through their legal texts, meant the process of regulating the issue of insurance, which has a significant impact on enhancing trust between the parties in society and providing a kind of stability in the transactions between the parties, as each party, when it makes any transaction, submits it in a stable manner because It guarantees the existence of legal texts that guarantee

him his right and compel the other party to implement his obligation in the event of a breach of it.

In connection with this, we find that various legislations have provided creditors with the issue of security of different types, namely, the general and privacy guarantees. The general guarantee means that all the debtor's money is a guarantor for the payment of his debts. Despite that, the guarantee is hardly devoid of danger because in the case of multiple creditors and no If the debtor's money is sufficient to pay all the creditors, this money is divided between the parties to the contract, and this matter may lead to weak dealings between the parties and may also lead to the debtor being burdened with other obligations. As a result of this, and also to enhance confidence between the parties in society, the various legislations worked on organizing the private guarantee to avoid falling into the danger that the creditor may face in the general guarantee. It is a mortgage.

## **2. Significance of the Study**

The study's significance is that it shows the fate of the mortgagee's rights when the title of the owner is removed from the mortgage. The title of the owner may be removed either voluntarily through the sale of the mortgaged money or his gift or compulsory through inheritance. Therefore, this study came to clarify the fate of the rights of the mortgagee creditor in the event of the transfer of ownership of the mortgaged money.

## **3. Study Questions**

In this study, a number of questions arise, including, but not limited to:

- 1- Is it possible to transfer the ownership of the pledged money?
- 2- What is the fate of the rights of the mortgagee creditor when the owner's capacity ceases?
- 3- Can the mortgagee creditor trace his right upon the transfer of ownership of the mortgaged money?
- 4- What is the rank of the mortgaged creditor in relation to the rest of the creditors of the mortgaged money?

We will strive to reach sufficient and adequate answers to these questions and many others that may stand in our way during this study.

And we find that in-kind insurance has become very popular among the parties, and it is meant for the debtor to determine a right in kind over specific money of his money with the aim of fulfilling his right from it in priority over other creditors and among these insurances are the possession mortgage and the insured mortgage.

#### **4. The problem of the Study**

Ownership of the pledged money may transfer to a person other than the debtor for any reason for gaining ownership, and the money remains burdened with the mortgage. The problem of how the mortgagee creditor can exercise the right of tracking against the owner.

#### **5. Study methodology**

In this study, we will rely on the descriptive-analytical approach by analyzing the legal texts related to the subject of the study and clarifying the rulings of the courts and their compatibility with the legal texts and the opinions of the law commentators in the place of the study. In the second section, I will deal with the purification of the pledged money and its effect on the rights of the pledge creditor.

Jordanian legislation has organized the issue of mortgage of its two types in the texts from (1322-1447) in the Jordanian Civil Law No. 43 of 1976. Therefore, we find that the issue of in-kind insurance is one of the important issues for creditors, as it works to provide a guarantee for them to obtain their rights on time and on the date agreed upon with the debtor.

#### **6. Right of Tracking of the Pledged Creditor**

The mortgage gives the creditor the mortgagee vis-à-vis others two rights, as under these two rights, the mortgagee creditor can perform them vis-à-vis others. The two rights are the right to advance and the right to pursue. According to these two rights, the creditor can claim his right by taking precedence over all the ordinary creditors and the mortgaged creditors following in the rank. Also, the mortgagee creditor can trace the mortgaged money to any person to whom the ownership of this money, loaded with the mortgage, has been transferred.

Accordingly, I will study this topic through two demands where I will address in the first requirement the concept of the right of tracking and its conditions, and in the second topic, the right of tracking by the mortgagee creditor.

##### **6.1 The concept of the right of tracking and its conditions**

The Jordanian legislator stipulated the right of tracing in the Jordanian Civil Code, which came in one of its texts as follows: "The mortgagee with a security mortgage has the right to pursue the mortgaged property in the hands of any holder of it, not to repay his debt at the time of payment according to his rank."<sup>(1)</sup> It is understood from the previous text that the right of the mortgaged property Traceability enables the mortgagee creditor to follow up on the mortgaged property.

The debtor sells the pledged money, donates it, or establishes any rights in his eyes on it, so the right of retaliation came to counter this and protect the mortgagee creditor when the title of the owner ceases to be from the debtor <sup>(2)</sup>.

## 6.2 Section one: the concept of the right to trace

When extrapolating the legal texts regulating the mortgage in the Jordanian Civil Code, we find that it did not clarify what is meant by the right of tracing completely, but rather the legal texts were satisfied with stating specific parts of the right of tracing by explaining the provisions of the relationship of the mortgagee creditor with others. Therefore, we find that there is a part of the law commentators who defined the right of tracking as "the right of the mortgagee creditor to pursue the mortgaged money in the event of the transfer of its ownership or any other real right over it subject to a mortgage to a third party, in order to recover his debt from its price after execution on it" <sup>(3)</sup>.

Therefore, we find that the right of atonement does not appear except in the relationship between the mortgagee and creditor because it has imposed an accessory right over the mortgaged money and the possessor of the mortgaged money.

From my side as a researcher, I know the right of tracing as a right imposed on the mortgagee creditor according to which he guarantees his right to the mortgaged money by tracing the mortgaged money upon maturity of the debt and according to the rank of the mortgaged creditor. And we must point out an extremely important matter, which is that the tracking right can only be used on the mortgaged property and its appurtenances, and whether the property is by nature such as houses or property by allocation (such as the accessories inside the house that the owner has harnessed to serve the property) and in the event of loss The property is assigned to its quality, so the mortgagee creditor will not be able to exercise the right of retrieval over it <sup>(4)</sup>.

## 6.3 Subsection Two: Conditions for the validity of the tracking right

The right of tracing is established for every mortgagor, whatever his rank, but in order for the mortgagor creditor to exercise his right, a set of conditions must be met.

**First:** the conditions related to the holder of the pledged money

There must be a set of conditions for the mortgaged property holder, and these conditions can be summarized as follows:

- 1- The mortgaged money or an original right in rem that can be mortgaged shall be transferred to the holder, and the original right must be tradable. Ownership leads to the disruption of the tracking authority, for example, expropriating the pledged money for the public interest or selling it by public auction. Here, the mortgagee is not able to follow up on the pledged money.

- He can only apply for compensation or the price <sup>(5)</sup>. The mortgaged person is everyone whose ownership has been transferred after the mortgage.” <sup>(6)</sup>
- 2- The person to whom the mortgaged property is transferred should not be personally responsible for the debt secured by the mortgage. The mortgagee creditor may use his right of tracing because they are directly responsible for the debt secured by the mortgage. Therefore, the capacity of the indebtedness is lifted from the holder of the mortgaged property as the holder <sup>(7)</sup>.
  - 3- Registration of the holder’s deed. In order for a person to acquire the capacity of the holder, it is required that he register the contract whose registration entails the transfer of ownership of the pledged money.
  - 4- Acquisition of the right by the holder after registering the mortgage and before registering the decision to seize the property. Therefore, the capacity of the possessor must be acquired on the pledged money before registering the expropriation notice. Therefore, if the ownership is transferred to a person before the pledge registration, the pledge creditor cannot invoke his right against him. Also, suppose a person acquires ownership of the pledged money after placing the attachment sign. In that case, he is not considered a possessor, and the mortgagee creditor is able to dispose of and enforce the mortgaged money <sup>(8)</sup>.

**Second:** Conditions relating to the right of the mortgagee creditor

There are a set of conditions that the mortgagee creditor must meet in order to be able to adhere to the right to track the mortgaged money, and we mention them as follows:

- 1- The term of the debt secured by the security mortgage, in order for the debtor to be able to track the pledged money, must come at the time of its fulfillment since it is not possible to implement according to a deferred right, but the debtor can adhere to tracking the pledged money in the event of the debtor’s insolvency, even if he did not come At the time of repayment of the debt and also in the event that the debtor waives his right to the term <sup>(9)</sup>.
- 2- The security mortgage must be valid in the face of the permissible, and this means that the mortgagee creditor registers the mortgage before someone else writes a right in kind on the property because the right of the track is the power of the mortgagee creditor, and in order for the mortgagee creditor to acquire this power, his right must be prior to the holder. Registration leads to the holder notifying that the property is burdened with a mortgage, which leads to the possibility of execution on the property against it <sup>(10)</sup>.

**6.4 The exercise of the right of tracking by the mortgagee creditor**

We mentioned in the previous requirement the concept of the right of tracking and the conditions that must be met in order for the mortgagee creditor

to be able to exercise his right to follow up on the mortgaged property, and in this requirement, we will show how the creditor can exercise the right of the track.

We find that the Jordanian Civil Code mentioned in one of its texts the following: "The creditor who is mortgaged with a security mortgage may take measures to expropriate the mortgaged property and sell it if the debt is not paid on time, after warning the debtor and the property owner in accordance with the procedures stipulated in the Law of Procedures and Special Laws." <sup>(11)</sup> We also find that the Jordanian Civil Code came with it "The procedures for forced expropriation are carried out when the debt is not paid in accordance with the provisions of special laws." <sup>(12)</sup> And through the previous texts, we conclude that the Jordanian Civil Code shows that the mortgagee creditor must follow special procedures In order to be able to directly investigate the tracking, these procedures are:

- 1- Warning the debtor to pay in order for the mortgagee creditor to be able to initiate his investigation in the pursuit against the holder of the pledged money, and the reason for alerting the debtor to pay because he is the original responsible for fulfilling the debts owed by him. In tracking, if the debtor is notified and does not pay, then he is in default of his obligation, and it is the right of the mortgagee creditor to track the mortgaged money <sup>(13)</sup>.
- 2- Notifying the possessor that the Jordanian law imposed on the mortgagee creditor alerting the possessor of the pledged money to pay the debt. After warning the debtor to pay, or at a time. If the warning takes place after the warning, it is considered void, and a notification must accompany the warning to the possessor to the debtor that the holder has been warned to pay. Execution of the pledged money in possession of the holder.
  1. Purging the mortgaged money and its impact on the rights of the mortgagee creditor.

The purification of the pledged money is a legal means given by the legislator to the holder of the money in order to get rid of the effect of the mortgage and its weight on the mortgaged money, as the owner of the property can get rid of the right of the mortgaged creditor to follow through by purifying the mortgaged property, where he can offer the creditors, whose debts are restricted to pay its value if he accepts it the creditors get rid of the mortgage. If the creditors refuse to do so, then they must request the sale of the property immediately, even if their debts are not in the same condition, and the case ends either by awarding the auction to the possessor or third parties and here also the property is cleansed of the mortgage.

Therefore, I will address this topic through two demands; I will explain in the first bump what purification means and its procedures, and in the second requirement, we will discuss the effect of purifying the pledged money on the mortgagee creditor.

### **6.5 The first requirement: What is meant by purifying the pledged money and its procedures?**

We find that the Jordanian legislator stipulated in one of the provisions of the Civil Code as follows: "The holder of the mortgaged property has the right to purify the property that has been transferred to him from every right in rem that entails authenticating a debt registered with the debtor's payment until the date of its sale or on the dates specified by the procedure law or special laws." <sup>(14)</sup> We find that the Jordanian legislator has organized the purification in the previous article, and it becomes clear to us from the previous text that the purification is from the right of the holder until before the completion of the process of registering the property in the name of the auctioneer.

Therefore, we can know purification as a legal means that will facilitate the circulation of private real estate, given that the person is reluctant to buy money burdened with a mortgage, if you find a way to get rid of this money from the mortgage, such as purification, he will not hesitate to buy.

And after we have clarified what is meant by purifying the pledged money, we must clarify the measures that are taken

A. Following them to purify the pledged money and by extrapolating the texts of the Jordanian civil law, we did not find that the Jordanian legislator stipulated the methods that must be followed to purify the pledged money.

But by extrapolating the comparative legal texts, we find that the Iraqi legislator has clarified the method of purifying the pledged money, as he stipulated in one of his legal texts the following: "If the possessor wants purification, he must direct the creditors whose rights are registered in their chosen place of residence announcements that include the following data: A0 Extract from the title deed of the holder It is limited to stating the type and date of the disposal, defining the property precisely and specifying its previous owner. If the disposal is a sale, the price and its attachments are also mentioned.

B. A statement of the rights that were registered on the property before the holder's deed was registered, the date of its registration, and the amount and names of the creditors.

C. The amount estimated by the possessor is the value of the property, and this amount must not be less than what is required according to the price that is taken as the basis for estimating the price in the event of expropriation, and in no case less than the remainder owed by the holder from the price of the property if the disposal is a sale. And he should mention in the same announcement that he is ready to pay the registered debts to the amount in which the property was valued. He does not have to accompany the offer with the amount in cash. Still, the offer is limited to showing his willingness to pay the amount that must be paid immediately, that is, whether the date of maturity of the recorded debts" <sup>(15)</sup>. According to Iraqi law, the procedures for purifying the mortgaged property start through an announcement to the creditors who have rights, but we find that the

Iraqi legislator restricts the freedom of the holder in two matters. They are not less than the amount offered by him for the rest of the property price if the disposal is a sale and also not. The displayed amount is less than the price that is taken as the basis for estimating the price in the event of expropriation.

### **6.6 The second requirement: is the effect of purifying the pledged money on the mortgagee creditor**

When the holder of the mortgaged money submits an offer in order to release the mortgaged property, two orders follow:

#### **First effect**

The offer may be accepted by the mortgagee creditor, which entails the holder paying the amount he pledged to pay. in 1 day.

#### **The second effect**

Mortgage creditors may be granted either to accept the offered value or reject the offered value:

- 1- The creditors' interest in accepting the offer may be if the offer made by the holder satisfies all their debts. Acceptance of the holder's offer results in two effects:
  - A- The holder is personally obligated to pay the offered value, as the holder is obligated to pay the offered value and is the guarantor of all his money and not only the value of the mortgaged property <sup>(16)</sup>.
  - B - Purging the pledged money from the mortgage. When the holder pays the value of the money he accepted, the pledged money is cleansed of all rights that burden it, whether they are mortgage rights or privilege rights <sup>(17)</sup>.
- 2- The offer submitted by the holder may be rejected, and here every creditor who has a right over the money has the right to reject the purpose presented by the holder <sup>(18)</sup>. It is sufficient for one creditor to refuse a mortgagee, whatever his rank, but the rejection is accompanied by request to sell the property in a public auction, and the refusal is within the period <sup>(19)</sup>. The legal ones we mentioned earlier were not addressed by the Jordanian legislator, while the Iraqi legislator <sup>(20)</sup> included them. And we must show that purification is a legal means to confront the mortgagee creditor in the right of tracing, and it is limited only to the security mortgage. As for the possessory mortgage, only one means has been authorized for it to confront the pursuit of the mortgagee creditor, which is the settlement of the debt <sup>(21)</sup>.



## **7. Conclusion**

After we finished this scientific trip, we reached a set of results and recommendations, which are:

## **8. First: the results**

- 1- The right of tracking is a legal means to pursue the pledged money in the event of the end of ownership.
- 2- The mortgagee creditor cannot use his right of retaliation except at the time when the debt term is realized, and the debtor is unable to pay.
- 3- Purification is a legal means that facilitates the circulation of real estate ownership by ridding it of the burden of a mortgage.
- 4- Purification is limited to address the creditor's right to follow up only in the security mortgage.

## **9. Second: Recommendations**

- 1- We call upon the Jordanian legislator to indicate the legal period granted to the holder when he submits his offer to purify the mortgaged property.
- 2- We call upon the Jordanian legislator to clarify the procedures for purifying the pledged money.
- 3- We call upon the Jordanian legislator to grant the possessor of the pledged money the right of purification in the face of the pledgee as a pledge of possession.

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